

Our Ref: IMLU/ 0001

Your Ref: TBA

Date: 27th April 2020

MR. HILLARY NZIOKI MUTYAMBAI
OFFICE OF THE INSPECTOR GENERAL OF POLICE,
TAIFA ROAD, JOGOO HOUSE 'A', 4TH FLOOR
P.O BOX 44249-00100
NAIROBI

DEAR SIR,

**RE: PETITION FOR IMPARTIAL INVESTIGATION INTO POLICE BRUTALITY
DURING THE COVID-19 CURFEW.**

The **Independent Medico-Legal Unit** (IMLU) is a governance, health and human rights non-profit organization, whose vision is *A World Free from Torture, Violence and discrimination*. 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 5,000 victims of torture, cruel, degrading and inhuman treatment through the support of our national networks of professionals: doctors, trauma counsellors, lawyers, human rights monitors and journalists.

We refer to the above subject matter in which on 25th March 2020, the president announced a dusk-to-dawn curfew (7pm-5am), effective March 26, exempting 13 groups of workers offering essential services that include all categories of medical and health workers, national security, food and fuel distributors and retailers and licensed media.

Additionally, when the cases reached 172, the Ministry of Health declared Nairobi (82% of cases), Mombasa, Kwale and Kilifi counties (18% of the cases) as COVID-19 infected counties. Consequently, the President imposed a total 21- day ban on movement in and out of Nairobi effective 6th April 2020, and Mombasa, Kwale and Kilifi effective 8th April 2020.

Since the declaration of the curfew to slow down Covid-19 infections, we have recorded incidences of corruption, arbitrary and lethal use of force. Weapons used under the guise of enforcing the curfew are whips, batons, teargas, and live bullets. Violence has been used to clear the streets, sometimes two hours before the start of the curfew, a case in

point in Mombasa officers where officers were filmed beating people waiting for a passenger ferry, as well as journalists covering the events.

We as an organization have taken measures to encourage and monitor human rights protection during the curfew period. Since the curfew was effected, we have so far recorded *34 cases of torture and other forms of ill-treatment and extra-judicial executions (EJEs)* related to the curfew. Out of the 34 cases, 11 were deaths from police extra-judicial killings, 23 were injuries from police torture and ill-treatment. We have facilitated seven (7) post mortem examinations to provide medical-legal evidence in our quest for justice on behalf of the victims and survivors and provided psychological support to two families.

Post mortem reports from the 7 deaths we have reviewed indicate that one victim died from a gunshot wounds and the rest (6) injuries resulting from police torture and ill-treatment. The circumstances of the deaths indicate a clear dereliction of duty by the police to protect life and abide by the law. In none of these cases was the life of any police officer under threat, nor that of another person.

We are pursuing redress for four (4) cases.

These cases are as follows:

No.	Date	Full Name	County	Injuries/ Death	OB/Number/ Police Station
1	2 nd April 2020	Yassin Hussein Moyo	Nairobi	Death from police shooting	Huruma Police Station
2	1 st April 2020	Eric Ng'ethe	Kwale	Death resulting from police torture and, or ill-treatment	Kwale Police Station
3	29 th March 2020	Rose Mwikali	Nairobi	Injuries from police torture and, or ill-treatment	Huruma Police Station
4	3 rd April 2020	Peter Gachago Gacheru	Nairobi	Death resulting from police torture and, or ill-treatment	OB No. 31/04/2020

5	5 th April 2020	David Kiiru Kihara	Nakuru	Death resulting from police torture and, or ill-treatment	OB8/30/3/2020
6	1 st April 2020	Moses Maithya Kagunyi	Nakuru	Injuries from police torture and, or ill-treatment	OB No. 30/2/4/2020 Kaptembwa Police Station
7	30 th March 2020	Francis Karanja	Nakuru	Injuries (broken arm) from police torture and, or ill-treatment	Kaptembwa Police Post
8	2 nd April 2020	Cornelius Kioko	Nairobi	Injuries from police torture and, or ill-treatment	Kayole Police Station
9	1 st April 2020	Mary Kioko	Nairobi	Injuries from police torture and, or ill-treatment though arrested and released without any charges	Kayole Police Station
10	2 nd April 2020	Faith Kioko	Nairobi	Injuries from police torture and, or ill-treatment though arrested then arrested without any charges	Kayole Police Station
11	4 th April 2020	David Kerich	Nakuru	Death resulting from police torture and, or ill-treatment	OB3/2/4/2020
12	30 th March 2020	Ramadhan Yusuf Juma	Kakamega	Death resulting from police torture and, or ill-treatment	Kakamega Police Station
13	4 th April 2020	Zachariah Maende Lubale	Kakamega	Injuries from police beating	Kakamega Police Station
14	30 th March 2020	Patrick Ouma	Kakamega	Injuries from police beating	Kakamega Police Station
15	3 rd April 2020	Bernard Orega	Busia	Injuries from police torture and, or ill-treatment	Nambale Police Station
16		Godfrey Oyoda Sande			
17		Ruth Achola			
18		Brenda Achieng'			

