

BRIEFING NOTE - Independent Medico Legal Unit
4th Universal Periodic Review Cycle - 49th Session - February 2025
KENYA: ADDRESSING TORTURE, EXTRAJUDICIAL KILLINGS, ENFORCED
DISAPPEARANCES AND RELATED VIOLATIONS

Current State of Implementation

Kenya has made strides in establishing a robust legal framework, including the enactment of the Prevention of Torture Act (2017) and the National Coroner's Service Act (2017). However, the implementation of these laws remains a significant challenge. The Office of the Director of Public Prosecutions (ODPP) has persistently failed to prosecute any case of police torture under the Prevention of Torture Act. The Office of the Attorney General (AG) has proposed amendments to the National Coroner Services Act to ensure its full implementation, but they are yet to be tabled in the national assembly for debate and adoption.

IMLU has documented a sharp rise in torture and related violations, particularly during protests. In 2022, there were reported 130 cases of extra judicial killings and 22 cases of enforced disappearance. Between January and September 2023, IMLU documented 228 cases of police torture, 67 cases of extra judicial killings and 1 case of enforced disappearance. In 2024 during the Gen Z protests in June-August 2024, IMLU documented 601 cases of police torture, 61 cases of extra judicial killings and 89 cases of enforced disappearances. These trends highlight the systemic abuse of force and lack of accountability in law enforcement. Arbitrary arrests, surveillance, intimidation, threats and abductions of protestors, Human Rights Defenders, activists and bloggers.

This briefing note will address five key issues that remain a glaring gap in the efforts to take Kenya into an era where torture, extra judicial killings and enforced disappearance are no longer tolerated, where victims receive the reparations, they are entitled to and where perpetrators are held accountable.

The issues are:

Non-Operational Institutions:

Critical institutions like the National Coroner's Service, mandated by law to investigate reportable deaths, remain non-operational, limiting independent investigations of extrajudicial killings and torture. The Kenya National Commission on Human Rights and the Independent Policing Oversight Authority, mandated by law to investigate cases of torture, are hugely underfunded by the state, hence, limiting their capacity to effectively investigate cases of human rights violations by state agencies is limited.

Inadequate Redress for Victims:

Victims of torture, extrajudicial killings, and enforced disappearances face significant barriers in accessing justice. Court-ordered compensation remains unpaid in most cases, and the Victim Protection Trust Fund is non-operational. Victims, survivors and

their families are unable to access reparation services including medical rehabilitation, psychosocial support and compensation.

Criminalisation of public assemblies and protests

Article 37 of the Kenyan Constitution guarantees every person the right to assemble, demonstrate, picket, and present petitions to public authorities, provided such activities remain peaceful. However, the Kenyan government has increasingly restricted this right through legal, administrative, and security measures effectively treating protests as unlawful. This has created the foundation for the excessive use of force, torture, enforced disappearances and extrajudicial killings that have taken place in recent years. The proposed Assemblies and Demonstrations Bill 2024 would turn many of these restrictions into law and therefore represents a key challenge to freedom of assembly and protection from torture, extrajudicial killings and enforced disappearances.

Death Penalty:

Despite judicial rulings allowing discretion in sentencing, the death penalty remains legal. This is inconsistent with global trends toward abolition and the protection of the right to life. The continued sentencing of offenders and lack of clarity on their sentences is a form of mental torture to the inmates on death row.

International Commitments:

Kenya has yet to ratify key international instruments such as the Optional Protocol to the Convention Against Torture (OPCAT) and the International Convention for the Protection of All Persons from Enforced Disappearance.

Recommendations

Fully implement the Prevention of Torture Act and the National Coroner's Service Act to hold public officials accountable for torture and related human rights violations and ensure reparations for victims.

Immediately establish an independent investigative mechanism for human rights violations through the Independent Policing Oversight Authority (IPOA) and publish data on the processing of complaints.

Allocate resources to the Victim Protection Trust Fund and develop clear regulations to facilitate compensation and rehabilitation for victims of human rights violations.

Amend the Witness protection Act and the Victims Protection Act to provide for state protection of witnesses and victims of torture related violations.

Withdraw the Assemblies and Demonstrations Bill 2024 and instead adopt a comprehensive legal and policy framework that guarantees freedom of assembly and protects protesters against police abuse in accordance with international human rights standards.

Amend all relevant laws to abolish the death penalty and align Kenya with global human rights standards.

Expedite the ratification of Optional Protocol on the Convention Against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance.

About IMLU

The Independent Medico-Legal Unit (IMLU) is a Kenyan nonprofit organization committed to a world free from torture, violence, and discrimination. Our work involves medical and psychosocial rehabilitation for survivors, litigation, monitoring government adherence to human rights obligations, and advocating for legal and policy reforms. It highlights the state's progress and persistent gaps in addressing torture, extrajudicial killings, enforced disappearances, arbitrary arrests, and related human rights violations, providing actionable recommendations.