

# Torture and the Right to Rehabilitation in KENYA



**written by**

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REPORT

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# TABLE OF CONTENTS

- 4** Introduction
- 5** Torture and ill-treatment in Kenya
- 8** The situation for victims of torture and ill-treatment
- 11** The right to rehabilitation
- 12** Implementation targets
- 13** Member information
- 24** Notes and references

## **Cover Photograph**

Policemen on Patrol, Nairobi  
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# INTRODUCTION

Kenya is a signatory to numerous human rights instruments that prohibit torture and ill-treatment including the Convention against Torture. The Constitution<sup>1</sup> not only prohibits torture, but declares freedom from torture a non-derogable right. Torture has also been outlawed in various national laws but they all fall short of the requirements for criminalisation under the UN Convention against Torture. Despite all these laws, torture and ill-treatment is still rife in the Kenya and it happens especially in the context of security operations and other counter terrorism measures. Recently Kenya passed several laws such as the Security Laws Amendment Act of 2014, which among other things prolonged the period of detention for a person suspected of terrorism from 90 days to 360 days. We have also seen violent dispersals of peaceful demonstrations by citizens, which has in many occasions resulted in death and/or serious injuries.

On a positive note, Kenya enacted the Victims Protection Act in 2014, establishing a legislative framework for supporting victims of crime in general including victims of torture during the court process and thereafter. The act provides for different forms of reparations that victims of torture and their families can access such as rehabilitation and compensation. It also created the National Victims Fund, which is to be used for supporting victims of torture. Unfortunately, the Fund is yet to be operationalised, leaving victims of torture and their families depending on the services of non-governmental organisations (NGOs) for rehabilitation and legal support.

For the past decades, Kenya has been experiencing a very volatile situation with recurrent violence traceable to political disputes, ethnic animosity, unemployment, poverty, illiteracy, poor security systems and historical injustices. There are serious concerns about torture perpetrated by state agencies and by militia groups including sexual violence such as rape and physical attacks. This normally occurs during the electioneering period, during inter-communal conflicts over resources such as land and during security operations in places where communities are suspected by state agencies to be armed. A good example is the post-election violence in 2007 and 2008, where 1300 persons died and up to 600,000 were internally displaced.

All of this is happening in a context of crime and other human right violations such as enforced disappearance<sup>2</sup>, incommunicado detention, kidnapping, extortions, blackmailing, extrajudicial executions and threats and intimidation. The lack of accountability for perpetrators and the lack of political will to address these issues only entrenches the culture of impunity. As a result, victims are left with no justice or reparation from the state despite strong support efforts by local NGOs.

# TORTURE AND ILL-TREATMENT IN KENYA

Torture in Kenya remains an issue of great concern. The main perpetrators of torture in Kenya are law enforcement agencies i.e. the National Police Service, the Kenya Wildlife Service, the County Law Enforcement Officers, Kenya Defence Force, Kenya Prison etc. In 2015, most torture and related violations occurred during dispersal of peaceful protests against abuse of office by various state officials. The Independent Medico-Legal Unit (IMLU) noted with great concern the excess use of force in the dispersal of demonstrators in various parts of the country including the use of live ammunition in such occasions.

In 2015 IMLU documented 151 cases of torture and other forms of ill-treatment as shown in the tables below:

<b>Gender</b>	<b>Numer of cases</b>
<b>Male</b>	<b>126</b>
<b>Female</b>	<b>25</b>
<b>TOTAL</b>	<b>151</b>

<b>Age</b>	<b>Numer of cases</b>
<b>0-20</b>	<b>18</b>
<b>21-35</b>	<b>76</b>
<b>36-50</b>	<b>32</b>
<b>51+</b>	<b>25</b>
<b>TOTAL</b>	<b>151</b>

