

**UNIVERSITY OF NAIROBI**

**Institute of Diplomacy and International Studies**

**The Role and Impact of Aid in the Delivery of Prevention of Torture in Civil Society  
Organizations in Kenya – A Case Study of Independent Medico Legal Unit (IMLU)**

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**This Research Paper is submitted in Partial Fulfillment of Masters of Arts Degree**

**International Studies**

**DECLARATION**

This is to confirm that this proposal is my original work and has not been presented to any other University.

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This research paper has been submitted with my approval as university supervisor

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## **DEDICATION**

This Study is dedicated to my family, friends, my fellow students, IMLU, the Institute of Diplomacy and International Studies and University of Nairobi Lecturers for encouraging and supporting me throughout the studies. I am most grateful for always showing me the brighter side of life and helping me to believe in myself, reminding me that God will always be on my side and everything is possible if only you believe.

## **ABSTRACT**

Torture is defined by the Convention against Torture act, as an act which causes severe pain mentally or physically with an aim of achieving some information or a confession or punishment or for intimidation. Torture is an unbearable act of violation of a person's human rights and an attack on a person's dignity. State perpetrated torture in Kenya has been practiced since colonialism and it continued in the successive governments with the aim of suppressing divergent views from the middle class and the political elite. Today torture is manifested upon the poor and marginalized. Victims and survivors of torture have been assaulted, threatened, intimidated, have experienced arbitrary arrests and these terrorizing acts have led to death. Civil society organizations have focused time and attention to foster a torture free country with support from donor funding which has played a significant role in torture prevention work.

About 26%<sup>1</sup> of torture survivors have been able to access legal services. This is a clear indicator that access to medical, legal and psychological services is minimal especially in rural and urban poor communities. Knowledge and skills among professionals such as doctors, clinical officers, lawyers, human rights activists, community based monitors and counselors is limited in terms of documenting torture violations and providing timely responses to address the needs of victims and survivors of torture. The quality of forensic medical materials is poor and for this reason the pursuit of justice in cases of torture is hindered. The above professionals are not equipped with skills in collecting evidence, statements and documenting torture violations. The above mentioned problems are escalated by obstacles faced in the criminal justice system leading to

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<sup>1</sup> National Torture Prevalence Survey 2007 of IMLU.

poor delivery of services and the non domestication of international legal instruments which has encouraged a culture of impunity among perpetrators.

This study therefore analyzes the role and impact of aid in the delivery of torture prevention by civil society organizations in Kenya. Using IMLU as a case study, documents, reports and publications are analyzed. The researcher gives a descriptive analysis on practice of torture prevention. Other civil society organizations in Kenya also contributed to the study so as to be able to analyze the role and impact of donor aid in prevention of human rights violations and particularly torture prevention activities. There is need for further research on the work of torture prevention and the practice of torture in Kenya among students and organizations. The results of this study indicated a significant contribution by international donor funding to support torture prevention activities. The study found out that 85% male victims and survivors of torture between the ages of 18 and 35 have benefited from IMLU's medical, psychological and legal support in the last 20 years. The low turnout of women to report cases of torture was attributed to fear of reprisals and intimidation and possibly that they are not aware of their rights. This study therefore undertakes to analyze the role and impact of aid in torture prevention in Kenya.

## **LIST OF ABBREVIATIONS**

ACHPR	African Commission on Human and Peoples Rights
BFCO	British Foreign Commonwealth Office
CLARION	Centre for Law and Research International
CLAN	Children’s Legal Action Network
CSOs	Civil Society Organizations
COVAW	Coalition of Violence against Women
CIPEV	Commission of Inquiry into the Post Election Violence
CRECO	Constitution and Reform Education Consortium
CAT	Convention against Torture
CID	Criminal Investigation Department
CID	Cruel, Inhuman and Degrading Treatment
DAI	Development Alternatives Incorporated
DAC	Development Assistance Committee
EACJ	East African Court of Justice
EU	European Union
EJK:	Extra Judicial Killings
FIDA	Federation of Women Lawyers Kenya
FGM	Female Genital Mutilation
GAO	Government Accountability Office
GROs	Grassroots Organizations
IBON	Iowa Board of Nursing
IMLU	Independent Medico- Legal Unit

IPOA	Independent Police Oversight Authority
IREC	Independent Review Commission
ICTJ	International Centre for Transitional Justice
ICJ	International Commission of Jurists
ICC	International Criminal Court
IRCTV	International Rehabilitation Council for Torture Victims
KIOS	Kärcher Information & Ordering System
KANU	Kenya African National Union
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
MDGs	Millennium Development Goals
MFA	Ministry of Foreign Affairs
MRC	Mombasa Republican Council
MUHURI	Muslims for Human Rights
MWAKENYA	Muungano wa Wazalendo wa Kukomboa Kenya
NCHRD	National Centre for Human Resources Development
NSIS	Kenyan National Security Intelligence Services
NPS	National Police Service
NPSA	National Police Service Act
NGOs	Non Governmental Organizations
NFD	Northern Frontier District
OMCT	World Organization against Torture
OSIEA	Open Society International for East Africa

PAT	People against Torture
PEV	Post Election Violence
RCK	Refugee Consortium of Kenya
RPP	Release Political Prisoners
UNCAT	United Nations Convention against Torture
UNDP	United Nations Development Programme
UPR	Universal Periodic Review
UNVFT	United Nations Voluntary Fund for Victims of Torture
USAID	United States Agency for International Development
T, CID	Combined incidents of Torture and Cruel, Inhuman and Degrading Treatment
T, EJK:	Torture followed by Extra Judicial Killing
TJRC	Truth Justice and Reconciliation Commission

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## CHAPTER ONE

### INTRODUCTION TO THE STUDY

#### 1.1 Background

The study analyzes the role and impact of aid in the delivery of prevention of torture in Kenya. In examining the role and impact of aid in many of the project activities carried out by civil society in Kenya, donor agencies are interested to see whether they can have confidence in these institutions to make gainful progress in their work. Torture has been defined by the United Nations Convention against Torture (CAT) as that act which causes severe pain mentally or physically with an aim of achieving some information, a confession and punishment or for intimidation<sup>2</sup>. The World Medical Association (1975) defines torture as “The deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on orders of an authority to force another person to yield information to make confessions or for any other reason<sup>3</sup>”. Torture manifests itself in many forms in our Kenyan society. State perpetrated torture continues to be practiced widely even in the face of prohibition of torture under international law. The gains that have been made in prevention of torture and the efforts that have been made to see a just society have been harnessed by the civil society with assistance from donor funding.

During the British colonial administration, torture, arbitrary arrests, unlawful detentions, rape and sometimes arbitrary executions was a characteristic of the colonial rule. Even with these atrocities the perpetrators were not brought to justice, not forgetting that they were signatories of

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<sup>2</sup> Article 1, United Nations Convention Against Torture (CAT)

<sup>3</sup> The State of Mental Health in Kenya, Victimization and Torture Among Persons with Mental and Psychological Disabilities IMLU

the UN Charter<sup>4</sup> and the Universal Declaration of Human Rights. This trend continued during and after independence when the successive regime carried on with the colonial structures. The situation worsened following resistance from opponents when government transformed into a one party system. We live in a society where torture is justified by security forces as long as their security agenda is achieved. It is these state perpetrated torture acts that this study seeks to analyze. The inhuman acts which conveniently preserves power and control of the political elite and in today's government this inhuman acts are directed to the poor.

Development aid fills the gap for financial capacity which can be used for training of different categories of people; doctors, lawyers, counselors, law enforcers, security forces, prison officials who will collectively represent millions and also as a long term impact, will spawn a generation which values the abolition of torture; networking, making appeals, making international campaigns, publication of books journals magazines, documentary films on torture to boost legal rights awareness<sup>5</sup>. Development aid will help such actors to enhance the rule of law - the backbone upon which a nation can stimulate foreign direct investment and further economic progress<sup>6</sup>. Donor funding will enhance rehabilitation of victims and survivors of torture. This study will also analyze how an organization conforms to the requirements of aid agencies in order to make an impact and find out the gaps or constraints which pose as a difficulty in conforming to requirements of the donor agencies.

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<sup>5</sup> <http://www.netzkraft.net/mitglied>.

<sup>6</sup> <http://www.globalgiving.org/projects/end-torture-africa>

## **1.2 Statement of the Research Problem**

From literature studies, the academic work has focused more on causes of torture however this study will focus on measures in place to mitigate the practice. Torture prevention work is a huge area. Some experts are involved in inspection and monitoring of conditions in detention facilities, other experts play the role of influencing policy within the political and socio-economic context and improving access to justice for victims of torture through medical, legal and psycho-social support. The gap identified is that there hasn't been adequate study on the prevention of torture. There is inevitably a major gap between the law mechanisms and what actually happens.

In Kenya today torture is still rampant even in the face of the UNCAT which the government ratified, the government has delayed to pass the parliamentary prevention and torture bill which will end torture incidences and this has posed great challenges for civil society who have continuously collaborated and pursued the bill. To narrow this gap and for change to come there is need for greater efforts from and support to civil society organizations that deal in torture prevention; support to train many experts such as psycho-social counselors, medical-forensic doctors and pro bono lawyers who will be able to address the plight of the victims of torture. IMLU has recognized that the government needs to be held accountable for torture but the challenge in the fight against torture is the lack of concerted efforts to document torture cases. There is also need to bring to light all those un- documented and not reported torture violations and impact positively the victims and survivors of torture and their families.

### **1.3 Main Objective**

The main objective of the study is to analyze the role and impact of development aid in the delivery of prevention of torture in Kenya.

#### **1.3.1 Specific Objectives**

The specific objectives of this study include:

1. To analyze characteristics of victims and survivors of torture who have been rehabilitated since 1992, as a factor leading to decrease in torture cases.
2. To analyze the intensity of training for professionals in order to rehabilitate victims and survivors of torture as a factor leading to decreasing torture incidences.
3. To examine the extent to which level of awareness campaigns and training helps reduce torture incidences in Kenya.
4. To analyze the extent to which conforming to donor guidelines and requirements can be a challenge in the delivery of torture prevention work.

### **1.4 Justification of the Study**

This study is significant to actors in NGOs, civil society organizations and development agencies in prevention of torture in a number of reasons; transparency, accountability and efficiency. These should be an integral part for any great impact to be made and especially for delivery of prevention of torture. This cannot be achieved without the great effort and support of donor aid. This requires development efforts, community outreach awareness and sensitization interventions. To the researchers, significance means benefitting from the findings and recommendations as a basis of their research work. The project work will be obtainable at the

Institute of Diplomacy and International Studies resource centre for use as reference for academic and research purposes.

The study will be useful in deepening the understanding of prevention of torture and provide recommendations to the government, human rights defenders, community group practitioners, research institutions and policy makers in their work. The general public will also benefit from the study. The study will be instrumental in the way NGOs, governments and other institutions formulate policies or legislations on torture. Based on the significance and importance of this study, it is worthy of the time and any other resources necessary to proceed with this study and add this wealth of knowledge to existing body of knowledge on issues of human rights violations and prevention of torture.

### **1.5 Definitions of Key Terms**

**Beneficiary:** (<http://oxforddictionaries.com>) A person who derives advantage from something.

**Civil Society Organization:** (Anthony Bebbington and Roger Riddell 1997 Donors, NGOs and Civil Society Organizations pp109) define civil society as the sphere which social movements become organized. They include church related groups, trade unions, cooperatives, service organizations, community groups and youth organizations as well as academic institutions and

others. Civil societies are also known as Pressure groups or Interest groups.

**Aid:** (Lumsdaine, 1993- p.33) defines aid as “gifts and concessional loans or economic resources, such as finance and technology, employed for economic purposes provided to less developed countries by governments of the developed democracies”

**Donor;** (Burnett, 2002, p. 4) - A basic definition defines donors as “people who actively support your work through their sustained financial contributions”

**Impact:** (<http://oxforddictionaries.com>) defines impact as a marked effect or influence.

**Role:** ([www.thefreedictionary.com](http://www.thefreedictionary.com)) defines a role as a function or a position.

**NGO:** (David Hulme and Michael Edwards; NGOs, States and Donors, Save the children 1997) define NGOs as intermediary organizations engaged in finding or offering other forms of support to communities

and other organizations that seek to promote development and grassroots organizations which are membership organizations of various kinds.

**Perpetrate:**

(<http://oxforddictionaries.com>) means to commit a harmful, illegal or immoral action.

**Rehabilitation:**

(<http://oxforddictionaries.com>) To restore (someone) to former privileges or reputation after a period of disfavor:

**Torture:**

(The UN Convention against Torture) defines torture as any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person, has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official

capacity. It does not include pain or suffering arising only from inherent or incidental to lawful sanctions.

**Victim:** (<http://oxforddictionaries.com>) defines a victim as a person harmed, injured or killed as a result of a crime, accident or other event or action.

## **1.6 Literature Review**

### **1.6.1 Introduction to Literature Review**

This section of the study explores work from different scholars on foreign assistance, reviewing various perspectives and exploring the role and impact of donor funding on the subject under study. Rehabilitation and support for torture victims and survivors, creation of awareness, training programmes and capacity building for various experts is a measure in the fight against torture. This section reviews secondary literature on torture prevention in terms of rehabilitation. In addition, in line with the study hypothesis it will bring forward the arguments that donor aid has played a role and has caused an impact on torture prevention, that activities of torture prevention have been underfunded, activities of torture prevention are largely dependent on donor funding and that donor agencies' work have been shaped by clear principles and guidelines.

This section also reviews the relationship between donor agencies and civil society generally in Africa and further narrows down to civil society organizations in Kenya in the way foreign aid

encompasses political organizing in Kenya and how foreign aid contributes in bringing change through political and economic resources. Different scholars have analyzed the influence civil society and donor agencies have on each other and the influence of foreign aid on civil societies, these influences as seen are both positive and negative on either party. Other issues and contexts within a broad framework of civil society which are of interest to this study have been reviewed. The chapter looks into contextual issues surrounding the relationship of civil society with donor agencies and how they influence foreign aid priorities to organize political issues of the state. In spite of the efforts to mitigate torture, this area of work over decades has had constraining factors such as impunity which deter positive legislation to protect and guarantee human rights. More critical to this could be donor related constraints and underfunding dependent on the quality of aid.

### **1.6.2 The Role and Impact of Development Aid in Prevention of Torture**

Lipton M. Toye<sup>7</sup> observes that aid is a means of poverty alleviation. He postulates that poverty alleviation is the broader effect of aid on institutions. Wall<sup>8</sup> defines foreign aid as the “government enforced international income redistribution”. Foreign aid is interdisciplinary due to its international character practically involving transfer of resources to fields for various purposes; international relations, economics, finance, development, law, political and policy, science, ethics, anthropology and cultural studies e.t.c.

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<sup>7</sup> Lipton, Toye. M *Does Aid work in India? A country study of the impact of official development assistance*. By Lipton M. Toye, Retrieved on 27<sup>th</sup> April 2013 from <http://www.cabdirect.org/abstracts/>

<sup>8</sup> Wall, D. (1973 ) *The Charity of Nations*, London; The Macmillan Press Ltd,1973 pp3.

Professor Brown 2013<sup>9</sup> explained that the role of donor communities in Kenya is to make empty threats and statements without consequences hence losing credibility in the eyes of Kenyans. He gave an instance where western donor countries threatened not to cooperate with Kenya's President Uhuru Kenyatta if he was elected president. He linked this behavior to that of organizations that previously worked for democratization and shifted to peace-building. He however noted that when Uhuru Kenyatta was elected as president the leverage of Western donors in particular diminished.

The Paris Declaration<sup>10</sup> identifies the remaining gaps in the aid structure as the key focus on aid effectiveness. According to the Paris Declaration, donor and partner policies and practices determine the quality of aid and the impact of aid on development depends on the quality of aid. The declaration continues further to argue that for impact of aid to be evaluated, there is need for distribution of capacity and indicators. The Paris Declaration has collected reports which have suggested that aid keeps poor countries in a state of dependence on the rich world, and is used to exert power over poorer nations, but other people believe it is necessary to provide poorer countries with aid while they are developing, until they are able to support themselves. Lumsdaine<sup>11</sup> also stands on a liberal position which offers a role to values and keeps the hope for a successful development process in the way that aid is channeled multilaterally, hence increasing efficiency of foreign aid.

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<sup>9</sup> Discussions in Bonn- Germany from the report of the 1<sup>st</sup> Kaete Hamburger Dialogue; Elections, Violence and International Criminal Justice; The Case of Kenya on 15<sup>th</sup> April 2013. The Centre for Global Cooperation Research

<sup>10</sup> Aid Effectiveness in Africa A synthesis African Forum and Network on Debt and Development AFRODAD pp 10 2007

<sup>11</sup> (Lumsdaine D. H 1993 pp.139-140 *Moral Vision in International Politics: The Foreign Aid Regime, 1949-1989*. Princeton: Princeton University Press.

