



**International  
Rehabilitation  
Council for  
Torture Victims**



## **TORTURE AND ILL-TREATMENT IN KENYA**

**- REALISING VICTIMS' RIGHT TO A FORENSIC MEDICAL EVALUATION AND PROMPT AND ADEQUATE REHABILITATION SERVICES**

### **Background**

The following submission to the Committee Against Torture (the Committee) addresses two specific issues of the Government of Kenya's implementation of its obligations under the UN Convention Against Torture (UNCAT):

1. Access to prompt, effective, independent and impartial forensic medical documentation for all persons alleging and otherwise showing indications of having been exposed to torture and ill-treatment; and
2. Prompt access to appropriate rehabilitation services for all victims of torture and ill-treatment.

The submission specifically analyses the State's response to questions 23, 33 and 37 and proposes concrete measures that the State can take to improve its implementation of UNCAT obligations as they pertain to medical documentation and rehabilitation services.

The submission is prepared jointly by the the Independent Medico-Legal Unit (IMLU) and the International Rehabilitation Council for Torture Victims (IRCT). IMLU has many years of experience of providing holistic rehabilitation of torture victim through provision of legal , psychosocial and medical services at the national and regional level and the IRCT has extensive experience in medical documentation of torture and ill-treatment and provision of rehabilitation services from a global perspective.

### **Domestic Implementation of the Istanbul Protocol**

Access to prompt, effective, independent and impartial medical documentation of alleged torture and ill-treatment is an essential element of the obligation to conduct a prompt and impartial investigation as provided by UNCAT article 12 and 13. The Committee has consistently recognised the importance of applying the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) when conducting such documentation.

In its report, the Government of Kenya notes that it has held extensive consultations on integration of the Istanbul Protocol into its system of forensic investigations and that it is currently developing and appraisal tool to monitor the impact of training programmes.<sup>1</sup> The Government further reports that the P3 form for standardised medical examinations has been amended to include anatomical drawings and a section on psychological consequences of torture and that Provincial Medical Officers have been instructed not to charge fees for filling in the forms.<sup>2</sup> While these initiatives to implement the Istanbul Protocol and improve the P3 form are commendable, they fall significantly short of what is needed to realise the right to prompt, effective, independent and impartial medical documentation for all alleged victims. Among the key shortcomings are:

- 1. Availability:** The right to have a prompt, effective, independent and impartial medical examination for alleged victims is not provided by law and the decision to conduct a medical examination is thus left to the discretion of the investigating authorities, who often do not order such examinations. Further, there are an insufficient number of qualified health professionals trained in forensic documentation to provide quantitative and geographical coverage of all regions of the country. The only medico legal examination service within the government is run by the police, which has negative implications on independence and impartiality of the examinations. The service is further resource challenged as it has only one examining doctor for a population of 3 million residents in the city of Nairobi. This results in week long queues with the very few qualified health professionals in Nairobi and the total absence of this service in many other areas of the country.
- 2. Access:** The P3 form is administered by the police and is not available in public health institutions, which is the point of first contact for most victims, leading to delays in prompt documentation. This lack of access is exacerbated by the absence of direction on who will cover the doctors' expenses in attending court leading to the doctors charging fees for the filling of p3 forms. The situation is further worsened by frequent delays in judicial system resulting in the doctors being away from their workstations for an inordinate period of time.
- 3. Quality:** Despite some improvements, the P3 forms still fall short of the standards provided in the Istanbul Protocol. Notably, there is no space for written consent, description of the circumstances of the examination and photographic evidence and there is insufficient space for findings on history, general appearance, and physical examination. This means that these important part of the medical evidence collection are either not covered superficially or not at all during standard examinations. Further, the absence of a clear policy on the role and responsibility of doctors in filling of p3 forms has led to apathy on the part of medical professionals due to the laborious process involved in the conducting of medical examinations as opposed to the routine clinical care. All of this results in medico-legal reports that are not in compliance with the standards provided in the Istanbul Protocol.
- 4. Monitoring, evaluation and accountability:** The Governments reports that it is developing an assessment and appraisal tool to monitor impact of trainings. However, there does not appear to be any plans for systematic monitoring and evaluation of the quality of medico-legal reports produced on alleged victims nor is there any system to ensure accountability for persons involved in realising the right to a medical examination including in relation to health professionals who do not perform in accordance with their professional standards and other public officials who take measures to prevent victims from accessing a medical examination. This absence of monitoring and accountability risks encouraging health professionals to produce insufficient or directly false medico legal reports to avoid conflict

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1 CAT/C/KEN/2, PARAGRAPHS 87 & 88

2 IBID, PARAGRAPH 113

with the police authorities who are often the suspected perpetrators; and it risks encouraging legal professionals in the judicial system to disregard the victims right to prompt, effective, independent and impartial medical documentation.