19		Dennis Mukhekhe			
20		Stella Illung'ati			
21		Enock Omondi			
22		Wilberforce Barasa			
23		Joseph Orenga			
24		Gideon Otieno			
25	29 th March 2020	James Ogero	Busia	Injuries from police torture and, or ill-treatment	OB No. 20/17/14/2020 Nambale Police Station
26	30 th March 2020	David Koinange Mwaura	Nairobi	Injuries from police torture and, or ill-treatment	Kabete Police Station
27	15 th April 2020	Maurice Otunga Mutachi	Kakamega	Death resulting from police torture and, or ill-treatment	Kakamega Police Station
28	15 th April 2020	Rukia Shanga	Lamu	Injuries from police torture and, or ill-treatment	Lamu Police Station
29	17 April 2020	David Kasyoki	Nairobi	Injuries from police torture and, or ill-treatment	Nairobi
30	17 th April 2020	Peter Gitau Kinuthia	Naivasha	Death resulting from police torture and, or ill-treatment	Naivasha Police station
31	4 th April 2020	John Muli	Nairobi	Death resulting from police torture and, or ill-treatment	Huruma Police Station
32	7 th April 2020	Idris Mukolwe	Kakamega	Death resulting from police torture and, or ill-treatment	Kakamega Police Station
33	29 th March 2020	Calvince Omondi	Homabay	Death resulting from police torture and, or ill-treatment	Homabay Police Station

34	18 th April 2020	Shanga Tunje	Kilifi	Injuries from police torture and, or ill- treatment	OB No. 07/01/04/2020 Marereni Police Station
----	--------------------------------	--------------	--------	---	---

We applaud the National Police Service Commission (NPSC) which announced that police officers involved in criminal or disciplinary misconduct will not be interdicted but instead dismissed from the service, as some officers had taken advantage of the new laws, including the curfew orders. The Commission has warned that prompt action will be taken against them. We recognize your office has already identified the isolated cases, taken the initial step to interdict the officers and recommended their dismissal and dishonorable discharge from the service. We also applaud President Uhuru Kenyatta who has sounded a warning to all law enforcement officers stating that they risk facing the highest punishment available if they overstep their mandate.

The above notwithstanding, we solemnly condemn the acts of the perpetration as the same defies fundamental entitlements entrenched by the Constitution, Acts of Parliament and international treaties ratified by the State; such as the United Nations Convention against Torture, Inhuman Treatment and Other Forms of Degrading Treatment and Punishment (UNCAT). Most specifically, the said acts contravene the Constitution under Article 25(a) and 29 on unlimited freedom from torture, Article 28 on human dignity as well as Article 26 (1) on right to life.

In addition, Article 244 of the Constitution of Kenya 2010, dictates that the Service shall strive for the highest standards of professionalism and discipline among its members with strict compliance to constitutional standards of human rights and fundamental freedoms. Clearly, terminating an individual's right to life and right not to be tortured falls short of these constitutional standards and is in itself an affront to the right of fair trial under Article 25(c) of the Constitution which cannot be limited under any circumstance.

Our recommendations:

- a. Besides the police officers involved in human rights violations being interdicted and dismissed from service, criminal sanctions are leveled against them.
- b. While we note that you appear to display a sense of urgency and clarity on implementation of police reforms, Kenyans are yet to see a change on the ground with regard to the conduct of police officers in reduction of impunity. Its clear much more needs to be done. We urge full cooperation of your office with the Kenya National Commission on Human Rights (KNCHR) and the Independent

Policing Oversight Authority (IPOA) and the Internal Affairs Unit (IAU) as they embark on investigations into incidents of police brutality to ensure criminal sanctions are leveled against officers found culpable.

- c. The police are equipped with Personal Protective Equipment (PPEs) while discharging their duties to enable them act effectively while protecting themselves and the citizens from COVID-19.
- d. Encourage use of preventive measures like Community Policing as provided for under article 96-100 of the National Police Service Act 2011 as it provides a great platform for police and citizen's joint action and nexus between the police and other sectors and public agencies especially during the restrictions of movements.

Yours Sincerely,

Peter Kiama
Executive Director.

Copy to:

The Director,
Internal Affairs Unit
National Police Service
Jogoo House "A" Ground Floor, West Wing
P.O Box 44249-00100
Nairobi

The Chief Executive Officer
Independent Policing Oversight Authority,
ACK Garden House Annex, 1st Ngong Avenue,
P.O Box 23035-00100,
Nairobi.

The Chief Executive Officer
National Police Service Commission

The Chief Executive Officer
Kenya National Commission on Human Rights