According to Graham Hancock<sup>12</sup>, small Non Governmental Organizations are funded on a voluntary basis by contributions from the general public and thus are under considerable pressure to use properly the money they received and sometimes they do greater good. He continues to say that the same cannot be said by official aid agencies who transfer large sums of money and are not accountable to the public directly, transparent, open and honest in their dealing.

*According to Sonia Picado<sup>13</sup>, “Every day, millions of individuals the world over suffer torture and its after-effects. Combating torture requires concerted and sustained efforts by Governments, the United Nations and civil society at the local, national, regional and international levels. Until there is an end to torture, there will be a need for mechanisms such as the United Nations Voluntary Fund for Victims of Torture.”*

The UN Torture Fund was established in 1981 by General Assembly resolution 36/151. It is a voluntary fund which distributes contributions through channels such as NGOs, associations of victims and family members of victims, private and public hospitals, legal clinics, public interest law firms and individual lawyers, who in turn provide humanitarian, medical, psychological, medical legal and financial aid to those who have had their human severely violated as a result of torture and their relatives have also been affected as a result of suffering. Torture however often persists even in the wake of the Convention against Torture, twenty six years on but a culture of impunity remains even when regimes change.

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<sup>12</sup> Graham H (1989). Lords of Poverty, published in United Kingdom, pp xiii-xv

<sup>13</sup> Sonia Picado, Former Chairperson, United Nations Voluntary Fund for Victims of Torture

Sonia<sup>14</sup> points out that the UN Torture Fund supports training programmes, seminars and conferences for experts, professionals, social workers and lawyers learn from each other and develop new strategies in order to address the needs of torture victims. On a yearly basis the needs of 70,000 victims are realized. A yearly grant of US Dollars 21,800 is awarded<sup>15</sup>.

### **1.6.3 Challenges of Donor Requirements and Guidelines**

Judith R, Tony G and Deborah E (2002)<sup>16</sup> assert that donor guidelines, policies or mechanisms also known as aid conditions are intended to ensure that resources given are used as the donor intends<sup>17</sup>. Tony Jujan of IBON points out that these policies are applied to effect institutional/policy changes otherwise the recipient would not otherwise have agreed. According to Kosack<sup>18</sup> the political environment will determine whether a country is suitable to receive aid. He further notes the concern that while NGOs are valued when they contribute to the development agenda, they also strive to implement donor policies, as the saying goes that “he who pays the piper calls the tune”. Kosack claims that NGOs are subjected to pressures due to availability of aid finance and funds are important if utilized well in which case the acceptance of aid is marked by agreements which partners enter into for accountability and reporting.

According to Djankov<sup>19</sup> good governance and democratization has recently become a new type of conditionality imposed by donor nations. Even with good governance and democracy as expected international practices, foreign aid has failed to produce expected results. One debate is

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<sup>14</sup> Sonia Picado, *Former Chairperson, United Nations Voluntary Fund for Victims of Torture*

<sup>15</sup> <http://www.ohchr.org/EN/Issues/Torture/UNVFT/Pages/WhattheFundis.aspx>

<sup>16</sup> Ibid from *The Reality of Aid* 2002 pp 8

<sup>17</sup> Ibid

<sup>18</sup> Kosack S (2003), *Effective Aid: How Democracy Allows Development Aid to Improve the Quality of Life*. World Development, (p.14)

<sup>19</sup> Djankov S, Montalvo J. G and Reynal-Querol M (2006), *Does Foreign Aid Help?* Cato Journal

on sovereignty in inter – state relations and doing development and another debate is that aid requires an interdisciplinary approach such as the MDGS approach which is critical in improving the aid regime and aid’s functionality<sup>20</sup>.

MISEREOR<sup>21</sup> for instance, is a German Catholic Bishops donor agency which uses funds available responsibly, economically and efficiently, and is required by both private back donors and governmental donors to account for it regularly. Misereor encourages strong monitoring systems which can guarantee transparency within and without the organization in the use of funds. There are clear rules, which contribute to corruption free areas of work. For partners such as IMLU that are supported by Misereor, working for effective development, their performance is from time to time reviewed by external consultants and documented in public evaluation reports.

Odhiambo M (2007)<sup>22</sup> observes that requirements and policy prescriptions by donor agencies are in other terms the conditionalities which are tied to a specific approach from the time the request for a fund is submitted to the time funds will be approved and disbursed to a partner organization in installments all the way to reporting and auditing, but it is clear that the term conditionality is not applied, instead what is referred to it is ‘guidelines’. Killick<sup>23</sup> adds that there are prior actions and performance criteria, which are the requirements before submitting a request for funding and measures which, must be undertaken by the recipient during project implementation.

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<sup>20</sup> United Nations (2006).

<sup>21</sup> <http://www.misereor.org/about-us/transparency.html>

<sup>22</sup> Odhiambo, M. (2007) the influence of Foreign Aid Conditionalities on Domestic Policy Making: a Case Study of Kenya, 1995 to 2005. MA Research Project. University of Nairobi, 2007)

<sup>23</sup> Killick, T. Principals, Agents and the Failings of Conditionality. Journal of international Development Vol 9 No.4,pp.483

#### 1.6.4 Other Perspectives of Aid

Hattori<sup>24</sup> looks at foreign aid as a ‘form of giving gifts and connects foreign aid with resource allocation – gifts and with symbolism of domination. According to the MDGs, foreign aid before was just a policy tool to advance donors’ interests, but such a claim no longer holds in the post MDGs era. For instance, according to EU donors, EU sometimes places the developing countries’ interests above their own (EU, 2006d; EU 2005a; EU 2005d; EU 2005e). As mentioned above, donor characteristics matter. Acharya *et al.* (2004) and Knack and Rahman (2004 in Djankov *et al.*,2006) however argue differently that the costs for recipient countries in dealing with donors and the negative impact of the competition between donors results in lower quality of governance and economic performance, meaning that the presence of bilateral and multilateral donors creates coordination problems.

Finnemore 1997<sup>25</sup> understands that poverty is an element which has tremendously suffered important changes in status. More specifically the concern to alleviate poverty and link poverty to incidences of torture is no different situation seeing as torture thrives most where people are poor. Finnemore says that the major shift here is passing from poverty as a condition of countries to poverty as a condition of individual human beings. He adds that just as development is promoted and aimed at individuals, so is poverty aimed at individuals implying that developed states care, take action for and take action on behalf of individuals who are not under their authority.

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<sup>24</sup> Hattori T (2002), Reconceptualizing Foreign Aid. *Review of International Political Economy*, 8(4). 1243-1255.

<sup>25</sup> Finnemore, M 1997, p.203, Redefining Development at the World Bank In Cooper, F. and Packard, R. eds. *International Development and the Social Sciences: Essays on the History and Politics of Knowledge*, Berkeley and Los Angeles: University of California Press.

Mosse 2005<sup>26</sup> argues that aid projects are shaped by the donor's identity, vision, ideals and as such they satisfy first of all the "political needs of Western development agencies long before they meet the livelihood needs of poor people. He points out how British exports to India in 1994 were "thirteen times the annual aid budget. He continues to add that in the midst of a web of interests, development projects seem to require long periods of time to produce change on the ground. Cassen<sup>27</sup> agrees that such aspects in some sense make the impact of aid smaller than the sum of the parts. Cassen and Associates begs to know why donors do not want to cooperate. The possible answers are in the political and commercial interests, operational difficulty, ideology, problematic understanding of responsibility and recipients may also not want donors to cooperate for fear of pressure.

Mosse, (p.230) draws lessons that the knowledge of experts is hard to justify within a community which finds itself on a different cultural and developmental level, but also the impact of development projects on the local communities is much stronger, meaning that the mere existence of a development project within a community alters identities and redirects development. Mosse (p.94) observes that the perceptions and misperceptions shape villagers' needs and identities of what the project was able to deliver, the change brought by practitioners is acknowledged. However how to produce and justify it is questionable, making the idea to use a participatory planning approach so as to involve the villages and beneficiaries and consider their local knowledge. Mosse (p.95) adds that this practice does not come without problems. The type of knowledge development agencies are looking for is relevant, since underdeveloped

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<sup>26</sup> Mosse, David and Lewis, David, eds. (2005) *The Aid Effect: Giving and Governing in International Development*. London; Pluto press, pp 22

<sup>27</sup> Cassen, R and Association (1994 ) *Does Aid Work*, p.175

communities may not possess the knowledge donors require. The result is a rather unusual type of knowledge produced through project activities and negotiated across opposing views within villages and the project team.

Sorensen 2004 asks the question, “why is the current understanding of ‘doing development’ problematic?” he refers to the concept of ‘Development’ in the Western thinking and secondly he argues that donors run away from the responsibility of making development happen. Since aid is given by the ‘West’, it would be almost impossible to imagine that donors are going to promote non-Western understandings of development in developing countries. This cultural gap between Western donors and non-Western recipients is indeed a problem, and unfortunately one which will stay with us for a considerable period of time. Mosse adds that some projects/programs are conceptually limited to a certain period of time, implying a rejection of continuity. Just as this conceptual mismatch points to an inevitable failure of creating sustainable development, it also points to failure in causing an impact in torture prevention. Misereor as a donor agency argues differently that donors strengthen self-initiative of partners they cooperate closely with, encouraging them to know their rights and their obligations, that self initiative supports independence and a reduced dependency on foreign aid. Donors’ efforts and support are seen through technical advice, expertise, funds they give and together with the partners involved<sup>28</sup>. As Christy Cannon<sup>29</sup> has rightfully put it, NGOs have come in to fill in the gap of the state in terms of social welfare, employment markets, enormous funding they attract and policy making.

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<sup>28</sup> <http://www.misereor.org>

<sup>29</sup> David Hulme 1992 and Michael Edwards 1995, *NGOs, States and Donors, Too close for Comfort*

### **1.6.5 Influence of Foreign Aid on Civil Society Organizations in Kenya**

According to Rob Jenkins<sup>30</sup> civil society has been received in what is termed as development profession where you find a community of scholars, consultants, activists, and policy analysts who influence policymaking in national governments, international agencies and non-governmental organizations so that in the process of social, economic and political change in post colonial societies they have constructed an elaborate discourse around the role they play. Anangwe (1995)<sup>31</sup> observes that it is common to ascribe NGO under performance to state interference but it is possible to have other alternative explanations such as that NGOs are weak and ineffective hence the reason they fail to mobilize beneficiaries and reduce the incidence of poverty.

According to Hyden (1995)<sup>32</sup> the usage of the term civil society in history is ‘pressure groups or interest groups’ applied to the political systems especially of the advanced industrial countries but today civil society describes the development field sector and has influenced foreign aid priorities encompassing how political issues are organized. Hyden points out that the word civil society is a common point for the civil society and the retransmission to aid recipient countries. He adds that civil society organizations are independent centers with power to enable the environment through social and economic checks on activities of politicians and government officials hence promoting accountability. Hyden further adds that CSOs are an arena of public

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<sup>30</sup> Prepublication version of a paper published in Sudipta Kaviraj and Sunil Khilnani (eds.), *Civil Society: History and Possibilities* (Cambridge: Cambridge University Press, 2001), pp. 250-68.

<sup>31</sup> Anangwe, A. (1995) ‘NGO-State Relations in Kenya’, mimeo, University of Nairobi.

<sup>32</sup> Hyden, Goran (1995) ‘Assisting the Growth of Civil Society; How might it be improved?’, paper for workshop on civil society and democracy, arranged by Development assistance committee of the OECD, Uppsala University Sweden, 12-13 June

space as well as a set of private actor and therefore, aid to the “democracy and governance sector”, as it has increasingly come to be known within the profession must be set aside to support both individual associations as well as the political setting in which they carry out their functions.

David Williams and Tom Young (1994)<sup>33</sup> expose the emptiness of the World Bank’s stated commitment to respecting indigenous African political traditions, because as a multilateral aid agency they need to be held to account for the hypocrisy of their policy statements on civil society. Pierre Landell-Mills<sup>34</sup> observes that the term civil society comes with a lot of ideas and meaning, but for foreign aid there is one crucial difference which is their intentionality to deploy economic and political resources to bring about change because what aid agencies have developed is not consistent with the achievement of their stated objectives, and not compatible with other principles to which they are ostensibly committed.

Zaya Yebo<sup>35</sup> argues that aid agencies fund organized groups within developing countries and seek to create a moral cycle where rights to free association may promote equilibrium of sound government policies, human development, and (ultimately) a more conducive environment for

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<sup>33</sup> David Williams and Tom Young, “Governance, the World Bank and Liberal Theory”, *Political Studies* (1994), XLII, pp. 84-100.

<sup>34</sup> Pierre Landell-Mills, “Governance, Civil Society and Empowerment in Sub-Saharan Africa”, paper prepared for the Annual Conference of the Society for the Advancement of Socio-Economics, 1992; P. Landell Mills and I. Serageldin, “Governance and the External Factor”, *Proceedings of the World Bank Conference on Development Economics* (Washington, DC: The World Bank, 1991); and P. Landell-Mills and I. Serageldin, “Governance and the Development Process”, *Finance and Development*(1991), 29, pp. 14-17. Pierre Landell – Mills expresses his own views and not those of World Bank.

([http://ccs.ukzn.ac.za/files/Mistaking\\_Governance\\_Politics.pdf](http://ccs.ukzn.ac.za/files/Mistaking_Governance_Politics.pdf))

<sup>35</sup> <http://www.pambazuka.org/en/category/books> 10<sup>TH</sup> June 2013

the protection of individual freedoms. Aid agencies however expect too much of civil society. The notion of civil society as mutable hence capable of adapting to new power settings might appear as an attractively flexible idea. The effort however to operationalize these new power settings are usually challenging in terms of supporting civil society through the application of foreign aid. In this attempt to operationalize many donors have stripped the notion of civil society of any substantive meaning.

According to Zaya Yebo<sup>36</sup> the civil society has the ability to influence change using non violence avenues. With the claims that over the last few years, civil society is to be franchised to international NGOs meaning little room will be left for local solutions and strategies for collaboration with governments and the private sector. He adds that financial aid and donor agency has been used by governments and civil society in the last 20 years allowing re-colonization and influence of regime change through the back door and so this influence has led to widening the gap between government, private sector and civil society and needs to be challenged. Following examples provided by Ghana, Sierra Leone and South Africa of how people power can bring about change, Kenyan civil society can draw inspiration and even support In terms of achieving effective and lasting political reforms.

From Pambazuka News<sup>37</sup>, the Southern Africa Trust in South Africa has undertaken an assessment of the impact of financial aid flows on the policy work of civil society, Kenya just as Sothern Africa can as part of its ongoing work engage with donors on financial aid flows to strengthen its work around supporting increased aid flows to civil society for them to be able to

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<sup>36</sup> ibid

<sup>37</sup> <http://pambazuka.org/en/category/fundraising>

effectively influence policy to overcome poverty. The Paris declaration<sup>38</sup> and Windhoek declaration<sup>39</sup> made by donor's calls for effective utilization of development resources but the implementation even among donors remains with challenges. Therefore, civil society in the context of Kenya needs to borrow leaf from the Paris declaration and explicitly address specific frameworks for guidance for their contribution in planning and organizing development programmes, especially in relation to enhancing the voices of the poor in developmental policy processes. Also support to civil society in terms of networking, learning, reducing duplication are some positive approaches that multi-donor approaches are contributing towards in Southern Africa. Kenya's civil society should borrow best practices and involve such multi donors to increase their voice in regional policy processes within the spirit of the Paris and Windhoek Declarations and give more attention to the level of coherence in implementation of these declarations.

Kalima B- Phiri <sup>40</sup>points out that the level of delivery from civil society is in contention from donor agencies, particularly in terms of civil society institutional and absorptive capacity to address poverty reduction and socio-economic development. Still, the models and mechanisms available for civil society support as well as the ongoing debates on the need for greater collaboration and a shift in aid effectiveness policies are also increasingly enhancing dialogue and collaboration between civil society and donors in their respective roles in development support. Kalima adds that when reviewing relationships between CSOs, donors, governments,

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<sup>38</sup> Paris Declaration; Aid Effectiveness Retrieved on 12<sup>th</sup> August 2013 from <http://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm>

<sup>39</sup> Windhoek declaration of 1991; declarations on promoting independent and pluralistic media, retrieved on 12<sup>th</sup> August 2013 from [http://www.unesco.org/webworld/fed/temp/communication\\_democracy/windhoek.htm](http://www.unesco.org/webworld/fed/temp/communication_democracy/windhoek.htm)

<sup>40</sup> The Regional Poverty Observatory Unit Southern Africa Trust, 4 Midridge North, International Business, Gateway, 6th Road (off New Road), Midrand, South Africa OR Email: [bkalima-phiri@southernaficatrust.org](mailto:bkalima-phiri@southernaficatrust.org)

businesses and other development partners it is important to focus cases studies of those undertaking policy work with a regional impact on poverty, collect evidence-based lessons highlighting issues, best practices and enabling conditions for improving this type of relationship.