<b>Violation</b>	<b>Numer of cases</b>
<b>Beating</b>	<b>92</b>
<b>Death Threats</b>	<b>1</b>
<b>Disappearance</b>	<b>6</b>
<b>Deatyh in Custody</b>	<b>2</b>
<b>Extra Judicial Killing</b>	<b>18</b>
<b>Indecent Assault</b>	<b>1</b>
<b>Rape</b>	<b>1</b>
<b>Shooting</b>	<b>29</b>
<b>Sodomy</b>	<b>1</b>
<b>TOTAL</b>	<b>151</b>

<b>Perpetrators</b>	<b>Numer of cases</b>
<b>National Police Service</b>	<b>92</b>
<b>County Law Enforcement Officers</b>	<b>1</b>
<b>Kenya Wildlife Service</b>	<b>6</b>
<b>Member of County Assembly</b>	<b>2</b>
<b>Assistant Chief and Police</b>	<b>18</b>
<b>Prison Officers</b>	<b>1</b>
<b>Kenya Defence Force</b>	<b>1</b>
<b>TOTAL</b>	<b>151</b>

Another major concern relates to the existence of non-state armed groups in Kenya. In this context government disarmament efforts too often result in excessive use of force against unarmed civilians. Meanwhile, the non-state armed groups brutalise the local populations through decapitations, burnings, rape, male genital mutilations, abductions, infection with HIV, death, and maiming. Women and girls suffer greatly in this context as they are particularly vulnerable to sexual violence.

During 2015, MATESO, whose activities cover Western Kenya, the North Rift Valley and parts of Nyanza registered 1280 new torture victims as clients. Among this group, there were 460 males, 499 females and 321 children.

Information collected from 178 clients received by CAT-Kenya in 2015 indicate that of the total group 76 were women and 47 children. The information also gives an indication of the profile of government perpetrators involved in torture and ill-treatment in Eldoret:

<b>Perpetrators</b>	<b>Numer of cases</b>
<b>County Law Enforcement Officers</b>	<b>58</b>
<b>National Police Service</b>	<b>72</b>
<b>Provincial administrators</b>	<b>13</b>
<b>Public Sevants (Teachers)</b>	<b>8</b>
<b>Military Personnel</b>	<b>2</b>
<b>Officials of Country Government</b>	<b>14</b>
<b>Officials of the National Government</b>	<b>11</b>
<b>TOTAL</b>	<b>178</b>

# THE SITUATION FOR VICTIMS OF TORTURE AND ILL-TREATMENT

IMLU's data indicates that a victim of torture in Kenya is mainly a young male (21-35 years) who lives and works in the informal settlements within the cities or in the rural area with an average earning of about 2 USD per day. Women are either directly victimised through sexual violence and rape or are secondary victims of torture being either spouses or mothers of the male victims of torture. This is exemplified in the data collected by MATESO and CAT-Kenya in 2015, where there is a very high prevalence of women and children among the victims in the geographical areas they serve.

Torture and ill-treatment have devastating effects on the victims, their family and the community at large. The effects are not limited to the physical but also include psychological effects such as extreme levels of depression and anxiety. These manifest in many ways including sleep disorders, recurring and intrusive memories, poor self-esteem, and difficulty in concentrating, sadness, fear, anger, and psychosomatic symptoms. This trauma is often transferred to spouses and children creating similar effects on them and it is seen to lead to breakdown in family and personal relationships. In some cases it can lead to the death or inability to work and earn a living of the main provider in a household resulting in devastating economic consequences for the entire family. The impact of torture often amounts to a double hazard for survivors as they both experience extreme trauma and stigmatisation, through a negative or hostile public attitude.



Victims of torture and their families need rehabilitation so that their lives can get back to normal as much as possible. The victims' most urgent and immediate needs are health and psychological support, to address the traumatic impacts that are caused by both physical suffering and stigmatisation by members of society. However, in order to deal with the impunity and to rebuild their socio-economic situation, survivors need a more holistic support system including legal and social support.

