



A Society Free From Torture and Related Violations



Torture, Inhuman, Degrading Treatment, and Arbitrary Arrests

Briefing note: February 2025

About Independent Medico Legal Unit (IMLU)

Established in 1993, IMLU is a leading health, governance, and human rights Non-Governmental Organization registered in Kenya with a mandate to prevent and respond to torture and related violations.

IMLU advocates for justice, healing, and accountability for victims of torture, driven by a commitment to upholding human rights and promoting a society free from torture.

Introduction

Torture, inhuman degrading treatment, and arbitrary arrest remain significant human rights issues in Kenya, with widespread reports implicating the security agencies. More often than not, arbitrary arrests have led to torture, inhuman and degrading treatment. It is important to note that the absence of proper implementation of relevant laws exacerbates the issue. Despite legal frameworks designed to prevent and address torture, including the Constitution of Kenya, 2010, the National Police Service of 2011, and the Prevention of Torture Act of 2017, there is a persistent culture of impunity and inadequate enforcement of these laws in Kenya.

Kenya's Situation Post the Constitution 2010

Kenya continues to witness and report cases of police brutality especially during lawful protests. Lawful protests have been seen and interpreted by the police and security officers in general as unlawful and protesters being treated as violent rioters. Human rights and accountability during lawful protests are largely seen by officers as irritations and hindrances to their effectiveness rather than a right to assemble and express. Despite Kenya being a signatory to the United Nations Convention Against Torture (UNCAT) and having provisions against torture in its constitution, the country is still grappling with an increase in torture cases and arbitrary arrests. Attempts by various nonstate actors to set up medical, legal, and psychosocial support centers for torture victims have been interrupted and thwarted by the police leaving scores of protesters and medical personnel with injuries and some dead.

It is to be noted that in 2024 during the youth-led protests against the defunct Finance Bill 2024 and specifically between June-August 2024, IMLU documented 829 cases of police torture witnessed during peaceful protests.

Torture is more than physical abuse, is a deliberate tool of repression, used to silence voices, instill fear, and manipulate political alignments. In Kenya, enforced disappearances and abductions have disproportionately targeted activists, journalists, and human rights defenders, whose only crime is speaking truth to power. From cases involving Del Monte plantation workers and Kenya Wildlife Service (KWS) rangers, where torture masquerades as discipline, to the systemic use of state-sanctioned brutality against dissenters, the pattern is clear: violence is weaponized to suppress opposition and maintain control. These acts not only violate fundamental rights but also expose a deep disregard for the rule of law, where perpetrators act with impunity, and the mere absence of legal accountability becomes an admission of guilt.

Causes of Torture in Kenya:

1. Cultural acceptance and normalization that torture can be used as a means of interrogation and punishment to obtain certain information.
2. Limited capacity and training of state agencies on human rights principles
3. Insufficient implementation of the Prevention of Torture Act (POTA) 2017.
4. Lack of accountability due to minimal investigation by state institutions and agencies mandated with the responsibility handling civilians / victims and suspects leading to abuse of power and continuation of torture practices.

5. Lack of comprehensive data collection on torture, which hinders effective monitoring and accountability.
6. Failure to fully implement the Persons Deprived of Liberty Act 2014.
7. Inadequate oversight and accountability mechanisms within the police and other security agencies.
8. Inability by state agencies to adhere to the legal and constitutional criminal justice processes

Successes in the fight against torture, inhuman and degrading treatment and punishment, and arbitrary arrests

- Court pronouncements in 2024 quashing the decision of the Inspector General of police to ban lawful protests within the capital city's central business district.
- Court decision to hold police commanders responsible and accountable for human rights violations committed by the police officers during public order management. 12 senior officers are currently being charged with death, torture, and human rights violations committed in 2017 in Kisumu city during a police operation in an informal settlement.

Proposed recommendations on ending torture, inhuman and degrading punishment or treatment, and arbitrary Arrests

1. Ensure full implementation of the Prevention of Torture Act (POTA) 2017 and the Persons Deprived of Liberty Act 2014 to enhance prompt and impartial investigations of the alleged acts of torture and related violations.
2. Ratify the Optional Protocol to the Convention Against Torture (OPCAT) and other Cruel, Inhuman, or Degrading Treatment or Punishment.
3. The Treasury should ensure appropriate budget allocation to the Witness Protection Agency (WPA) and the Victim Protection Fund to provide redress and rehabilitative services to victims of torture.
4. Development of regulations under the Prevention of Torture Act (POTA) 2017 to ensure that victims of torture can access rehabilitation services at state expense. Establish an official statutory database to track data on torture cases.
5. Enhance advocacy mechanisms on awareness and sensitization of the state agencies and citizens on the Prevention of Torture Act (POTA) 2017, inhuman and degrading treatment or punishment, and related abuses.
6. Operationalize the complaints and disciplinary procedure under the Persons Deprived of Liberty Act.
7. Establish a civilian oversight mechanism for the National Intelligence Service (NIS)

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