According to M. Edwards and D. Hulme 1996<sup>41</sup>, bilateral and multilateral donor agencies are keen to finance non governmental organizations (NGOs) and grassroots organizations (GROs) so as to promote a “New Policy Agenda,” on the grounds of their economic efficiency and contribution to good governance. As a result what is observed is the impact of this trend on NGOs or grassroots organizations’ programs, performance, legitimacy and accountability. Hulme and Edwards further add that there may be inconclusive evidence but signs to lead to a greater dependence on official funding which may compromise NGO/GRO performance in key areas, distort accountability and weaken legitimacy.

Arthur A. Goldsmith (2001)<sup>42</sup> argues that even though few states in Africa are well governed and are very able to conduct basic government operations, many African states depend on development assistance so as to provide public goods. It begs the answers whether foreign aid has destroyed state institutions in Africa in terms of state performance, also whether aid dependency contributes to misrule and state failure in Africa. According to Arthur, there is

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<sup>41</sup> M. Edwards and David Hulme World Development 1996; too close for comfort? The impact of official aid on nongovernmental organizations retrieved on 29<sup>th</sup> July 2013 from <http://www.sciencedirect.com/science/article/>

<sup>42</sup>Foreign Aid and Statehood in Africa, Arthur A. Goldsmith retrieved on 29<sup>th</sup> July 2013 from <http://journals.cambridge.org/action/displayAbstract> Arthur A. Goldsmith (2001). Foreign Aid and Statehood in Africa. International Organization, 55, pp 123-148.

consistent evidence with small positive relationship between aid and these indicators of state performance such as democracy and good governance. He adds that Africans should maintain and improve their performance with less foreign assistance, in view of the fact that the international community seems bent on reducing foreign aid.

Julie Hearn (1997) found out from a study conducted on foreign aid, democratization and civil society in Africa that civil society organizations committed to the promotion of liberal democracy and economic liberalism are the most popular with donors. She observed that although assistance to civil society is relatively small and directed at a particular sector, some of the key actors in this societies involved in influencing economic policy and defining the content of democracy are funded<sup>43</sup>. In a research conducted by Julie, she found this to be the case with all foreign donor civil society programmes that the most popular civil society actors were formal, urban-based, professional, elite advocacy NGOs, women's organizations, human rights/legal aid groups, think tanks, development NGO forums, business associations, governance/democracy NGOs, youth and student organizations, conflict resolution groups, and professional media associations. A feature that strikes is that international aid flows to civil society is small, for example, in Uganda and Ghana, the democracy budget of the US aid programme accounts for 4 per cent of overall US aid and within that, civil society assistance is just one component, In Ghana about 3 per cent of US aid goes specifically towards a civil society programme and In

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<sup>43</sup> Julie Hearn 1997 Foreign aid, democratization and civil society in Africa:A study of South Africa, Ghana and Uganda, retrieved on 29<sup>th</sup> July 2013 from <http://testing.ids.ac.uk/files/Dp368.pdf>

Uganda, the percentage is even less. But because of the political significance of South Africa, it is an exception so that 20 and 60 per cent of its aid is democracy assistance.

As Issa G. Shivji<sup>44</sup> posed “who are we Pan Africanists committed to African liberation and human emancipation or neo-liberal impostors serving imperialist vultures?” Frantz Fanon put it in another way when he said “every generation out of relative obscurity must discover its own mission, fulfill it or betray it.” Therefore Kenyan civil society should carve for itself a niche that enables it build a prosperous and dynamic country away from colonialism. Kwame Nkrumah said on the dawn of Ghana’s independence “Ghana is out of the gambling house of colonialism and will not return to it.” I believe that is the adage of our time.

Julie Hearn<sup>45</sup> in her book ‘uses and abuses of civil society’ The current discourse on ‘civil society’ in Africa, conducted by Northern governments, international NGOs, activists and academics often presents civil society as the ‘*locus sine qua non*’ for progressive politics, the place where people organize to make their lives better. Antonio Gramsci remind us that civil society is a potential battleground and also constitutes an arena in which states and other powerful actors intervene to influence the political agendas of organized groups with the intention of defusing opposition. Julie focused on Ghana, South Africa and Uganda during late 1990s by looking at their national contexts and investigating the relationship between the dominant development project in each, undertaken by the government in ‘strategic collaboration’ with donors and civil society; all three countries have been paradigmatic in terms of donor

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<sup>44</sup> Issa G. Shivji's 'Pan-Africanism or Pragmatism 2009 retrieved on 12<sup>th</sup> 08. 2013 from <http://pambazuka.org/en/category/books/59117> review by Mohammed Bakari

<sup>45</sup> The ‘uses and abuses’ of civil society in Africa, Julie Hearn , Review of African Political Economy Vol. 28, Iss. 87, 2001 Retrieved on 29<sup>th</sup> July 2013 from <http://www.tandfonline.com>, pages 43-53

visions for the continent and have attracted some of the largest aid packages that specifically target ‘civil society’. Julie further argues that donors have been successful in influencing the current version of civil society in these countries so that a vocal, well-funded section of it, which intervenes on key issues of national development strategy, acts not as a force for challenging the *status quo* but for building societal consensus for maintaining it.

### **1.7 Hypotheses**

1. That donor aid has had a positive impact on torture prevention.
2. That the activities of torture prevention have been underfunded.
3. That the activities of torture prevention are largely dependent on donor funding.
4. That donor agencies work has been shaped by clear principles and guidelines.

### **1.8 Theoretical Framework**

The role and impact of aid on delivery of torture prevention can best be explained within a framework of development theory that despite self governance in the third world not enough development has been realized. Todaro 1992<sup>46</sup> observes the inability of states in the third world to emerge from a state of dependence from the west. He defines development as a multi-dimensional process and is the ability of a country to meet the basic needs of its citizens. Development has been equated to western education, technological advancement and industrialization by some states<sup>47</sup>. According to Rodney 1982<sup>48</sup>, development is a ‘many sided

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<sup>46</sup> Todaro, M.P. Economics for a Developing World. Pearson Education. Harlow. 1992pp.159

<sup>47</sup> Odondi Lynnette Odhiambo; Masters Thesis 2011 “The effects of donor conditionality on EU/ACP Policy Implementation: The case of Community Development Trust Fund (CDTF)

<sup>48</sup> Rodney, W. How Europe Underdeveloped Africa.(Nairobi: East African Educational Publishers, 1982.pp3-4

process'. Other authors from varied approaches and disciplines have discussed development theory and although these theories are not on the subject with regard to this study, such as the World systems theory, state theory, etc. They all belong to the broad framework of development theory.

Harry Blair (1993) who propounded the applied democracy theory (democratization) argues that the international donor community has experienced an interest to support democracy as the wave of democratization has grown in the recent years<sup>49</sup>. A consensus statement of the Development Assistance Committee (DAC)<sup>50</sup> donor support to democratization is an example where members of the DAC have jointly put together approaches to provide material assistance to democratization. Norway for instance in 1994, USAID, the Bush and Clinton Administration in 1989 -1993 and since 1993 respectively, has pushed for democratic development as a foreign aid strategy. Within the Kenyan context Blair identifies implementation of applied democracy i.e. through the support of donor community IMLU is able to focus on the fight against torture.

Harry B (1993) observes that foreign aid programs of advanced capitalist northern countries have identified civil society as an important factor in promoting democratic development, in the economically less developed states of the south. Development requires sound policies and impartial implementation. These can only be delivered by governments that are held accountable

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<sup>49</sup> Harry Blair; Donors, Democratisation and Civil Society; Relating Theory to Practice; Blair, Harry (1993) Doing Democracy in the Third World: Developing an Applied Theory of Democracy, Paper for the annual meeting of the American Political Science Association, Washington, 2-5 September

<sup>50</sup> DAC enables effective development through inclusive partnerships for development, the OECD Development Assistance Committee (DAC) helps ensure better lives for people in the developing world by understanding development finance, strengthening aid delivery, improving development policy and building partnerships for development

for their actions. GAO 1994<sup>51</sup> conducted a study on donor assistance for human rights, justice systems, political parties; legislations have been given but only to a few of them. Therefore this applied democracy theory could inform the donor strategies.

Jeffery Sachs<sup>52</sup> however has commented that he does not believe in global governance by the rich countries or permanent governments entrenched by bureaucracies or governance by conditionality set by rich countries and imposed on the desperately poor. A lack of democracy in international institutions and persistent poverty is then linked. An applied theory is essential for this study for democratic components like the civil society, defining civil society, showing how the theory can support as well as possibly constrain democracy; it is also a theory that can depict linkages between civil societies.

According to dependency theory, the developed world reaps benefits from the system and realizes development for itself by exploiting the resources and labours from the third world and maintains the status of dependency of the developing world. According to Rodney, the dominant features of underdevelopment are structural dependence positing that Africans went into the relationship unequal to the west. He continues to explain that the colonialists used different strategies in the political, social and economic sphere e.g. education to prepare Africans for

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<sup>51</sup> GAO 1994- The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that works for Congress. Often called the "congressional watchdog," GAO investigates how the federal government spends taxpayer dollars. It audits agency operations to determine whether federal funds are being spent efficiently and effectively,

<sup>52</sup> Judith Randel, Tony German and Deborah Ewing, The Reality of Aid 2002 pp 7 "Reforming Conditionality; tighter controls on developing countries? Too Concerned with with compliance; not enough focus on quality or legitimacy of the advice.

docile roles in the colonial bureaucratic system. Burnell 2004<sup>53</sup> posits further that foreign aid created the North/ South conflict seeing as the developed countries formed a decision making body which enabled it to concur the third world.

Dependency theory (Pfeffer and Salancik 1978) predicts organizational responses to changes in the surrounding environment. It gives a theoretical justification for NGO behavior in a changing funding environment. Resource dependence determines NGO behavior. It is therefore expected that NGOs characterized with high resource dependency will comply with donor interests. It also follows that this behavior could be by the presence of strong or weak ties, where you find an NGO centrally located in a network with strong ties it possibly would comply with donor interests. It is likely to be true that an organization which adopts an exit as a response to shifts in donor funding is characterized with a low resource dependence and weaker network ties. It is also possible that an organization that voices itself is characterized with low resource dependence and stronger ties. In the 80s and 90s, Kenya was largely funded by donors and there were no conditions but with shift in the present period, Donors have tightened their fists, this was evidenced by Human Rights organizations and defenders who did have a passion but did not have a structure which led to donors exiting. Lastly, the likelihood of an organization to adopt loyalty responding to shifts in donor funding is higher with higher resource dependence and stronger ties.

According to Burk 2003 p. 22, dependency is characterized by donor-centered fund raising. This is an approach to raise money and interact with donors. This approach acknowledges what

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<sup>53</sup> Burnell p. et al (2004) Foreign Aid in the New Global Economy. ( Cheltenham, UK: Edward Edgar Publishing Ltd, )pp 53-69

donors really need and puts those needs first” donors are retained longer when fund raisers adhere to this concept hence giving them time to develop their own philanthropic resiliency, secondly, it causes more donors to offer increasingly generous gifts; and third, it raises the performance of even the most active and loyal donors to a new standard”. Dependency theory therefore supports the study; the role and impact of aid in delivery of torture prevention to understand how NGOs and civil society organizations are dependent on donor aids to fill the gap left by the state.

## **1.9 Research Design and Methodology**

### **1.9.1 Introduction**

This section describes the research design and methodology of the study, data collection procedure and data analysis methods that will be employed. The methodology to be used will also include target population. In addition, the data collection instruments will be tested to ascertain and improve their validity and reliability.

### **1.9.2 Research Design**

The researcher will use both qualitative and quantitative design. Qualitative and quantitative research design will provide clear defined information and its findings will be considered to be conclusive enough. There is considerable information from civil societies that work in Kenya, especially IMLU. Combining both qualitative and quantitative approaches gives depth coverage of issues being addressed. The topic also requires a process of understanding that captures contextual findings and that information is difficult if not impossible to measure or quantify only

through quantitative method. The research will be conducted using a combination of methods and approaches. The steps will be as follows:-

- (i) Review of the recent literature on prevention of torture and the impact of aid in strengthening gains made.
- (ii) A review of the ongoing debates on torture incidences.
- (iii) Face to face interviews with the programme manager and staff of IMLU and informal interviews and discussions with human rights practitioners and CSOs.
- (iv) Consultation with the staff of donor agencies working in Kenya, Misereor in particular.

### **1.9.3 Target Population**

Target population refers to the total number of subjects of the interest to the researcher. The research intends to determine the role and impact of aid in the delivery of prevention of torture in Kenya. The target population of the study will focus mainly on personnel of IMLU in Nairobi Kenya, where the coordinating secretariat is located; the project managers and program officers including stakeholders, human rights practitioners from other civil society organizations and policy makers. The target population has been chosen because they draw wide expertise and are likely to give in depth responses to this study.

### **1.9.4 Sample Design**

A sample is that part of the population which has been selected for observation and analysis. Therefore sampling is the process of getting a representative number of the subject. The state of population under study will be identified and the researcher will use stratified random sampling

method to represent the issue under study. The sample size of 30 will enable the researcher's source for information from different groups which can be helpful for the study.

### **1.9.5 Data Collection Procedures/Instruments used**

The method of data collection will involve administering questionnaires, interview schedules, and telephone interviews. These are the most appropriate instruments in this kind of study because there is need for in depth collection of data. An Interview with IMLU's project managers will be conducted, questionnaires to other Civil Society Organizations such as Kenya Human Rights Commission, MUHURI, Release Political Prisoners and also the Kenya National Commission on Human Rights, community monitors among others will be administered. Discussions will be held where possible.

Secondary data will be collected from strategic plans, annual financial and narrative reports, half yearly reports, publications, surveys conducted and records from IMLU, stake holders and donors. Policy documents from donors and other relevant documents will also be reviewed.

### **1.9.6 Instrument Validity and Reliability**

Questionnaires consist of questions which will be sent to respondent to seek information from them and later be tabulated and subjected to a statistical manipulation (SPSS) under the study. Semi-structured questions will be used since the method was easy to compute and allow respondents to give their opinions. In order to test and hence improve on the validity of the questionnaire, the researcher first pre-tested in pilot study using 2 participants from IMLU. This will correct the items that were difficult and ambiguous.

### **1.9.7 Data Analysis Methods**

The data to be collected and used is qualitative and quantitative in nature. The researcher will use descriptive analysis of the data to come up with in-depth information of the study. Descriptive statistical methods to be used are pie charts, graphs and tables where applicable. These are quick reference of information especially to non-experts. Qualitative analysis will be used as a method of inferential statistics to better understand the collected data and this will be through the use of designed questionnaire which provided answers to question asked. This will allow for better interpretation, conclusion and recommendation.

### **1.9.8 Scope and Limitations of the Study**

The aim of the study was to determine the role and impact of aid on the delivery of torture prevention in Kenya between 1992 and 2012. Victims and survivors of torture, donor agencies and other civil society organizations that are experts in torture prevention will also be investigated. The study will be carried in August 2013 at IMLU head offices in Westlands area and will be based on the role and impact of development aid in the organization. The respondents to be approached are likely to be unwilling to give information in order to protect confidential information about their institutions. The researcher plans to handle such a problem by carrying an introduction letter from the University and assuring respondents that the information they give will be treated with great confidentiality and it will be used purely for academic purposes.

The other challenge is lack of relevant research information in the area of study. The role and impact of aid on delivery of torture prevention in Kenya has not been widely researched on as compared to other fields. Limitation of information is a challenge because it may be treated as

confidential. The researcher will try to be as exhaustive as possible and all inclusive in order for the study to be all covering. Inaccessibility of medical and psychological records of torture survivors because of highly sensitive matters and difficulty to access research areas e.g. suspected sites of torture.

### **1.10 Chapter Outline**

Chapter one begins to describe the need to study the role and impact of aid in the delivery of prevention of torture in Kenya. A background is given on the role of aid and the extent of impact it makes in supporting development cooperation generally and in particular supporting implementation of torture prevention. The Statement of the Problem and how development aid supports NGOs such as IMLU follows. The main objective of the study and the specific objectives, literature review, research design and methodology follow in that order. The justification of the study and the hypothesis is an outline of basic assumptions considered for the success of the study. The theoretical framework focusing on development and dependency theories outlines the different disciplines as outlined in the objectives of the study.

Chapter two examines civil society organizations in support of torture prevention and their roles in the process of social, political and economic change in the post independence and the current governments.

Chapter three is an overview of the situational analysis of Torture in Kenya in the colonial period, post independence during Mzee Jomo Kenyatta's reign, Daniel Moi's reign, in the reign of Mwai Kibaki and also in President Uhuru Kenyatta's government.

Chapter four analyzes IMLU Kenya (Case Study) and its programmes and activities. A section of the chapter provides recommendation by IMLU for Kenya to the committee against Torture and other inhuman violations. One section also delves into the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in which IMLU's activities are anchored.