## Implementation of the Right to Rehabilitation in Kenya

In its list of issues prior to reporting, the Government of Kenya is requested to provide information about types of programmes that have been developed and implemented to provide victims with comprehensive support and care and number of victims served by the programmes.<sup>3</sup> In its responses, the Kenyan Government mainly focuses on compensation provided in individual cases, on support to victims of sexual violence and draft legislation that will address provision of psychosocial support for victims of offences.<sup>4</sup> In addition to the information provided in the State report, it is worth noting that several non-governmental organisations currently provide holistic torture rehabilitation services in Kenya – these include IMLU and Mwatikho Torture Survivors Organization (MATESO) who are both members of the IRCT.

The Committee's recently adopted General Comment 3 provides that rehabilitation services must be available, appropriate and readily accessible. Contained in these overall criteria are more specific requirements for rehabilitation services to be: provided directly or indirectly by the State; have sufficient quantitative and geographical coverage; holistic and based on proper needs assessment with active participation of the victim; promptly accessible without discrimination; and based on an assessment of a competent health professionals and without prejudice to the pursuit of judicial remedies.

It is essential that the new programme currently under development is fully compliant with these requirements. Furthermore, victims of torture and ill-treatment are often reluctant to approach government institutions for rehabilitation services since they are often somewhat linked with the perpetrator. Therefore, the Government should consider appropriate methodologies for ensuring that victims can freely choose between services that are provided by State and non-State actors, while ensuring services are still paid for by the Government.

## Recommendations

1. The State should take concrete measures to ensure that forensic medical examinations in accordance with the Istanbul Protocol are an integral part of all investigations of torture and ill-treatment and that victims . These must ensure that victims are able to access and utilize the documentation. These measures should include:
  - a. Integration of forensic medical services in mainstream health framework. This will make it an essential health service available in all public health services at no cost or at a reasonable cost.
  - b. The State should deal with the ambiguity on where the office of the forensic pathologist lies as it is not clear whether it lies in the Ministry of Health, The Office of Directorate of Public Prosecutor or Internal Security. This state of ambiguity contributes to challenges in funding the program as its needs are not taken into account when the ministries draw their

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3 CAT/C/KEN/Q/2, PARAGRAPH 37

4 CAT/C/KEN/2, PARAGRAPHS 117-19

budgets.

c. The role of the forensic pathologist in relation to the criminal justice system should be clearly formulated and gazetted.

d. The p3 form should be available for free in government hospitals which will result in prompt documentation and mitigate the conflict of interest from the current situation of administration by the police that causes a challenge to victims of torture in accessing the documents.

e. The State should work with institutions of higher learning to develop programs on forensic medicines and forensic pathologist into the curriculum.

f. The State should include stakeholder involvement in the development and review of the p3 forms and other medico legal documentation tools to make them aligned with the Istanbul Protocol.

2. The State shall take concrete measures to ensure that holistic rehabilitation services are available, appropriate and readily accessible to all victims of torture and ill-treatment. These must take full account of the guidance provided by CAT's General Comment 3 and must include:

a. Elaboration of a State run rehabilitation programme that provides holistic services, which are developed and delivered with the full participation of the victim and which are promptly available to all victims of torture and ill-treatment in the country.

b. Establishment of a monitoring and evaluation mechanism to ensure the continued quality of services. Such a mechanism should include representation for all major State and non-State stakeholders.

c. Establish a mechanism whereby victims who wish to receive rehabilitation services from Non-State actors can receive such services in exchange for Government reimbursement to the service provider.

d. Considering the devastating personal and societal consequences of not rehabilitating victims of torture and ill-treatment, the State must report to the Committee as a matter of urgency on the type and capacity of rehabilitation services established; number of victims treated; and number of victims treated by non-State service providers against government reimbursement.