They repeatedly express a strong sense of frustration about the prevailing impunity for perpetrators and the limited access to justice. These factors eventually result in a deep sense of injustice that tends to compound the adverse psychological effects of torture. Unfortunately, seeking justice is both challenging and potentially re-traumatising for most victims due to deficient national procedures.

Section 40(6) and (7) of the National Police Service Act provides that each police station is competent to register victims and receive, record and report complaints against police misconduct within their areas of jurisdiction. In practice however, this is the police station where the alleged perpetrator of the act of torture or ill-treatment is based. It therefore becomes a challenge for the victim of torture to make a complaint in such a police station due to fear of reprisal and victimisation by the alleged perpetrator. A survey conducted by IMLU among hawkers and small-scale business operators in Nairobi City County in 2014, showed that only 12.6 percent of torture cases are reported to state agencies, mostly the police. The reason for the reluctance among victims is that some feel it is a waste of time, while others say that no action has been taken in the cases they have already reported. The lack of prompt investigations and prosecution of perpetrators of torture breeds a culture of impunity amongst perpetrators and apathy amongst the victims of torture.

Supporters commemorating the  
UN International Day in Support of  
Torture Victims, 26 June.  
© courtesy of IMLU

## Victim Stories

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Sillah Muhia Kinyanjui,<sup>3</sup> 59 was arrested on suspicion of killing his brother's wife by the flying squad unit on 15 September 1997 at Hannah's Lodge in the Pangani area in Nairobi County, where he was visiting his sister who worked in the hotel. His wife, father, mother, elder brother and a neighbor had earlier been arrested at their rural home at Kanunga / Ndakaine in Gatanga, Murang'a County.

The entire administration of the surrounding area, including five police stations, was not aware of the crime they were accused of. Sillah was taken to Makuyu Police Station in the boot of a station wagon and tortured in the nearby forest the next day. He was suspended in the air by a rope tied to his wrists, with the same rope affixing him to the trunk of the tree.

He was continuously beaten at the knees and ankle joints by three policemen with what appeared to be wooden hoe handles, while the officer in charge (Mr. Kamunde - now deceased) kept watch, armed and ready to shoot. Sillah's knee caps were completely crushed and the surrounding ligaments torn.

It was only at the intervention of a herdsman, grazing animals nearby, that the torture ended. The herdsman begged them not to kill Sillah, at least not in his presence. After lowering him to the ground they tied a string to his testicles against a stone and asked him to jump, causing serious injuries to his testicles. After trying to shield a blow to his jaw, Sillah injured his forearm and as a result were not able to stretch his fingers. Today, he is still not able to stretch one of his fingers. He also lost six teeth .

Afterwards he was taken to the Thika Police Station to await charges. Upon arrival, the police officer on duty, who was also Sillah's neighbour, recognised Sillah and alerted his relatives and friends. They came in large numbers and begged for him to receive medical intervention. Under heavy police escort, they were allowed to take him to a nearby private hospital where doctors attended to his multiple injuries. At his first court appearance the judge ordered for his hospitalisation on 20 September 1997. He was taken to Kenyatta National Hospital where he stayed for the next three months undergoing treatment.

Sillah's case was referred to Nairobi High Court after he refused to admit his guilt and agree to their suggestion to become a state witness. He was then remanded at the Industrial area Prison for the rest of his incarceration. During his time there his injured jaw and gums flared up and the doctor ordered for immediate treatment and replacement of teeth lost during the torture.

The whole process of incarceration in the remand prison system lasted for the next four years before he, his wife and his brother were acquitted on 20 September 2001 for lack of evidence. His children, who at the time of arrest were at the ages of 12, 10, nine and five years, were left without a particular caregiver because of the abruptness of the arrest. They were deeply traumatised and remain emotionally vulnerable. It was the community that came to their rescue and provided for their basic needs, including education in nearby schools.