Chapter five looks into donor funding for IMLU towards prevention of Torture in IMLU, the role and impact of aid and effect of donor guidelines and principles on IMLU work. This chapter reveals hypothesis testing. It reviews one donor (Misereor) guidelines and principles.

Chapter six summarizes data collected and analyses findings of the study in light of study objectives and hypotheses. The chapter also presents conclusions and recommendations which would add knowledge to the topic of this study.

## CHAPTER TWO

### CIVIL SOCIETY ORGANISATIONS IN KENYA

#### 2.1 Introduction

This chapter reviews civil society organizations in Kenya in support of torture prevention during the post independence and current governments. Since early 80s and throughout 90s, civil society organizations always seemed to be on opposing sides with the government and to some extent also the corporate sector. The citizens, disadvantaged and vulnerable groups suffered from lack of activity from office bearers. This period was characterized by impunity, lack of popular participation and political will to implement reforms because of vested interests. Human rights civil society has since demanded for structural reform in the judicial sector. Looking at recent history in Kenya, the grand coalition government engaged with civil society in governance, justice and the law and order sector reform program was founded to push for reforms. Civil society organizations have a chance to contribute in an open way to reforms that Kenyans need, the government can work hand-in-hand with civil society to bring about structural reforms that will push Kenya forward.

The role of civil society is to ensure that the voice of the voiceless is heard, to fill in the gaps in development left by government. CSOs help with human rights protection, children and women's rights, micro-credit facilities, and access of services such as justice and welfare. This is where the synergy between government and civil society becomes apparent. Kenyans must believe in their own institutions and the power of their people to help resolve difficult political problems, poverty and social deprivation. Advice, moral and financial support can be offered by funding agencies. Kenyan civil society has been recognized as one of the 'most dynamic' in

Africa today therefore a clear direction, a sense of purpose in terms of being broad-based, and people-driven should be its focus. They must be able to engage the grassroots with a view to building a movement upward from below. Change also comes through solidarity with peoples from other nations with an aim of engaging with them for the common good and not to get into a confrontation as to who is right and has the moral authority or can impress foreign nations.

## **2.2 Organizations in Support of Torture Prevention**

### **2.2.1 People against Torture (PAT) - The Human Rights House Network**

The mandate of PAT<sup>54</sup> was to prevent and fight torture through exposure, advocacy and provision of legal and rehabilitation services to survivors and families of torture. Four core values steer the path of PAT; human dignity, equality, democracy and organizational credibility. It came into existence under a political environment of intolerance and many unjust incidences which still is persistent and conducive to torture practice. According to PAT, many CSOs are not focused on torture but on human rights issues. The practice of torture is persistent in a social environment dominated by tribal, regional and class lines. Poverty has direct implication on torture practice because the poor are likely to be tortured and be denied access to justice. PAT campaigns against perpetration of torture through awareness creation and activist events in partnership with organizations and individuals on the same wave length so as to expose incidents of torture through research, documentation and dissemination of information.

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<sup>54</sup> <http://humanrightshouse.org/noop/>

According to the annual report 2007<sup>55</sup> of The Human Rights House Network provides that civil society organizations easily recognize the impact of networks because they increase access to resources, enhance efficiency and allow for specialization. They provide solidarity, support, and reduce costs and duplication of efforts, and increase visibility and credibility while reducing risk and isolation.

### **2.2.2 The African Commission on Human and Peoples' Rights**

The African Commission on Human and Peoples Rights<sup>56</sup> handles complaints alleging that the state has violated the rights of an individual. A state must be party to the African Charter. Both individuals and NGOs in Africa bring to the commission complaints of this nature. The commission denounces alleged violations of peoples and human rights covering matters such as the rights and freedoms protected in the Charter.

### **2.2.3 Coalition of Violence against Women (COVAW)**

COVAW<sup>57</sup> is a non-profit making national woman human rights NGO registered in Kenya and was established in 1995 to address violence against women in Kenya as a grave women rights violation. Since its initiation COVAW has fronted the campaign towards women having the right to be free from violence, the right to self defense and the right to state protection. COVAW considers that people have the capability to learn and transform their attitudes towards women. COVAW beneficiaries are therefore women and girls.

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<sup>55</sup> [http://humanrightshouse.org/noop/Annual\\_reports\\_2007](http://humanrightshouse.org/noop/Annual_reports_2007)

<sup>56</sup> <http://www.achpr.org/sessions/> retrieved on 6<sup>th</sup> July 2013

<sup>57</sup> <http://covaw.or.ke/>

COVAW<sup>58</sup> has adopted the definition of violence against women from article 4 of the United Nations International Declaration on the Elimination of Violence against Women (DEVAW), that *'violence against women is any act of gender based violence that results in or is likely to result in physical, sexual and psychological harm or suffering to women including threats of such acts coercion or arbitrary deprivation of liberty whether occurring in public and private life'*. COVAW works with this definition in three areas; the family, the community and violence perpetrated by the state. COVAW has experienced challenges in the past when it came to donor reporting and compliance; it has had to reimburse disallowed costs to donors and also poorly managed projects and non compliance with donor requirements has affected their ability to attract more funding.

#### **2.2.4 Rights Promotion and Protection Centre - Release Political Prisoners (RPP)**

The struggle against the oppression and dictatorship by the KANU regime that peaked in for those detained without trial lays RPP's true roots<sup>59</sup>. This situation spawned the emergence of political prisoners or prisoners of conscience; those convicted in show trials based on confessions obtained under torture, all because of their political beliefs. The mothers of the political prisoners relentlessly put a lot of pressure on the government by the end of the 1980s and in the early 1990s. This gave birth to Release Political Prisoners Pressure Group (RPPG). RPP became focused on a wider terms of office that included campaigns for other prisoners beyond the original 52, penal reforms and human rights (civil liberties as well as socio-economic rights). At the height of nationwide demonstration for constitutional reforms in 1997/8, RPP became more involved in broader aspects of Human Rights, Democracy, and Governance. RPP

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<sup>58</sup> Strategic Plan 2012 – 2017, COVAW

<sup>59</sup> Retrieved on 17<sup>th</sup> August 2013 from <http://www.rpprights.org/>

worked with diverse communities in Kenya including the academia, religious groups, the marginalized, worker movements, prisoners and prison authorities. This was carried out through civic education in communities, research and publications, advocacy and production of IEC materials. At this point, RPP became highly visible in its work. In 2006, it undertook 3 strategic key areas: Human Rights Promotion and Protection; Penal Reforms; Institutional Development/capacity building and carried out projects on the right to life, campaigns against impunity, research and documentation and re-instituted its secretariat.

### **2.2.5 World Organization against Torture (OMCT)**

The World Organization against Torture (OMCT)<sup>60</sup> is an organization based in Geneva and is the most important network of non-governmental organizations working for the protection and the promotion of human rights in the world. Since its inception in 198, it is the main coalition of international non-governmental organizations (NGO) fighting against torture, summary executions, and enforced disappearances and all other cruel, inhuman or degrading treatment. OMCT has 311 affiliated organizations in its torture network and many correspondents in every country. OMCT provides personalized medical, legal and/or social support to hundreds of torture victims and makes sure that urgent appeals are distributed daily across the globe, in order to protect persons and to fight against impunity.

OMCT provides support to particular categories of vulnerable people e.g. women, children and human rights defenders in the framework of its activities. Currently OMCT is the only international non-governmental organization providing first assistance directly to the women,

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<sup>60</sup> <http://www.omct.org/about/>

men and children who are victims of torture. With the backing of SOS Torture Network they identify and do verification for urgent assistance and provide quickly and economically the necessary help.

*“I have the honor of writing to convey my deepest thanks for the humanity you have shown me through OMCT. Indeed, I have just received the transfer of the amount required to cover my physiotherapy treatment. I thank you infinitively and keep the hope that thanks to your contribution, I will be able to use my leg again.” - Victim, Benin*

With regards to urgent assistance, OMCT favors a global approach. The organization offers legal, social or medical assistance. It is not only about healing the physical and psychological wounds of torture. For a victim to be able to move on his torments, the victim must be able to obtain complete rehabilitation, compensation for ill-treatments, social reintegration and punishment for the guilty parties. A victim may require assistance to speedily leave his country, as his life may be danger. Furthermore, it is required from time to time to support him in the procedure of obtaining asylum in a third country. This is an intervention in emergency situations in this programme. With regards to medical assistance, OMCT is not a centre specialized in care for torture victims, and cannot provide long term medical treatment. However, through NGOs in the Network, the programme can provide victims with the required medicine or the sum necessary to cover the first few hospitalization fees or appropriate treatments. This support, although limited, is allocated directly and quickly to its recipient, which makes it frequently a critical instrument.

### **2.3 Civil Society and Implementation of the New Constitution**

According to Zaya Yebo<sup>61</sup> the struggle to have a new constitutional dispensation in Kenya is closely tied to the history of civil society in Kenya. He recommends that civil society need to appreciate the role they have played in the Constitution making process in terms of closely monitoring the nomination and appointments of persons to the then Committee of Experts on the Constitution (COE) and the Interim Independent Electoral Commission (IIEC); carrying out thorough civic education to almost all parts of Kenya; performing a thorough critique to the draft Constitution to ensure that it meets a number of conditions amongst them being gender-sensitivity and taking care of minority rights; handing out Constitution copies to far areas in Kenya, developing custom-made and disability friendly programmes that ensured that everyone was brought on board in the process and partnering with the media to guard against distortions and misinformation. Civil Society further monitored the Referendum and celebrated the results of the referendum that gave Kenya a new lease of life.

Zaya expresses the need for civil society and the media to awaken in order to keep the legislative mechanisms in check and ensure that it is not interfered with by non reformist elements, provide platforms for open discussions and dialogue that will bring all on board, thus promote a sense of common destiny and ownership, ensure that Kenyans understand that the implementation process requires commitment and dedication over a long period of time.

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<sup>61</sup> zaya yebo; moving citizens towards constitutionalism retrieved on 12<sup>th</sup> August 2013 from <http://amkeniwakenya.org/index.php/human-rights> -

## **CHAPTER THREE**

### **SITUATIONAL ANALYSIS OF TORTURE IN KENYA**

#### **3.1 Introduction**

This chapter steers an overview of torture in Kenya, tracing it from the colonial regime, through post independence regimes under the rule of Presidents Jomo Kenyatta, Daniel Moi and Mwai Kibaki. Torture during colonial and post colonial times was a weapon of choice and it encouraged a vicious cycle of impunity and human rights violations from 1960s to date. The Jomo Kenyatta, Daniel Moi and Mwai Kibaki regimes perfected this trend by the colonialist in order to maneuver and manage political resistance. According to Kenya Human Rights Commission<sup>62</sup>, torture begins at the time of arrest many at times without a warrant of arrest, breaching the procedures laid down. Political activists and other perceived enemies experienced torture during the colonial and post independence regimes to silence dissenters and repress political opposition. IMLU's empirical assessment report 2007, explained that torture is manifested in four ways; torture of political dissenters – not so much in the current government, torture while in confinement – most common, torture against the weak or disadvantaged and ethnic / land clashes. This chapter also presents mechanisms for prevention of torture.

#### **3.2 Torture during the Colonial Era (1895 – 1963)**

The colonial regime ruled Kenya using repressive systems which perfected torture to dispossess citizens and suppress political resistance. In 1902 the colonial government put policy measures to

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<sup>62</sup> Surviving after torture, a case digest on the struggle for justice by torture survivors in Kenya

disposes citizens off their land rights and job opportunities. Anderson<sup>63</sup> described the situation of Africans in the 1930s and 1940s as squalid, crowded and reeking of poverty. Brutal force, torture and repression was the result of resistance against the white rule, Koitalel Arap Somoei led an eleven year resistance movement but was murdered, his son was detained in 1919 and released in 1964 making him the longest serving prisoner in Kenyan history. Others included Mekatilili, Harry Thuku, and freedom fighters of Mau Mau who opposed the colonial rule and were subjected to egregious violations of human rights. 2013 saw the Mau Mau veterans compensated by the British government for the violations, also an apology statement for torture was issued. According to Elkins<sup>64</sup>, Kenyans suffered during the struggle for independence; expropriation of property, murder, torture, ill treatment and use of concentration camps to incarcerate and liquidate all political oppositions.

### **3.3 Torture during Kenyatta Regime (1963-1978)**

This regime equally used torture to suppress dissent. Right to participation, freedom of association and expression were violated. There were the Shifta<sup>65</sup> wars of 1960s where Northern Frontier District (NFD) was brutally suppressed from seceding; there was the banning of opposition party in 1969 where leaders were detained. The detainees were detained without trial, under harsh treatment in the cells and medical treatment was rare and restricted.

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<sup>63</sup> Anderson David Histories of the Hanged. Britain's Dirty War in Kenya and the End of Empire, Weidenfeld and Nicolson, 2005 pp.35

<sup>64</sup> Elkins, Caroline Britain's Gulag: The Brutal End of Empire in Kenya (London; Jonathan Cape 2005);

<sup>65</sup> From the word shift after 1963, NFD currently North Eastern, including Lamu, Isiolo, Tana River, and Marsabit wanted to secede to join Somalia because they felt their interests were not addressed by Kenyatta's government.

### **3.4 Torture during Moi Regime (1978-2002)**

With the political philosophy of ‘Nyayoism’ meaning foot steps and spirit of his predecessor, Moi blackmailed Kenyans to loyalty. After the 1<sup>st</sup> August 1982 coup d’état, Moi used the state security apparatus to silence any political opponents<sup>66</sup>. According KHRC report, critics of Moi and those who were pro democracy and human rights advocates would be arrested, tortured and taken to court to confess being in Mwakenya (Muungano wa Wazalendo Wa Kukomboia Kenya – Union on Nationalist for the Liberation of Kenya). One would risk more torture if they claimed they were tortured<sup>67</sup>. In 1980 torture chambers were constructed at the basement of Nyayo house (then the provincial administration for Nairobi) which the centre stage for the atrocities by Moi regime. Initially torture places were Turkoman Carpet and Nyati house. The Wagalla Massacre in Wajir District was one of the most torturous of Moi regime. Men above 12 years old were tortured, women were raped and houses were burnt. This was all to force them to own up owning a rifle. Detainees were held up in an airstrip for five days, denied food and water and those who prayed were shot dead. More than 1,000 people starved to death and some were shot.

### **3.5 Torture between 1999 – February 2008**

Between 1999 and February 2008 IMLU<sup>68</sup> carried out a joint project to give accurate nature and magnitude of the violations suffered in Kenya, IMLU identified perpetrators and hurdles in access to justice and gave recommendations for interventions. Over 2000 cases of state perpetrated torture and related violations were documented. This number indicated how torture

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<sup>66</sup> Kenya Human Rights Commission (1994 and 1998)

<sup>67</sup> Kenya Human Rights Commission; Independent without freedom. The Legitimization of repressive laws and practices in Kenya. Nairobi Khrc, 1994, pp.27

<sup>68</sup> IMLU/GIZ State of Torture in Kenya (2012) Quest for Justice – A journey with Torture Survivors and Families of Victims to Access Justice in Kenya pp. 11

and impunity is widespread in Kenya. In line with the Truth Justice and Reconciliation Commission's (TJRC) mandate to seek justice for historical violations against persons between 1963 and February 2008, the report mapped out victims of torture and the violations in Kenya.

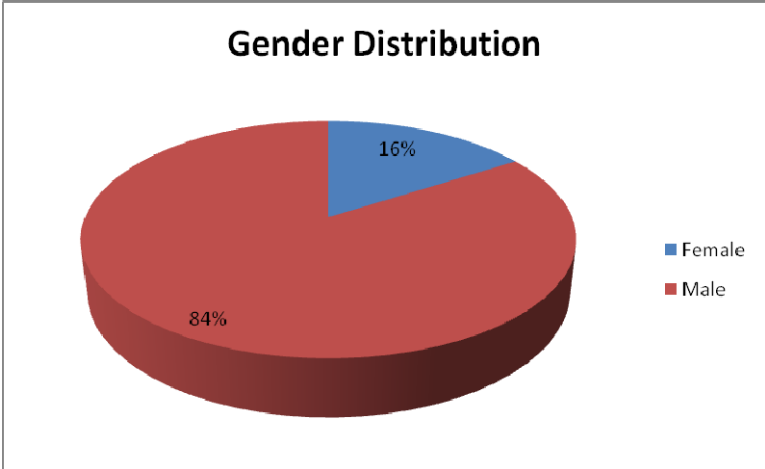
Documentation of torture is a specialized function of IMLU which was instrumental in holding the government accountable for torture and existence of torture dungeons, particularly in the 1990s. Torture has been used by state officials as a method of extracting confessions and further resulted in extra judicial killings, summary executions in the name of combating crime and cases of enforced disappearances. NGOs have done their best to highlight the practice of torture and the impact on victims and their families. However the problem has been the lack of concerted efforts to document Combined Incidents of Torture and Cruel, Inhuman and Degrading Treatment (TCID) in Kenya, which IMLU undertook to specialize in so as to bring about a positive impact for many more survivors of torture that remain un-documented and reported.

