



**68TH ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND
PEOPLES RIGHTS IN BANJUL, THE GAMBIA**

STATEMENT BY THE INDEPENDENT MEDICO-LEGAL UNIT (IMLU)

Honourable Chairperson, Honorable Commissioners, State delegates, National Human Rights Institutions, civil society organisations and distinguished participants.

On behalf of the **Independent Medico-Legal Unit (IMLU)**, I would like to express our gratitude for the opportunity to deliver this statement on the state of human rights in Kenya.

With regards to the human rights situation in Kenya:

1. Chairperson, we condemn in the strongest terms possible the continued Torture, Cruel, Inhumane and Degrading treatment and violence by the Kenyan Police Service in the implementation of the COVID-19 Curfew rules. There was excessive use of force and violation of human rights, and a lack of accountability by law enforcers creating physical and emotional harm. The police acted in contravention of the National Police Standing Orders, which prescribes proportional and reasonable force.

During this period, we documented 76 cases of police abuse related to COVID-19 enforcement guidelines. Of the 76 cases, 26 resulted in deaths, while 49 involved various cases of cruel, inhumane and degrading treatment. 62 of the victims were male, while 14 were female. The Independent Police Oversight Authority investigations have been slow, and very few cases have been prosecuted by the Office of the Director of Public

prosecutions. In an interesting case recently, the Office of the Director of Public Prosecution withdrew charges against 15 officers and 6 county enforcement officers accused of human rights violations in enforcing the curfew rules. This was despite the Independent Police Oversight Authority having conducted investigations and recommended them for prosecution.

Over the past few months, we have observed a trend within the security sector where during security operations, they engage in excessive use of force and enforced disappearances. This has been evident in the recent security operations in the Northern region.

We call upon the Commission to urge Kenya to ensure effective investigation and prosecution of persons accountable for committing these acts. The Independent Police Oversight Authority should thoroughly investigate these cases, and the Office of the Director of Public Prosecutions should facilitate immediate prosecution of the same. This will ensure that all security agencies operate within the rule of law according to the National Security guiding principles under Articles 238 (b) of Kenya's Constitution and the Principles of the African Charter in article 4 and 5.

2. **Chairperson, the Kenyan Government, through the Interior Cabinet Secretary Dr Fred Matiang'i, on 24th March 2021, gave a 14-day ultimatum to the United Nations High Commissioner of Refugees regarding a closure plan of the Kakuma and Daadab refugee camps.** The camps host some 410,000 people from more than a dozen countries, including Somali, South Sudanese, Ethiopians, Tanzanians, Ugandans and Burundians. The government seemingly ignored its obligation under the various national, regional and international human rights laws seeking to uphold the principle of non-refoulement to protect the refugees and asylum seekers. Worse still, the same was issued amidst an ongoing pandemic. The Kenyan authorities violate their laws, including the Kenya Refugee Act of 2006, and their commitment during a regional IGAD grouping's summit in March 2017 to continue providing Somalis asylum. Through petition no. 277 of 2016, the courts held that closure of the camps and repatriating refugees would be in grave violation of their rights.

We call upon the Commission to condemn this move by the government and remind it of its obligation under article 3 of the UNCAT, 1951 UN Convention and 1969 OAU Convention on Non-Refoulement, which emanates from article 2(5) (6) of the constitution of Kenya 2010. Any closure plan should be gradual and should uphold the rights of the refugees and asylum seekers.

3. **Chairperson of the Independent Medico-Legal Unit (IMLU) in 2020 conducted a desk analysis to establish the trends in budgetary allocation of the National Police Service (NPS) over the last three years, resource requirements for optimal performance, and utilisation of available resources over the stated period.** The study findings found irregularities in police expenditure and lack of itemisation of needs that lead to poor service delivery and inadequate public safety. Allocation of adequate resources is critical for the optimal performance of the service.

We call upon the commission to urge the state to enhance the Inspector General of Police's autonomy in terms of the National Police Service budget. The National Police Service Act of 2011 requires the IG to prepare budgetary estimates and develop a policy plan before the end of each financial year setting out the service's priorities and objectives and the justification thereof. Further, the Ministry of interior and coordination, NPS and the National Assembly should ensure the development budget's itemisation across police stations and divisions. The National Assembly should also ensure that the Budget Policy Statement's objectives and key performance indicators are implemented in the letter.

4. **Chairperson, the Supreme Court of Kenya declared the death sentence's mandatory nature as provided under section 204 of the constitution unconstitutional.** The death penalty still forms part of Kenya's punitive sentences, and we have seen judges issuing the death sentence.¹

A Taskforce on the Review of the Mandatory Nature of the Death Penalty was set up and their report² was submitted in 2018. However, no guidelines have been developed to operationalize their recommendations.

We call upon the Commission to push for a moratorium to be issued by the Kenyan President to convert all the death sentences into life imprisonment.

THANK YOU!