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The flying squad officers continued to harass the family even after Sillah's acquittal and would chase away anyone working in their small tea holding. The younger brother, who was in charge of three butcheries owned by Silah, was also harassed and all three businesses closed down shortly after Sillah's arrest. The arrest also led to Sillah being forced to give up his other work as a trader in livestock.

As a result of being tortured and imprisoned for four years, Sillah sustained physical injuries to the knees and suffered from potency and psychological trauma without treatment. He came to IMLU on 23 April 2015 and after a general assessment by an IMLU doctor and counsellor, it was clear that there was an urgent need to address Post-Traumatic Stress Disorder, anxiety and profound loss, while at the same time pursue medical support for sustained physical injuries and legal support to seek compensation for violation of his rights.

According to his counsellor, Sillah has improved significantly despite enduring 14 years without treatment for the effects of torture. "He can now squat in a pit latrine and support his weight at the knees much better than before because of medical treatment. Before he needed supported to stand

up under such circumstances," says Mr. Gitau. "He can also walk on steep terrain for one kilometre and return home without too much strain. Uncontrolled weeping when speaking about his ordeal to his listeners has dramatically reduced and he is now able to state the facts without emotional triggers. Initially, he had lost his memory but is slowly starting to remember."

Sillah has two more therapy sessions to go and it is important to note that during his first four sessions, he was brought by his close friend 80-year old Johanna Chege from his home in Murang'a to IMLU offices in Niarobi. However, during the time of the interview, he was accompanied by his son.

He is grateful to IMLU for giving him a second chance in life by allowing him share his story with the rest of the world and help him get to his feet again so that he can continue providing for his family after 15 years of physical, mental and financial challenges

Supporters commemorating the UN International Day in Support of Torture Victims, 26 June. | © courtesy of IMLU



# THE RIGHT TO REHABILITATION

**The Victims Protection Act of 2014 provides the legal framework for reparations for the victims of crime in Kenya including victims of torture. The objectives of the Act are:**

- a) to provide for protection of victims of crime and abuse of power, and to provide them with better information and support services
- b) to provide for reparation and compensation to victims
- c) to provide special protection for vulnerable victims

The act provides for the following forms of reparation:

1. Rehabilitation
2. Restitution and
3. Compensation

The Victim Protection Act establishes the Victims Protection Board, which among other things is supposed to run the Victim Protection Fund. This fund is supposed to facilitate the rehabilitation of victims of crime including torture. The Board is yet to be established and the Fund yet to be operationalised. There is therefore no government support system for victims and survivors of torture hence they have to depend on the support of civil society organisations such as CAT Kenya, IMLU and MATESO.

Victims of torture have often sought redress before the courts in Kenya, mostly for compensation for the violations they have suffered. The challenge has remained that court cases take very long in Kenya (minimum of three years) before there is a decision. When the court cases do come to an end and victims are awarded damages by the court, it takes more than five years (in most cases) before a victim of torture can access the compensation awarded. In some cases the victims die leaving their families in abject poverty.

In the Rift Valley region, the Moi Teaching and Referral Hospital in Eldoret and the Jaramogi Odinga Teaching and Referral hospital in Kisumu are the only two large referral and rehabilitation facilities. The hospital in Eldoret also serves parts of Eastern Uganda and the South Sudan. There are some privately owned and NGO-operated rehabilitation centres, but they largely treat drug addicts - not victims of torture.

In its General Comment No. 3, the UN Committee against Torture established that in order for victims to effectively enjoy the right to rehabilitation, appropriate services must be available and promptly accessible. Unfortunately, the services provided to survivors in the Rift Valley Region fail to meet these criteria.

Both aforementioned hospitals have the setup to offer basic rehabilitation services to torture victims because they employ physicians and psychologists/psychiatrists who operate under medical-ethical codes. However, appropriate services remain illusory due to congestion in the hospitals, inappropriate infrastructure and inadequate resources, resulting in a lack of specialisation and continuity of services provided to torture victims.