During this period the distribution of torture victims in different aspects was that 65% of victims and survivors of TCID were within the age bracket of 0.4 – 35 years, 10% were below the age of majority. It was found out that most of the victims were young men with low incomes working in the informal sector, 49.5% were employed in the formal sector doing agriculture and small businesses. There were findings of police officers torturing fellow police officers and the same applied to military officers. 41.7% of the violations took place in custody or places of confinement, while 45.3% took place in public. 1097 cases of beatings were the most common form of violations reported. 45.6% of TCID survivors had blunt object injuries, severe soft tissue injuries, moderate severe tissue injuries and minor soft tissue injuries while others had gunshot

related injuries. 438 cases were gunshot related violations of which 258 cases resulted in deaths while the remainder resulted in firearm injuries. 211 of all cases included beatings to death, prolonged detention without trial and harassment.

It still is disturbing that even with provision of international human rights instruments which Kenya is obligated to fulfill having ratified, torture incidences in Kenya have continued to occur. Kenya as a state for example has no rehabilitation policy and redress programmes within its legal framework for victims of torture to be provided for compensation, restitution, rehabilitation, financial compensation and satisfaction that the dignity of the victims will be restored or a public apology or tribute to the victims will be given. Below are results of Key findings of profiles of over 2000 victims of torture in terms of gender distribution, age, geographical spread, nature of violations and perpetrators between 1999 and February 2008.

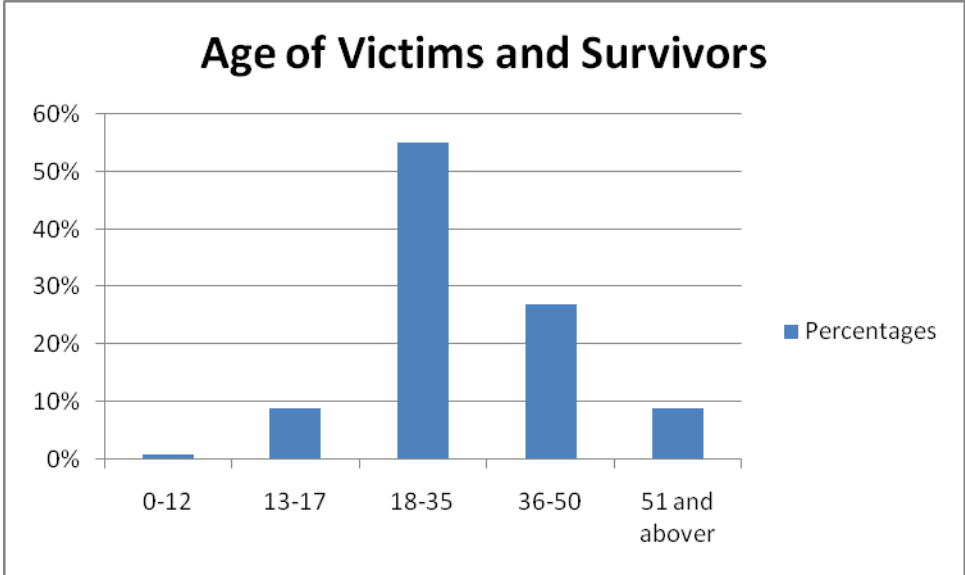
**Figure 3.1: Gender Distribution From 1999-2008**



Source: IMLU/GIZ Quest for Justice Survey; February 2012

The figure above illustrates the Gender Distribution. 1,731 men and 321 women respectively made the above TCID distribution. It can be concluded that young men speak out their experience but women prefer to remain quiet for fear of reprisals. The gender disparity is also attributed to women's lack of awareness of their rights. Women however went through horrifying kinds of torture.

**Figure 3.2; Age of Victims and Survivors from 1999 to 2008**

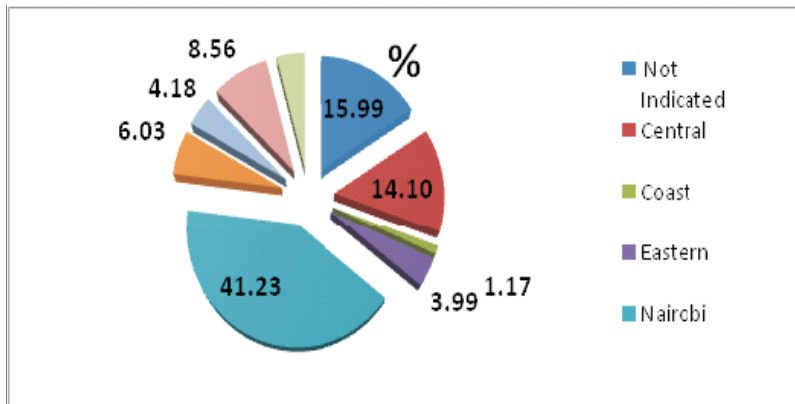


Source: IMLU/GIZ Quest for Justice Survey; February 2012

The above figure illustrates the age of victims and survivors between 1999 and 2008. 1,150 survivors of torture fall within the youth category of 18 – 35 yrs from the survey. It is likely that due to the high level of unemployment among them, they cannot afford to access justice. State officials claim that they use torture while allegedly combating crime. Key observation made in this category is that victims are stereotyped by perpetrators on their general physical appearance or the occupation of the victim. For example persons who wore dreadlocks are assumed to be

criminals but most survivors of TCID believe it is because they conduct lawful daily undertakings like touting, driving or hawking and these occupations are regular targets for extortion and human rights abuses when they failed to bribe because they lack licenses or appropriate uniforms.

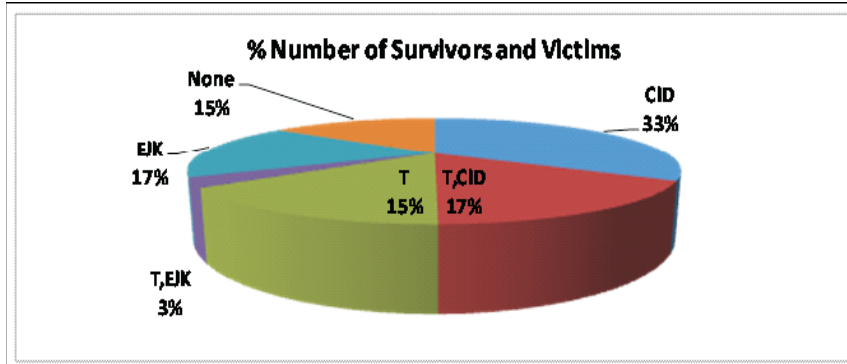
**Figure 3.3: Distribution of victims and survivors per province from 1999 to 2008**



Source: IMLU/GIZ Quest for Justice Survey; February 2012

The above figure illustrates the distribution of victims and survivors per province between 1999 and 2008. The above figure shows that TCID cases are reported from all over the country with Nairobi having majority of the cases.

**Figure 3.4: Nature of harm suffered between 1999 and 2008**



Source: IMLU/GIZ Quest for Justice Survey; February 2012

**Key**

- CID: Cruel, Inhuman and Degrading Treatment
- EJK: Extra Judicial Killings
- T, CID: Combined incidents of Torture and Cruel, Inhuman and Degrading Treatment
- T: Torture
- T, EJK: Torture followed by Extra Judicial Killing
- None: Violation not stated

These violations spread across the following regions: Coast, Rift Valley, Nyanza, Central, Eastern, North Eastern and Nairobi. Over 52% or the 1097 cases of the harms were done by police officers; other cases were carried out jointly between police officers, state officials and civilian and vigilante groups.

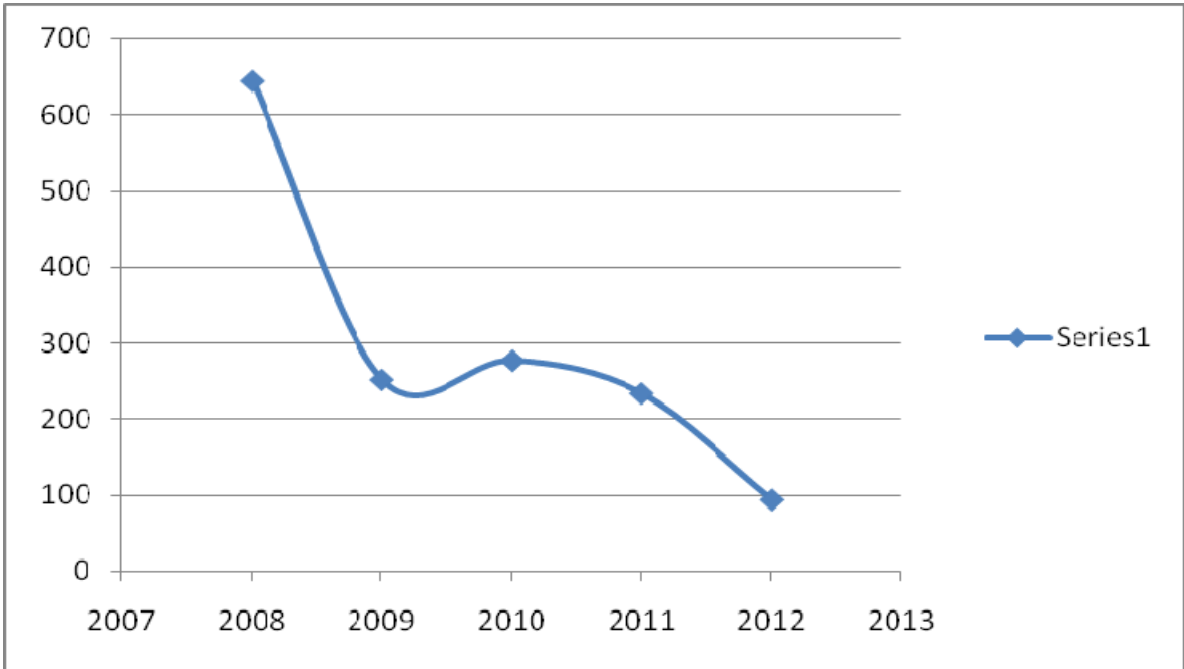
**Table 3.1; Cases IMLU handled from 2008 to 2012.**

<b>Year</b>	<b>Cases Handled</b>	<b>Male</b>	<b>Female</b>	<b>EJK</b>	<b>Shootings</b>	<b>Beatings</b>	<b>Death in Custody</b>	<b>Arbitrary Arrest</b>	<b>Other</b>
2012	94	78	16	23	9	51	4	2	5
2011	234	201	33	26	28(fatal 9)	85(Fatal 3)	3	52	40
2010	277	240	37	66	-	100	-		111
2009	252	181	71	35	15	140	-		62
2008	645	419	226	16	21(all fatal)	607(fatal 156)	1	-	-
<b>Total</b>	1502	1119	383	166	73	983	8	54	218

Source; IMLU Annual Reports 2008-2012

The above table shows the number of cases IMLU handled on an annual basis from 2008 to 2012.

**Figure 3.5: Cases Handled between 2008 and 2012**



Source: Author; August 2013

The figure above illustrates how cases were on the rise during the post election violence but as years moved on cases handled reduced indicating a decrease in torture incidences especially in the year 2012 advocacy on policy has increased, there is a significant number of people aware of their rights and creation of awareness on torture has been on the rise.

**Table 3.2: Summary of Monetary Awards To victims of Torture From 2003 to 2012**

	<b>Case Citation</b>	<b>Compensation</b>
1	Liza Catherine W. Mwangi Vs The A.G, High Court at Embu HCC No. 31 04 2007 [2010] eKLR	<b>7,122,000</b>
2	Cyrus Gitari Muraguri Vs The A.G, High Court of Kenya at Nairobi M isc Case No 1185 of 2003 [2011] Eklr.	<b>7,900,000</b>
3	Phillip Kimani Ngugi Vs Attorney General	<b>5,000,000</b>
4	M oses Tengeya Omweno Vs Commissioner of Police & AG,	<b>7,000,000</b>
5	High Court of Kenya at Nairobi JR Application No. 265 of 2001[Un reported] Harun Thungu Wakaba & 21 others v Attorney General , High Court at Nairobi Misc Case no.1411of 2004 {2010} Eklr:	<b>39,300,000</b>
6	Peter Makori Vs Commissioner of police (2006)	<b>5,053,671</b>
	<b>Total</b>	<b>83,375,671</b>

Source: IMLU/GIZ Quest for Justice Survey; February 2012

The above table reveals a summary of monetary awards given to the mentioned victims of torture from the government of Kenya.

### **3.6 Legal Frameworks for Torture in Kenya**

The constitution of Kenya and other acts of parliament contain provisions relevant to torture<sup>69</sup>.

The constitution has an expanded bill of rights with provisions to protect fundamental freedoms.

Article 26(1) of the new constitution on right to life, provides for death sentence and while it is

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<sup>69</sup> Effective prevention of Torture; A guideline for Security Forces

permissible in both Kenyan and international human rights some see it as ill treatment<sup>70</sup>. Kenya is a de facto abolitionist state, seeing as the last person that was executed in Kenya was in 1987 and the death sentences which were committed to life sentences on 3<sup>rd</sup> August 2009 by former President Kibaki is a clear illustration. Article 29 of the constitution provides for protection of human dignity and freedom of security<sup>71</sup> for citizens when dealing with security officers. The security officers need not subject citizens to humiliating practices but with respect. The constitution outlaws all forms of torture in line with the Convention against Torture. The constitution sets standards on the treatment of arrested persons, persons in custody for state security agents to follow.<sup>72</sup>

The Chief's Authority Act under section 20(1) (b) (1) (i) provides that; *'No chief shall subject any person to torture or to any other cruel, inhuman or degrading treatment. For its part, s 20(1) enacts that No chief shall maintain a cell or other place of confinement of persons.'* The National Intelligence Services (NSIS) Act (Cap 11) provides for officers not to use torture during performance of functions or otherwise the officer shall be liable to imprisonment for a term not exceeding three years. Section 12(1) of the Prisons Act criminalizes the use of unnecessary and disproportionate force except in prescribed circumstances, use of force may be necessary where the prisoner is disobedient and use of weapons may be used in case of escape to protect life in case of feared grave injury to prison officers or prisoners.

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<sup>70</sup> Concluding observations of the Committee against Torture (in respect of Kenya's initial Report), CAT/C/KEN/CO/1, para 29

<sup>71</sup> Article 29 a)deprived of freedom arbitrarily without just cause, b) Detained without trial, except during a state of emergency, subjected to any violence from either private or public sources, d) subjected to torture in any manner whether physical or psychological. e) subjected to cruel and inhuman or degrading manner

<sup>72</sup> Article 50 and 52

Section 14A (2) and (3) of the Police Act expressly prohibits torture and provides a basis for the prosecution of officers suspected of torture. Section 28 has relevant provisions in the understanding that the police are authorized to use force and in spite of this certain uses of force constitute torture or ill treatment.

Places of detention are known to be the most notorious sites where torture thrives. Prevention of torture in places of detention can be done in the following ways<sup>73</sup>; absolute prohibition against cruel punishment, all interrogation should be kept under systematic review to prevent torture<sup>74</sup>, persons deprived of liberty shall be held officially recognized in places of custody, no secret detention centers and black holes which are illegal, a detailed register of all persons deprived of liberty shall be kept, provision of written rules and regulations that apply to their rights and obligations, medical examination and treatment shall be provided.

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<sup>73</sup> Effective prevention of torture; A guideline for security forces; Kenya Section of the International

<sup>74</sup> Article 19, Torture Convention

## CHAPTER FOUR

### INDEPENDENT MEDICO-LEGAL UNIT (IMLU) - CASE STUDY

#### 4.1 Introduction

This chapter is focused on Independent Medico - Legal Unit, its programmes and activities and also looks at an overview of the United Nations Convention against Torture (CAT). IMLU's activities are anchored in the United Nations Convention against Torture (CAT) which seeks to protect all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment.

#### 4.2 About IMLU

Response from an in-depth interview conducted with the programme manager of IMLU brought out findings as follows; Independent Medico - Legal Unit started 20 years ago as a network of professionals concerned about human rights violations, mostly independent doctors, counselors and lawyers and they were motivated to register as an NGO in 2003 to legitimately address issues of torture and pursue due process for victims of state perpetrated torture in Kenya. From 1992 to 1995 IMLU's focus was to fill the gap of providing documentation of medical forensic of injuries suffered by victims of politically instigated ethnic violence in Western and Rift Valley Provinces to enhance access to justice<sup>75</sup> while several other civil society organizations focused on human rights advocacy. During this time IMLU operated as a project of Bungoma Professionals Associations (BPA). IMLU has since then grown from an ad hoc voluntary facility to an anti – torture organization

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<sup>75</sup> Strategic plan, 2011 – 2016 of Independent Medico Lego Unit, 08<sup>th</sup> June 2011 pp 9

IMLU has two departments, the finance and administration department and the programmes department which has three programmes. IMLU has a secretariat of 15 staff and works with interns. IMLU embraces a holistic approach i.e. medical, psycho - social and legal intervention to rehabilitate victims of torture and capacity build various stake holders<sup>76</sup>. It also utilizes advocacy interventions to seek justice for torture victims through documenting torture. Its vision is to have a torture free society. IMLU is the lead agency in Kenya in a regional human rights network of torture organizations. Cases brought to IMLU are majorly from Nairobi County because of proximity to access IMLU.

