



64TH ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS IN SHARM EL SHIKH

STATEMENT BY THE INDEPENDENT MEDICO-LEGAL UNIT (IMLU) AND THE KENYAN SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) TO THE CHAIRPERSON OF THE AFRICAN COMMISSION OF HUMAN AND PEOPLE'S RIGHTS (ACHPR)

Thank you Madam Chairperson,

Honorable Chairperson, Honorable Commissioners, State delegates, representatives of National Human Rights Institutions, members of civil society organizations and distinguished participants.

The Independent Medico-Legal unit and the Kenyan Section of the International Commission of Jurists (ICJ Kenya) are grateful for the opportunity to deliver this statement on the State of human rights in Kenya. We wish to bring to the attention of the Chairperson, a few issues with respect to the human rights situation and specifically torture in Kenya:

1. We welcome the Presidential directive of 2015 to establish a restorative justice fund to be used for restorative justice for victims. However, delays in setting up the restorative justice fund has hindered settlement of reparation claims. We also welcome the recent judgements from the courts in Kenya holding both the government and the public officers implicated in the acts of torture personally liable. However we wish to note that many victims of torture, inhuman and degrading treatment are yet to receive redress especially from the government despite receiving favorable court orders.
2. Kenya's enactment of the Prevention of Torture Act (No. 2 of 2017) came into force on 20th April 2017. The Act defines and criminalizes torture and provides hefty sanctions for perpetrators of torture, cruel, degrading and inhuman treatment. The Act also provides for redress and rehabilitation mechanisms for the families of the victims and survivors of Torture. However, we are concerned with the slow implementation of the Act. This increases the risk of human rights abuses and limits the preparedness of the State to handle human rights violations in a fair and effective manner. So far, no perpetrator of torture has been charged under the Act.

3. Mr. Chairperson, it is without a doubt that the aftermath of every general election in Kenya since 2007 has been political conflict, violence and internal displacement of persons in Kenya. In this regard, Mr. Chairperson, it is laudable that the government of Kenya has made notable strides in developing legislative and policy frameworks concerning internally displaced persons, such as the Internally Displaced Persons Act. The Act has the potential to provide an adequate response to internally displaced persons. However, the lack of synchronized normative frameworks carry the risk of pre-empting or watering down some of the guarantees envisaged under the Act.

Thus, we call upon the chairperson of the African Union to urge the government of Kenya to:

- a) Fast track the full implementation of the Prevention of Torture Act 2017 and develop regulations under the Act through 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;
- b) Appeal to the government of Kenyan to build the capacity of actors in the administration of justice sector, including security and law enforcement officials, Judicial officers, prison officials, prosecutors, among others on the Prevention of Torture Act 2017;
- c) Urge the government of Kenya to conduct sensitization programs to the members of the public on an ongoing basis, to ensure that they understand the provisions of the Prevention of Torture Act 2017 and support its implementation;
- d) Develop a clear guideline on how the restorative fund for victims will be disseminated and in a timely and effective manner;
- e) Facilitate the issuance of compensation to victims of state perpetrated torture, cruel, degrading and inhuman treatment who have received favorable court orders but are yet to be compensated;
- f) Ratify and implement the Kampala Convention, to ensure that domestic legislation is consistent with the convention's provisions; and
- g) Improve and streamline administrative redress and compensation processes for displaced or forcibly evicted individuals.

Thank you, Madam Chairperson,

Signed
Peter Kiama
Executive Director -IMLU

Signed
Samwel Mohochi
Executive Director- ICJ Kenya

Date this 28th April 2019
Sharm El sheikh, Egypt