



3rd CYCLE OF THE UNIVERSAL PERIODIC REVIEW

STATEMENT BY THE INDEPENDENT MEDICO-LEGAL UNIT (IMLU) ON TORTURE, EXTRA JUDICIAL KILLING AND ARBITRARY ARREST

Thank you, Ms/Mr Chair.

This statement is delivered by the Independent Medico-Legal Unit, which is a governance, health and human rights nonprofit organization, whose vision is A World Free from Torture, Violence and discrimination. We grateful for the opportunity to deliver this statement on the state of human rights in Kenya since the 2nd Cycle of the UPR.

This statement addresses basically two issues: Torture and Extra Judicial Killing in Kenya. The current status of Torture and Extra judicial executions in Kenya is both alarming and disconcerting.

1. THE LEGISLATIVE FRAMEWORK

During the previous cycle Criminalize torture, in line with international human rights obligations, and fight extrajudicial executions through, inter alia, capacity-building for State agents, ensure that legislation to counter torture goes beyond just police forces and instead covers all public bodies, and that it includes mechanisms for giving reparations to victims and ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

In 2017 Kenya made a tremendous step in the enactment of the Prevention of Torture Act and the National Coroners Service Act which were to ensure that perpetrators of torture and extra judicial killings are held accountable. However, the two acts have not been fully implemented since their enactment. The lack of progress in implementing of the Acts increases the risk of human rights abuses and limits the preparedness of the state to handle such abuses in a fair and effective manner.

Kenya is yet to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance and the Second Optional Protocol to the International Covenant on Civil and Political Rights.

Recommendations

- a) Full implementation of the National Coroners Service Act 2017 and the Prevention of Torture Act 2017 and develop a monitoring and evaluation tool to access the progress of implementation.
- b) The state to invest in immediate capacity building for actors in the administration of justice sector, including security and law enforcement officials, Judicial officers, prison officials, prosecutors, among others.
- c) Ratify of the Second Optional Protocol to the International Covenant on Civil and Political Rights.
- d) Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- e) Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

2. JUSTICE AND ACCOUNTABILITY

During the previous cycle the Kenya government was urged to properly investigate extrajudicial killings and bring to justice alleged perpetrators, to ensure that all police and counter-terrorism activities are carried out in compliance with the country's international obligations, Set out how it will act against the culture of impunity, including for perpetrators of extrajudicial killings and Promptly and impartially investigate all allegations of torture and ill-treatment and strictly hold perpetrators accountable.

During the reporting period IMLU documented 98 cases of extra judicial killings, 18 cases of enforced disappearances and 269 cases of torture with the highest perpetrators being the police officers. 24 of these cases had clear evidence of torture but the state has been slow to complete investigations and press charges against the perpetrators.

We are also concerned that the absence of comprehensive data encourages the use of anecdotal evidence of violations. The lack of data collection by the State prevents external monitoring of the situation and is used by the state to argue that no violations are taking place.

Recommendations

1. Ensure publication of outcomes of investigations to allow for public oversight and avoid impunity.
2. An official statutory database should be established and managed on behalf of relevant agencies for synthesizing and administering investigation, prosecution and conviction data.
3. **LACK OF ADEQUATE REDRESS MECHANISMS FOR VICTIMS OF TORTURE, EXTRA JUDICIAL KILLINGS.**

During the Previous cycle, Kenya was urged to Prevent extrajudicial killings and ensure compensation and justice for the families of victims, taking into account the recommendations of the United Nations Special Rapporteur on extrajudicial killings. The government is slow in complying with court orders requiring compensation of

survivors of torture, EJE and Enforced Disappearance defeating the principle of access to justice. IMLU has 9 cases where compensation amounting to approximately USD 19,000 was awarded to the victims as far back as 2011 but the government is yet to honor them.

The government is also not offering rehabilitative services including medical and physiological services to victims of torture, extra judicial killings and enforced disappearance and most victims are forced to either pay for private services or depend on civil society.

RECCOMENDATIONS.

- a) Appropriate budget allocation to ensure that the government can provide redress to victims of torture, extra judicial killings and enforced disappearance.

- b) Prompt and effective disbursement of the compensation funds to the survivors of torture, extra judicial killings and enforced disappearance.

- c) The speedy development of regulations under the Prevention of Torture Act 2017 using a consultative process, to ensure that the victims of torture and ill treatment can access rehabilitation services at no cost as the costs will be charged to the victim protection fund.

Thank you!