The respondent added generally torture occurs widely in Kenya and that the phase of torture had shifted from the middle class i.e. lecturers, political elite to the poor and that there is a reduction of torture incidences but not significantly. IMLU felt that in the Jomo Kenyatta and Daniel Moi regimes, the police and other state security agencies such as the CID and special branch were used by powers that be to torture and terrorize people and there was no accountability. IMLU felt that there was no political will to eradicate torture in the Mwai Kibaki government and this has continued in Uhuru Kenyatta's government seeing as the torture prevention bill has not been passed. According to IMLU, cases of Extra Judicial Killings only are as high as 100 in the year 2013 in Kenya.

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<sup>76</sup> Retrieved on 27<sup>th</sup> April 2013 from <http://www.imlu.org>

### **4.3 IMLU Programmes**

The work of IMLU<sup>77</sup> is informed by the constitution of Kenya that the rule of law should not be breached and that the government has an obligation to uphold it. IMLU is a centre for rehabilitation of torture victims as per the accreditation of the International Rehabilitation Council for Torture and has developed a global reputation as an anti- torture organization in Kenya. IMLU has three main programmes as will be discussed:

#### **4.3.1 Documentation and Rehabilitation**

The activities under this programme involves medical and psychological care to survivors and victims of torture using a country wide network of doctors, pathologists and counselors who conduct postmortem cases suspected of death due to torture, counseling and medical care to victims of torture and forensic documentation of torture cases adhering to global standards as defined in Istanbul Protocol. IMLU is the only specialized non-governmental organization in existence since 1996 dedicated to the documentation and rehabilitation of torture, cruel, inhuman or degrading treatment or punishment (TCID). Godfrey M Musila<sup>78</sup> notes that rehabilitation is an effective remedy to torture victims or other ill treatment on torture victims. Rehabilitation includes counseling of torture survivors and their families. At the end of rehabilitating each client a medical report with findings is compiled.

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<sup>77</sup> Strategic plan, 2011 – 2016 of Independent Medico Lego Unit, 08<sup>th</sup> June 2011 pp 9

<sup>78</sup> Effective Prevention of Torture – A guideline for security forces pg 37 – The Kenyan Section of the International Commission of Jurists and IMLU. Godfrey M Musila LLB, LLM, PHD

IMLU is instrumental in investigating and documenting the plight of many victims of torture, because many at times such cases are under-reported because of several reasons; that the communities lack information and understanding about their human rights and do not know the correct procedures to follow so as to seek redress or that states take the law into their own hands because the administration of justice is overwhelmed, lacks a proper justice system to address torture in Kenya, corrupt and lacks credibility. This explains why there still are reports in the media of continued use of torture and physical violence by state agents, vigilante groups and close relatives. Psychological mechanisms have played a part in inducing post traumatic stress. Stress can come when survivors feel that perpetrators have not been punished as they deserve hence leading to fear, anger, distress and demoralization. With psychological intervention, fear can be reduced and recovery encouraged<sup>79</sup>. A team of medical and psychosocial professionals belonging to IMLU's network are trained to enhance knowledge and skills to rehabilitate victims and families. These professionals also go through debriefing to prevent secondary trauma as a result of interacting with victims.

#### **4.3.2 Legal Redress and Training**

The activities under this programme involve offering legal advice for victims and survivors of torture, conducts public interest litigation and reviews policies and legislations. The United Nations Minnesota Protocol 1989<sup>80</sup> provides human rights standards used to conduct trainings. Training is done on how summary executions can be investigated. Training such as identifying the victim, recovering and preserving evidentiary material related to the death to aid in any

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<sup>79</sup> retrieved from <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC> on 7<sup>th</sup> May 2013

<sup>80</sup> Model Protocol for a legal Investigation of Extra- Legal, Arbitrary and Summary executions "Minnesota Protocol" 1989 Retrieved on 4<sup>th</sup> July 2013 from [www.theadvocatesforhumanrights.org/](http://www.theadvocatesforhumanrights.org/)

potential prosecution of those responsible, identifying possible witnesses and obtain statements from them concerning the death, determining the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death and many such trainings. There are a few cases where investigative procedure may be inadequate because of lack of resources or expertise. The Minnesota protocol is resourceful in this regard.

The United Nations Istanbul Protocol 2004<sup>81</sup> is an international training manual and guideline which factors in sensitive issues such as culture and gender issues. It is intended to serve as an international guideline for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body. This manual includes principles for the effective investigation and documentation of torture, and other cruel, inhuman or degrading treatment or punishment. In order to engage in medical rehabilitation of victims and survivors, training of medical professionals; clinicians, doctors, clinical officers, trauma counselors from various counties has been a key factor. Training of proper forensic documentation as there has been a wide lack of awareness.<sup>82</sup> The medical professionals are linked with paralegals to enhance documentation and accountability for acts of torture.

In 2011<sup>83</sup> 25 trauma counselors were trained to enhance knowledge and skills to rehabilitate victims and families and improve quality of documentation of psychosocial interventions. 17

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<sup>81</sup>United Nations Istanbul Protocol 2004 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, PROFESSIONAL TRAINING SERIES No. 8/Rev.1

<sup>82</sup> IMLU; Annual Report and Financial Statement 2011

<sup>83</sup> IMLU; Annual Report and Financial Statement 2011

new clinicians were trained from Isiolo and Maralal. Since 2004 IMLU has trained 150 doctors and clinical officers. 33 of these are actively involved in medical rehabilitation of victims and survivors and in forensic medical documentation for litigation purposes. With consultation from these medical professionals prior to the training, it has been found out that they lack awareness of the required medico-legal documentation, also medical professionals and the criminal justice system have no linkages.

### **4.3.3 Communication and Advocacy**

This involves dissemination of information, creating awareness to the public on torture and conduct advocacy campaigns against torture at all levels. IMLU has done its advocacy through the media and other outlets. The annual report 2011<sup>84</sup> reports that awareness outreaches and sensitization activities are aimed at reaching the general public, human rights defenders and community groups e.t.c. Through awareness interventions sites of detention are also monitored in an effort to support individuals and survivors in those communities. Public forums have provided platforms for participants to raise several legal issues and to chart a way forward for interventions against ill treatment. Field Interventions and community outreaches are avenues for people to mobilize against torture. The mass media, radio talks, TV shows, and news prints has been a success in sensitization and public awareness. In 2011 only 800 were reached through outreach and sensitization.

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<sup>84</sup> IMLU; Annual Report and Financial Statement 2011

**Table 4.1: Cases Received by IMLU in the year 2011**

<b><u>Mode of Torture</u></b>	<b><u>Number of Cases</u></b>
Incidences of torture leading to death.	36
Number of survivors of torture	198
<b><u>Forms of Torture</u></b>	
Extra- Judicial Killings	26
Shooting incidents	28
-Fatal	9
-Non fatal	19
Beatings/ Assault	85
-Fatal	3
-Non- fatal/grievous	83
Other forms of torture	
-Death in custody	3
-Arbitrary arrest and Solitary confinement	52
-Psychological torture	10
-PEV related	30

Source: IMLU; Annual Report and Financial Statement 2011

The table above illustrates a total number of 234 cases which were received by IMLU in the year 2011 in terms of legal redress, medical and psychosocial support to victims.

#### **4.4 Shadow Report to the Committee against Torture by IMLU**

According to Peter Kiama (IMLU), Kenya has not handled abuses well. A torture report tabled before the UN team by a team from Kenya<sup>85</sup> in Geneva was expected to review measures that have been adopted to prevent and punish acts of torture, according to the UN CAT (see UNCAT discussed in part 4.5 pp 83). Kiama<sup>86</sup> presented an alternative (shadow) report of the periodic Kenya report to the Committee against Torture and other Cruel, Inhumane and Degrading Treatment between 6<sup>th</sup> and 31<sup>st</sup> of May 2013 in Geneva during the committee's 50<sup>th</sup> session. The committee engaged Kenya during its presentation of the second periodic report, while IMLU engaged the Convention against Torture and other Cruel, Inhumane and Degrading Treatment in the context of Kenya's second periodic report.

The shadow report was in collaboration with the Kenya National Commission on Human Rights, CRECO Secretariat, FIDA Kenya, COVAW, MUHURI, RPP, International Justice Mission Kenya, ICJ – Kenyan Chapter, ICTJ, CLAN, RCK, NCHRD, East Africa Centre for Human Rights and CLARION. This report presents the present Kenyan context from the post election of 2007/2008 to engaging human rights defenders. It looks at the key issues of torture, judicial reforms, access to justice, and the forms of torture and provides recommendations. The alternative report of IMLU is informed by the list of issues prior to the submission of the Kenyan second periodic report which was adopted by the 45<sup>th</sup> session of the committee<sup>87</sup> and the second periodic report of Kenya (CAT/C/KEN/2).

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<sup>85</sup> Caroline, W. Daily Nation Article on Prevention of cruel and inhuman Treatment in Geneva, Switzerland, Accessed on May 13<sup>th</sup> 2013

<sup>86</sup> Alternative report to the committee against torture May 2013 - imlu

<sup>87</sup> UN Doc. CAT/C/KEN/2/ WWW.ohchr.org

#### **4.4.1 The Kenyan Context Presently**

According to the shadow report presented to the committee by IMLU the political and constitutional scenarios following the March 4<sup>th</sup> 2013 elections under the new constitution 2010 which did not result in inter communal violence as was the case in 2007/2008 elections, although a court process followed after the elections were disputed. The court ruled in favor of the Jubilee coalition and it the social media became a platform for heated negative ethnic exchanges. The report outlined the killings of civilians and security officers, inter ethnic conflict between the Pokomo and Orma communities in Tana River County, the secession threats of the MRC of the coastal region and the Al-Shabaab terrorists attacks prior to the elections.

#### **4.4.2 The 2010 Constitution**

With the 2010 Constitution of Kenya, Constitutional commissions and independent offices were established to deal with key issues such as human rights, land, security etc. With regards to freedom from torture, Kenya's bill of rights provides for right to freedom and security of the person<sup>88</sup>. The Constitution also lists and outlaws other cruel, inhuman and degrading treatment or punishment which falls under the category of torture. The Constitution provides that a person should not be subjected to any form of violence from the public or private sources or corporal punishment.

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<sup>88</sup> Article 25 and Article 29 (d) and (f)

#### **4.4.3 Kenya on Human Rights and Torture**

IMLU's view concerning human rights and torture was that Kenya has continued since four years ago to engage with regional and international human rights mechanisms. Kenya in 2010 went through an initial review under the Universal Periodic Review (UPR) in the UN Human Rights Council and was committed to eradicate torture and ill treatment by public officials, prosecute and punish all responsible. Kenya as a signatory of the CAT is to introduce and reflect on definition of torture and also continue to offer education and training to various public officers. Kenya has engaged with human rights treaty bodies. IMLU's shadow report however points out the laxity in Kenya to engage with continental human rights mechanisms not making any appearances at the African Commission on Human and Peoples Rights (ACHPR) sessions in the last three years. IMLU has recognized the efforts of the state to legislate and take policy measures to prevent torture but it also takes cognizance of the inadequacy of the state in undermining the spirit of the convention.

#### **4.4.4 The Prevention of Torture Bill**

IMLU participated in preparing the prevention of torture bill together with other human rights organizations such as the Kenya Section of the International Commission of Jurists and the Muslims for Human Rights in collaboration with KNCHR, Ministry of Justice and the National Cohesion and Constitutional Affairs. The bill is meant to enable Kenya's obligation under the CAT so as to protect against torture. The bill defines torture, establishes a complaints procedure and protects vulnerable witnesses, provides compensation and other institutional frameworks for supporting victims of torture. IMLU has had a concern because the bill has not been given the priority it deserves and it is not clear when it will be presented in parliament. Other provisions

defining torture are found in the National Police Service Act and National Intelligence Service Act<sup>89</sup>. The alternative report of IMLU has urged the committee to pursue Kenya not to digress from aiming to pass the anti torture legislation. This report has urged the committee to require Kenya to increase the age of criminality from 8 to 12 years to protect children from torture generally. Other areas of concern are violence against women, sexual crimes<sup>90</sup>, marital rape and FGM<sup>91</sup> and IMLU has outlined recommendations for the state that should be required by the committee. With the new constitution new judicial structures have been established to be more accountable and independent. The jurisprudence on torture has grown rapidly in terms of concluding cases of torture, compensation to victims, firm decisions on killings by security officers. IMLU wishes that the East Africa Court of Justice be used as an essential judicial tool for all East Africans where domestic courts do not offer redress. For IMLU it was a success when the Mount Elgon violations of 2007-2008 case against the state.

#### **4.4.5 Police Reforms**

IMLU and other civil society organizations have raised concerns with regard to institutional changes to manage policing. The National Police Service and the National Police Service Commission<sup>92</sup> have been established to ensure rights based approaches to policing. The Independent Police Oversight Authority<sup>93</sup> has also been established to provide civilian oversight to the National Police Service. Problems of domination have been encountered with these three

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<sup>89</sup> Section 95 of the National Police Service Act No. 11 of 2011 and section 51 of National Intelligence Service Act No. 28 of 2012

<sup>90</sup> Section 38 of the sexual offenses Act No. 3 of 2006

<sup>91</sup> Prohibition of female genital mutilation act no. 32 of 2011

<sup>92</sup> The National Police Service Act No. 11 of 2011- in Article 243 of the constitution and National Police Service Commission Act No. 30 of 2011 – in Article 246 of the constitution respectively.

<sup>93</sup> The Independent Police Oversight Authority Act No. 35 of 2011

institutions. The National Police Service have proceeded to seek to amend laws which will transform and limit the operational human resource and oversight structures as existing in the police service, reduce operational independence of police, prevent competitive process of advertising, conducting public interviews and short listing of candidates for position in the police service and other important propositions<sup>94</sup>. This mentioned changes will hinder police accountability.

From the extrajudicial killings of 2007 post election violence, no successful prosecutions have taken place, killings that occurred in Mt Elgon during the joint police military operation ‘Okoa Maisha’ in 2008 have not properly been investigated and prosecuted. In both instances, there existed torture and ill-treatment of individuals at the hands of security officers. IMLU filed a case with EACJ and ACHPR when Kenya failed to carry out effective investigations on the unlawful killings, torture and enforced disappearances.

#### **4.4.6 Post Election Violence Cases**

IMLU recommended to the committee that reports of commissions be fully implemented by the government. Independent Review Commission (IREC), Truth Justice and Reconciliation Commission (TJRC) and Commission of Inquiry into Post Election Violence (CIPEV) made strides to help the country move forward. IREC made recommendations to inform future elections but as it was clear from 2013 general elections there were many electoral flaws. TJRC was established as an act of parliament to cover long term injustices perpetrated on Kenyans

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<sup>94</sup> Petition to Parliament on National Police Service Amendment bill 2013 and National Police Service Commission amendment bill 2013 by Citizens of Kenya, NGOs, Quasi Governmental Organizations

since independence, but the commission has been faced with integrity issues making Kenyans lose hope in finding truth and resolving historical injustices. The CIPEV recommendations were that the state should establish a local framework to try perpetrators of violence, failure to which the ICC would step in. This resulted in Kenyans being tried at The Hague.

IMLU made recommendations to the state to enable skills development for human rights defenders who have had to confront traumatic experiences, give legal aid and financial support and broadly define witness protection when it comes to the needs of the human rights defenders. The question of whether death penalty should continue in Kenya has not been addressed since former president Kibaki in 2009 asked all ministries to conduct studies to determine the continuation of death penalty. IMLU therefore has suggested to the committee to recommend to Kenya that the government should be more proactive in taking political and moral responsibility for leading abolition of the death penalty if deemed impossible, it should then seek opinion of the Supreme Court.

IMLU urged the Committee that with declaration under articles 21 and 22 recognizing the committee's competence to receive and consider complaints against Kenya from other states and from individuals respectively, this will enable Kenyans seek individual remedies against torture and ill treatment before the committee.

#### **4.5 IMLU Achievement and Impact**

Through the documentation of medical forensics, IMLU is able to hold the state accountable for acts of torture in Kenya at the international level. E.g. the evidence of Mt Elgon torture in 2008 and other judicial killings in Nairobi and Central were presented to UN CAT in November 2008. The same was presented to other Institutions which made key recommendations to the ministry of Justice and Constitutional Affairs. These institutions were the UN Special Rapporteur on forced disappearance in March 2009, UN Human Rights Council in May 2009 and May 2010 and the African Commission on Human and Peoples Rights in May 2009. This has been a key achievement. IMLU has contributed to the formulation of the draft bill on the prevention of torture, if this goes through, article 25 and 26<sup>95</sup> of the constitution will be given more effect.