Due to the vast nature of this region, the hospitals have not devised outreach programmes or established satellite camps to ensure that services are continuously available to victims living in remote areas. The hospitals are overwhelmed with the number of patients they service, which further diminishes their ability to offer services that are appropriate to torture victims.

The hospitals charge victims a fee for specific forms of treatment. The victims also have other challenges in accessing services such as poor infrastructure, mobility problems and poverty.

Thus while torture victims in the Rift Valley region can theoretically receive rehabilitation services, the reality is one where victims are left to seek support from local NGOs or pay private clinics in their efforts to rebuild their lives.

# IMPLEMENTATION TARGETS

- 1) Adopt the anti-torture bill currently before Parliament and ensure that the bill contains appropriate provisions setting out torture victims' right to rehabilitation and documentation of their allegations.
- 2) Make the National Victims Fund under the Victims Protection Act fully operational by appointing a competent and independent board and ensuring sufficient budgetary allocations.
- 3) Establish functional and sufficiently funded legal aid schemes to ensure that victims have effective access to redress.
- 4) Make fully operational and adequately fund the Restorative Justice Fund announced by President Kenyatta during his State of the Nation address in March 2015.
- 5) Take concrete steps to improve the provision of mental health services in the country. These should include collecting and publishing data on availability of mental health services and ensuring that there is adequate funding for such services.
- 6) Ensure that the Kenya National Commission on Human Rights is adequately resourced to support victims getting other forms of reparation than legal redress.
- 7) Ensure that investigations of torture and ill-treatment are done in accordance with the standards of the Istanbul Protocol including by establishing a capacity building programme for all professionals involved in such investigations.
- 8) Put in place an adequate legal framework and mechanism to protect those working to support victims of torture and ill-treatment from reprisals.

# MEMBER INFORMATION

## MATESO

Mwatikho Torture Survivors Organization (MATESO) is a community based Human Rights organisation comprising of torture survivors and families of torture victims with interest in:

- advocating against torture
- creation of Human Rights awareness
- identification and recruiting of other torture survivors
- networking with other organization against torture
- rehabilitation of the survivors through counselling and creation of Hope
- advocacy for reparation and economic emancipation of the survivors and finally carrying out monitoring and documentation of torture.

MATESO's treatment programme includes: psychotherapy, physiotherapy and somatic treatment. Treatment of psychological conditions directly relates to traumatisation. The multi-disciplinary treatment of torture survivors must run parallel with other services, including nursing and social counselling.

## IMLU

The Independent Medico-Legal Unit (IMLU) is a governance, health and human rights non-profit organisation whose vision is A Just World Free from Torture. 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 IMLU assisted over 4,000 victims of torture, cruel, degrading and inhuman treatment through the support of national networks of professionals: doctors, trauma counsellors, lawyers, human rights monitors and journalists.

## CAT-Kenya

Center Against Torture founded in the year 2004 is a registered, an impartial NOT for profit, human rights organization based in Eldoret with a primary objective of providing holistic treatment and rehabilitation services to victims of torture and the prevention of torture. CAT has documented and presented over 100 high profile cases of torture pending in various courts in the country. Our work is organized in four thematic areas:

- Providing quality holistic treatment and rehabilitation services to survivors of torture;
- Advocating the prevention and end of torture internationally, regionally and nationally;
- Research and documentation; and
- Organizational strengthening.

## Notes and references

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<sup>1</sup> Articles 25, 28 and 29 of the Constitution of Kenya 2010.

<sup>2</sup> Based on reports from families and media monitoring, MATESO estimates the number of disappearances to be approximately: 400 in the Mount Elgon area, 300 in the context of anti-terrorism operations, 200 in relation to military operations on the Somalia border, and 100 in refugee camps.

<sup>3</sup> This story is also available on the IMLU website [www.imlu.org](http://www.imlu.org)



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