#### **4.6 United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment UN (CAT)**

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment UN (CAT), which Kenya is committed in international level through signing and ratifying<sup>96</sup> is a part of the Kenyan law<sup>97</sup>. The constitution therefore recognizes and prohibits torture and other degrading treatment. The challenge is that there is not yet a specific legislation despite numerous lobbying by the civil society<sup>98</sup>. The constitution of Kenya outlaws torture but does not define what consists cruel, inhuman and degrading treatment.

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<sup>95</sup> The constitution of Kenya; Article 25a freedom from torture and cruel, inhuman or degrading treatment or punishment shall not be limited. Article 25b freedom from slavery or servitude, c) the right to a fair trial. Article 26 (1) Every person has the right to life.

<sup>96</sup> UN General Assembly Convention against Torture and Other Cruel, Inhuman or DEGRADING Treatment of Punishment: resolution adopted by the General Assembly, 10<sup>th</sup> December 1984, A/RES/39/46. Signed and ratified by Kenya on the 27<sup>th</sup> February 1997

<sup>97</sup> Article 2 of the Kenyan Constitution

<sup>98</sup> Draft Anti Torture Bill

According to IMLU, the police have been using force but have become vulnerable to attacks while on duty, what has become a worrying trend in Kenya. IMLU explains that as the trend persists, it is important to Kenyans that the government of Kenya discusses the national efforts to implement the rights according to UN (CAT). The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishments is discussed in next paragraphs in detail. Roland C<sup>99</sup> notes that as a country, Kenya has failed to be active in making recommendations and engaging other states, despite being assessed and reviewed. It should be noted that without a Torture Prevention Act in Kenya it would be difficult to implement the recommendations at the domestic level and other human rights treaties so as to combat torture. The previous and current constitution relevant penal laws and other subsidiary legislations complete the UN (CAT).

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is an international treaty which contains and provides dealings in relation to the absolute prohibition of torture. UNCAT also establishes the Committee against Torture to; monitor the implementation of treaty obligations by States parties, examine the reports of States parties and individual complaints, give its views hence provide additional aid in interpreting the convention. 146 States including Kenya in April 2010 had ratified the Convention.

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<sup>99</sup> Roselyne O. The standard article on Human Rights Report to be presented in Geneva, Switzerland, May 15<sup>th</sup> 2013. UPR –Roland C - Universal Periodic Review, UPR’s executive director

Article 2 of the Convention provides that each State party has an obligation to take all necessary measures to prevent acts of torture. This includes legislative, administrative and judicial measures, as well as any other measures that may be appropriate; a legally binding obligation that when reporting to the Committee against Torture, states' parties explain what steps they have taken to implement this obligation. Article 2.2 of the Convention states that "no exceptional circumstances whatsoever" can justify torture. This includes war or the threat of war, political instability, combating terrorism or any other emergency. Orders from a superior officer are also not a justification for torture. Law enforcement and detaining officials should receive training that clearly highlights their obligation to refuse such orders. Article 3 of the Convention sets out the principle of non-refoulement, that states should not expel, return or extradite a person to another State if there are "substantial grounds" for believing that the person would be in danger of being subjected to torture. This provision illustrates that torture and other forms of ill – treatment is forbidden. The practice is used in war on terror, with the sending State seeking assurances from the receiving State that the individual in question will not be tortured or subjected to other forms of ill-treatment. This practice violates the principle of non-refoulement and is not permissible.

Each state party is required according to Article 4 of the Convention to ensure that torture is included as a specific crime in their national criminal law, because from a legal background of chapter 2 of International and regional instruments on torture and other forms of ill-treatment, it provides that it is essential because torture is not just a form of violent assault, but an exercise of power over a victim that does not correspond to any other criminal offence. This will underline the specific nature and gravity of the offence and provide a clear warning to officials that the

practice is punishable. It emphasizes the need for appropriate punishment, taking into account the gravity of the offence, and it enhances the ability of responsible officials to monitor the specific crime of torture.

Under Article 10 of the Convention, States parties are required to ensure that all personnel; law enforcement, medics, public officials and others involved in the deprivation of liberty receive education and information on the prohibition and prevention of torture. Under article 11 of the Convention, States parties are required to keep under systematic review interrogation rules, instructions, methods and practices, as well as custody procedures. These should comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. According to Article 12 of the Convention, each state party must establish prompt and impartial investigations whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. This means that even in the absence of a formal complaint, the relevant authorities must undertake an impartial, effective, independent and thorough investigation as soon as they receive information indicating any instance of torture or ill-treatment. The Convention provides for the right of victim to complain and obtain redress have a victim's case investigated promptly and impartially (article 13), as well as to receive redress and adequate compensation (article 14). This also includes the right to rehabilitation that is as full as possible.

## **CHAPTER FIVE**

### **DONOR FUNDING FOR IMLU**

#### **5.1 Introduction**

This section presents findings on IMLU's sources of funding over the years. It outlines the impact of aid towards prevention of torture and also examines the effect of donor guidelines on IMLU's projects. This section contains budgets or incomes and graphical presentations of donor funding to IMLU. This section tests the hypothesis and also examines guidelines and principles as provided by Misereor, the German Catholic Bishops Conference donor agency which has supported IMLU.

#### **5.2 Donor Funds for IMLU**

In 2011 IMLU received grants from the donors as follows: Centre for Victims of Torture (CVT) of Minneapolis Minnesota USA and European Union for capacity building. EU funded a survey on human rights on torture intervention. United Nations Voluntary Fund for Victims of Torture (UNVFVT) gave US\$ 81,000. Open Society Initiative for East Africa (OSIEA) a Swiss charitable foundation gave US\$ 85,000 for legal and medical assistance for pro democracy activists and victim witnesses testifying on post election violence. The Royal Norwegian Embassy- a contract through the Norwegian Ministry of Foreign Affairs (MFA) and IMLU gave NOK 1,000,000.00 for anti torture campaign i.e. to step up prevention and rehabilitation. British Foreign Commonwealth Office (BFCO) gave 20,000 pounds for capacity enhancement of community human rights monitors in documentation and reporting. Amkeni Wakenya a core funding initiative by UNDP gave Kshs. 5,827,500.00 and PACT Kenya gave Kshs. 1,608,450 for three months to promote full implementation of Article 244 and Article 1 of the constitution of

Kenya in recruitment and retention of police officers in National Police Service. International Rehabilitation Council for Torture Victims (IRCTV) gave Euro 12,500 for Rehabilitation activities benefiting female victims of sexual violence and torture. Other grants given were in kind by well wishers.

### 5.3 Budgets/Incomes

**Table 5.1; IMLU's Annual Report and Financial Statement for the period 2010 to 2012:**

	<u>2012</u>	<u>%</u>	<u>2011</u>	<u>%</u>	<u>2010</u>	<u>%</u>
<b><u>INCOME</u></b>	<b><u>KSHS</u></b>		<b><u>KSHS</u></b>		<b><u>KSHS</u></b>	
Grant received	86,824,656	97%	35,382,354	98%	74,524,480	99%
Other Income	2,277,181	3%	551,590	2%	72,090	0.09%
Sale of manuals			12,000	0.03%	16,800	0.02%
Cash bails returned			-		80,000	0.1%
	<b><u>89,101,837</u></b>	<b><u>100%</u></b>	<b><u>35,945,944</u></b>	<b><u>100%</u></b>	<b><u>74,694,370</u></b>	<b><u>100%</u></b>
<b><u>EXPENDITURE</u></b>						
Rehabilitation and documentation	18,246,170	26%	18,902,373	29%	17,960,853	34%
Research, monitoring and evaluation	1,627,453	2%	13,570,404	21%	1,952,192	4%
Legal and training	7,438,949	11%	7,550,301	11%	9,316,940	18%
Communication and advocacy	5,849,369	9%	6,782,246	10%	5,145,682	10%
Workshop and conference expenses	5,595,801	8%	2,841,811	4%	6,796,781	13%
Project management cost	7,652,611	11%	5,078,095	8%	5,164,849	10%
Project administration cost	7,204,853	11%	11,323,980	17%	6,311,996	12%
<b><u>Total Expenditure</u></b>	<b><u>67,676,293</u></b>	<b><u>100%</u></b>	<b><u>66,049,210</u></b>	<b><u>100%</u></b>	<b><u>52,649,293</u></b>	<b><u>100%</u></b>
<b><u>Surplus before capital transfers</u></b>	<b><u>21,425,543</u></b>		<b><u>-30,103,266</u></b>		<b><u>22,045,077</u></b>	

Source: IMLU Annual Reports 2010-2012

The table above illustrates IMLU’s income and expenditures and their percentages respectively between the year 2010 and 2012. The grants received in 2011 were less as compared to 2010 and 2012 due to delayed activities hence delaying disbursement of funds. The expenditure on research, monitoring and evaluation was unusually high and at 21% of the funds spent because of mid project evaluation which is a crucial process incurring costs of consultants and research assistants and other recurrent costs that come with evaluation preparations and conclusions.

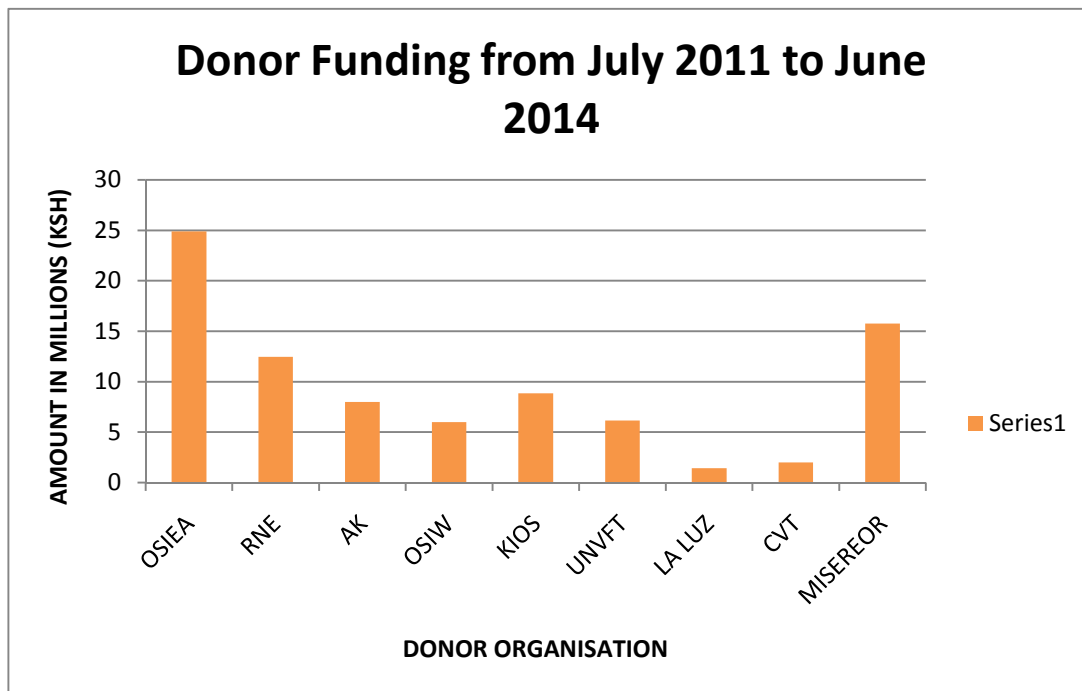
**Table 5.2: Donor Funding from July 2011 to June 2014**

<b>Donor Organizations</b>	<b>Amount in Kshs.</b>
OSIEA - Open Society Initiative for East Africa	24,883,477.00
Royal Norwegian Embassy	12,474,113.00
Amkeni Wakenya	8,000,050.00
OSIW - Open Society Initiative for West Africa	5,999,498.00
KIOS-Kärcher Information & Ordering System.	8,869,059.00
UNVFT - United Nations Voluntary Fund for Victims of Torture	6,142,500.00
LA LUZ	1,441,000.00
CVT- Centre for Victims of Torture	2,005,517.00
MISEREOR	15,750,000.00
<b>TOTAL</b>	<b>85,565,214.00</b>

Source; IMLU Finance Department

The table above illustrates the international and local donor funding behavior for three years from July 2011 to June 2014. The funds received are on three year basis and can be accounted for upon request of disbursement and acknowledgment of receipt. Therefore a yearly breakdown of funds could not be guaranteed.

**Figure 5.1: Donor Funding for IMLU from July 2011 to June 2014**



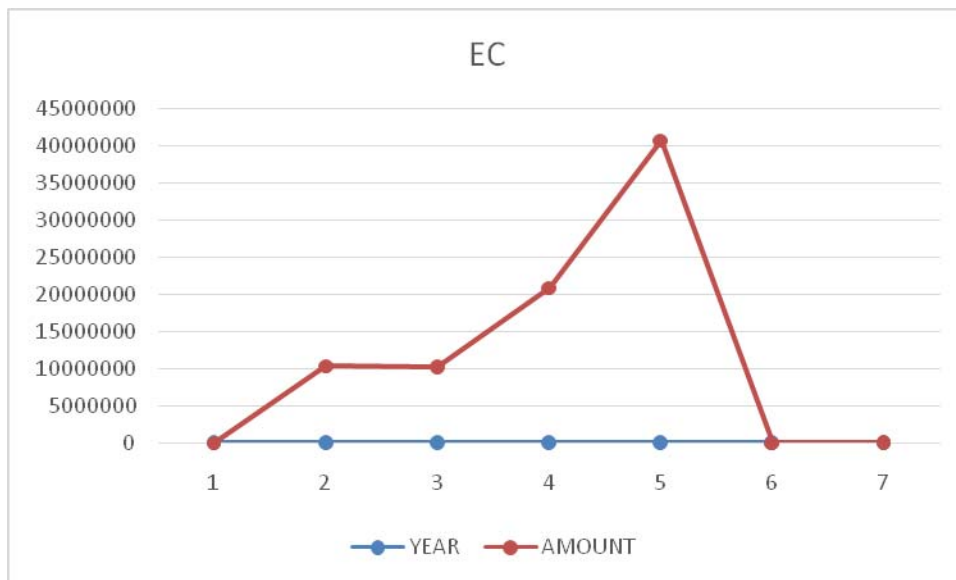
Source: Author; August 2012

The above figure illustrates grants received from various donor organizations for IMLU between July 2011 and June 2014. The figure shows funding behavior of both local and international donors in the three years.

### 5.3.1 Graphical Presentations of Donor Funding

The figures below are graphical presentations of donor funding for IMLU for 7 years. Note that this covers the period 2006 - 2012. The period on the graph marked 1 - 7 represents years 2006 to 2012 between the years. The below figures were sourced from IMLU's finance Department

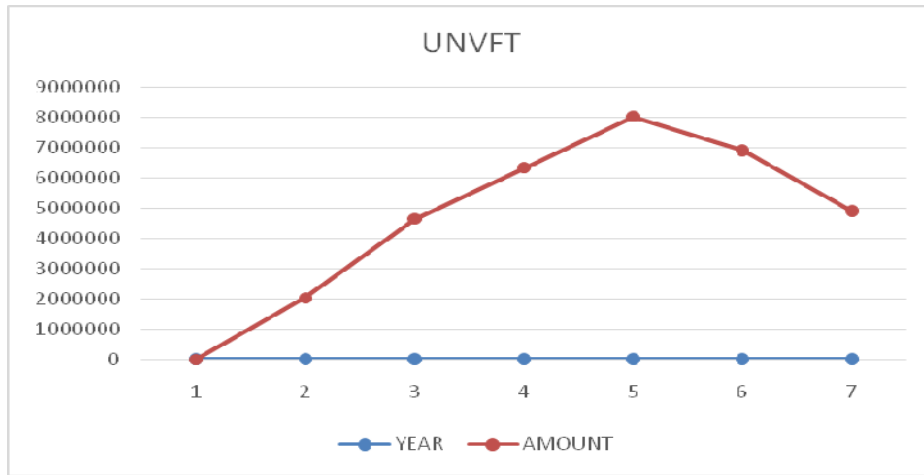
**Figure 5.2: Grant from European Commission**



IMLU received from EC ten million Kenya shillings in 2007 and 2008. In 2009 and 2010 it received twenty million and forty million respectively. With the post election violence activities were intensified in IMLU hence the rise in grants to twenty million and further forty million.

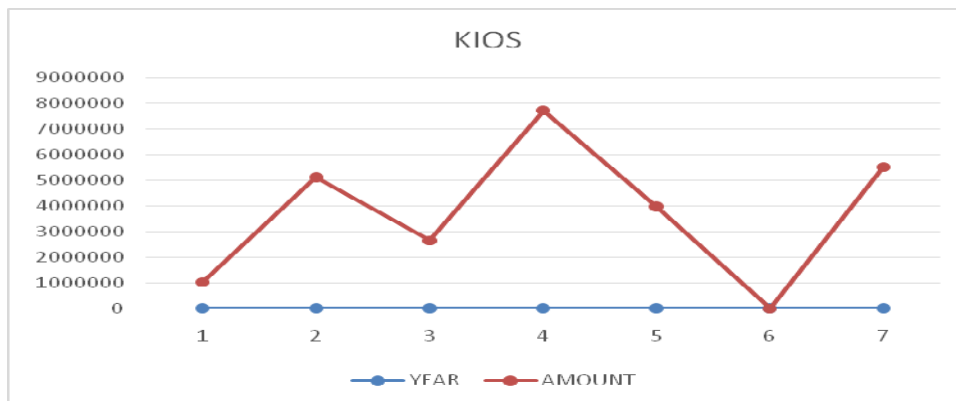
IMLU received approximately 170,000/= Kenya shillings in 2007 400,000 in 2008, 1,300,000 in 2009 from IRCT.

**Figure 5.3 Grants received from United Nations Voluntary Fund for Victims of Torture from 2006 to 2012**



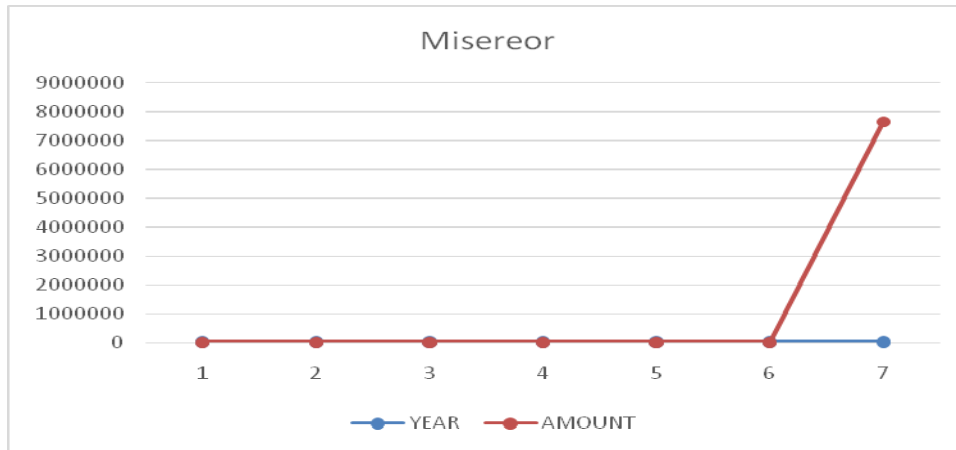
The UN Torture Fund as illustrated in the graph has increased gradually from 2006 to 2010 because of increasing medical, psychological, social, legal and financial needs to torture survivors and their family members. The rise is also attributed to increase need for training programmes, seminars and conferences in order to allow health professionals, social workers and lawyers to exchange experiences and develop new strategies to address the needs of torture victims.

**Figure 5.4 Grant from Kärcher Information & Ordering System (KIOS)**



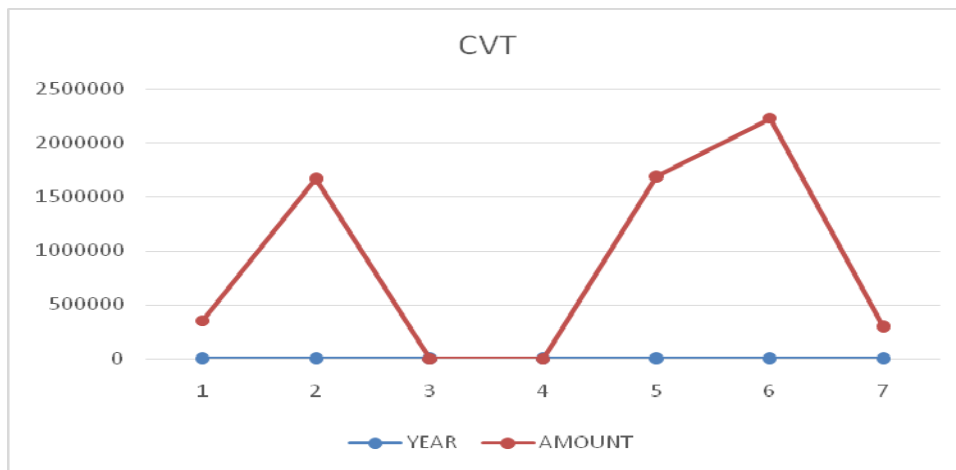
IMLU received approximately 1,000,000 million Kenya Shillings in 2006, 5,000,000 in 2007, 3,000,000 in 2008, 8,000,000 in 2009, 4,000,000 million in 2010 and 6,000,000 in 2012 from KIOS.

**Figure 5.5 Grants from Misereor**



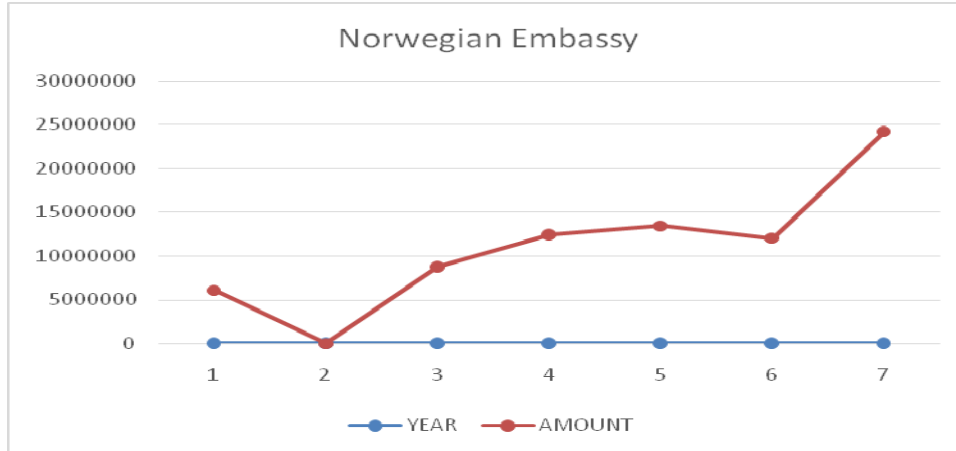
IMLU received approximately 8,000,000 million shillings in 2012 from Misereor.

**Figure 5.6 Grants received from Centre for Victims of Torture from 2006 to 2012**



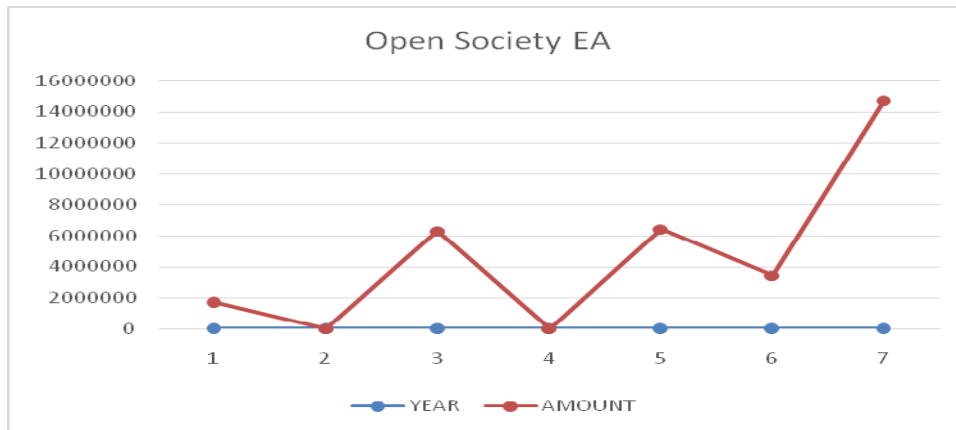
Approximately Kshs. 40,000, Kshs 170,000, 175,000, 230,000 and 30,000 were received in 2006, 2007, 2010, 2011 and 2012 respectively by IMLU from CVT.

**Figure 5.7 Grants received from Norwegian Embassy from 2006 to 2012**



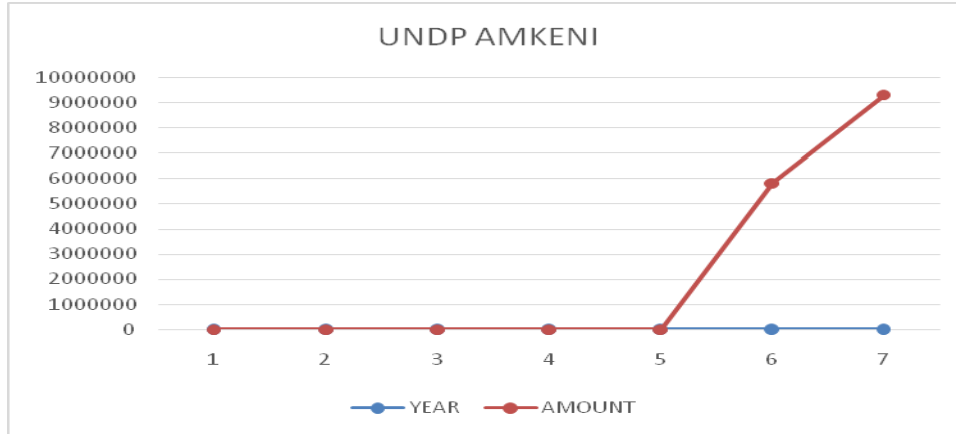
The figure above reveals grants received from the Norwegian Embassy . the graph shows that funding escalated over the years and in 2012 approximately Kshs 25 million was received by IMLU.

**Figure 5.8 Grants received from Open Society Initiative for East Africa from 2006 to 2012**



The figure above reveals grants received from OSIEA. Between 2006 and 2012 funding was irregular. in 2006 they received approximately Kshs 2 million and in 2012 IMLU received approximately Kshs 15 million.

**Figure 5.9 Grants received from UNDP Amkeni**



The figure above reveals grants received from UNDP AMKENI . the graph shows that funding escalated between 2010 and 2012. approximately Kshs 9.5 million was received by IMLU.

#### **5.4 Role and Impact of Donor funding**

Over 4,000 victims and survivors of torture have reported cases and have benefitted from IMLU’s medical, psychological and legal support in the last 20 years. Of these cases 85% are male and are between the ages 18 and 35 years. IMLU gives transport reimbursement for the poor victims but it is not a medium through which victims of torture can receive direct funding because it is not in their focus area and it has no competencies to run an economic empowerment programme but it links victims and survivors to other agencies with this mandate.

Donor funds for IMLU and other civil society organizations contributed significantly and enabled the push for a new constitution. Aid helps reduce torture incidences through awareness campaigns and there has been an increase in knowledge for professionals through training programmes. Documentation of cases is still a struggle but efforts are being pursued to make it successful.

**Table 5.3: Experts Trained Since 1992**

<b>Experts trained</b>	<b>Numbers</b>
Forensic Medical Experts	150
Human Rights Monitors	70
Psychological Counselors	25
Pro-bono Lawyers	50

Source; IMLU 20<sup>th</sup> Anniversary Supplement; 2013

The table above shows experts trained in the last 20 years towards prevention of torture with support of donor funding. From the Interview conducted it was revealed that the number of professionals trained is not as high as expected because the cost of training is on the high side. A boost in funding will ensure that knowledge and skill is imparted in forensic medical documentation in order to increase standards of evidence and enable them reach out to more remote areas and to vulnerable groups. Training of the above professionals aims at conducting community awareness sessions reaching thousands of participants in selected areas and country wide.

### **5.5 Guidelines and Principles for Donor Funding – Case Study of MISEREOR**

From the Interviews conducted, it was acknowledged that guidelines and policies for funding have by and large played a big role in realizing human rights work generally. Guidelines have helped to check that resources are placed where they should be and objectives achieved. Donors supporting IMLU do not drive or influence the substance of their work it is a ‘carte blanche’ relationship however interactions with donors may vary dependant on core funding or project funding. Misereor is one such donor that interacts with IMLU on ‘carte blanche’ basis.

Misereor<sup>100</sup> is a Catholic Bishops Conference agency in Germany which is supported by public and church funds for project promotion. Misereor supports development measures regardless of ethnicity, religion or sex of the beneficiaries, in which connection it also cooperates with non-Catholic and non-Church-based partners. Misereor requires a written ‘no-objection’ statement on the proposed project from the Catholic Church in a given area e.g. from a Diocesan Bishop. Misereor is required to be accountable to its donors. Guidelines provided by Misereor require formal information of the project that is requesting for funding, background and context of the project, information on previous projects, target groups, work done, achievements and lessons learnt. It also requires the project objectives and funding period giving details of activities, outcomes and impacts intended. In addition the indicators should show the impact and also be easily recognized by the target groups that change has actually taken place.

Guidelines from Misereor also require a cost and financing plan which should be drawn in the national currency and must have a financing period. Donor guidelines require knowing who the internal and external are. I.e. details of the internal staff and external contact persons that cooperate with the organization. The planning, monitoring and evaluation processes are of interest so as to know how target groups and other actors are involved in project implementation and monitoring of indicators and intended effects. Donor guidelines encourage the aspect of sustainability so that they can know what will happen beyond the project funding or find out whether further support will be required to support achievement of long term goals. Donors guidelines require to know what other local sources of funding are being mobilized.

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<sup>100</sup> Retrieved on 6<sup>th</sup> of May 2013 from <http://www.misereor.org>

### **5.5.1 Role of International Donors and Donor guidelines in supporting Torture Prevention**

IMLU stands on a position that donors have played a role in preventing torture in that they provide direct funding and also help in pressurizing the government to adhere to human rights standards. The guidelines are critical in fostering a relationship between the donors and the implementing agencies. They are also critical in enhancing accountability by the implementers of torture prevention. IMLU works with core funding as opposed to project funding which supports their strategic plans. IMLU works with aid agencies which have developed what is consistent with their objectives such as the Norwegian Embassy, UNDP, Open Society Institute, Finnish Embassy, Misereor and other donors e.t.c. Torture incidences according to the respondent will reduce with sufficient aid flow but civil society organizations need to push the government to hold people to account through the Kenya National Commission on Human Rights, The Independent Police Oversight Authority and other mechanisms as opposed to continuing with normal service provision.

## CHAPTER SIX

### SUMMARY OF FINDINGS, PRESENTATION, ANALYSIS AND CONCLUSION

#### 6.1 Introduction

The purpose of this study was to find out the role and impact of aid in the delivery of torture prevention in Kenya. This chapter therefore presents results and discussions of the study from the data collected from interviews, discussions and questionnaires; whereby the researcher sorted to find views and opinions on the role and impact of aid in the delivery of torture prevention in Kenya. The chapter presents the findings qualitatively, in tables, percentages, pie charts and graphs with clear discussions of each finding. The chapter offers conclusions and recommendations of the study.

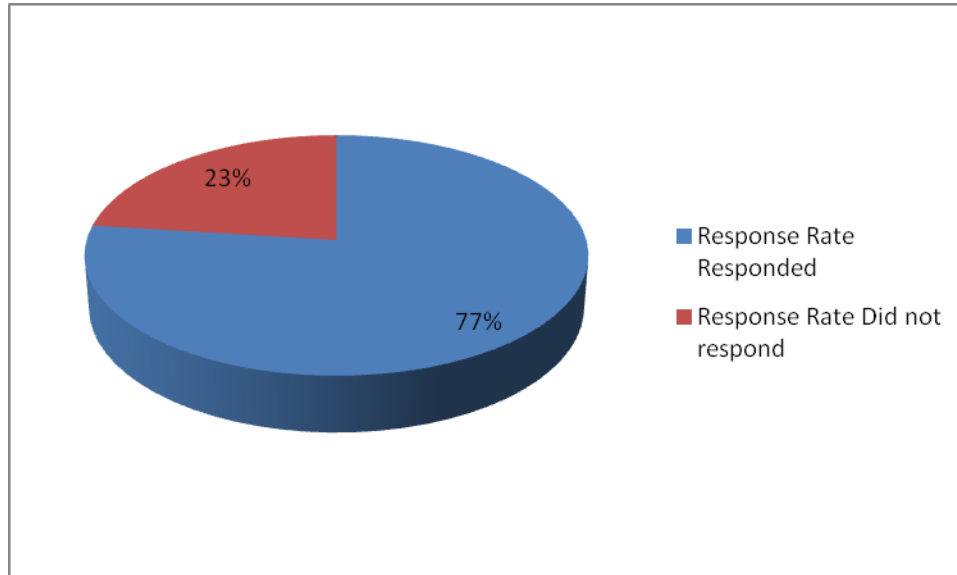
#### 6.2 Presentation and Analysis of Findings from Civil Society Organizations

**Table 6.1 Response Rate**

<b>Category</b>	<b>Frequency</b>	<b>Percentage</b>
Responded	23	77%
Did not respond	7	23%
<b>Total</b>	<b>30</b>	<b>100</b>

**Source; Author; August 2013**

**Figure 6.1 Response Rate**



Source: Author; August 2013

According to the respondents who were mainly program officers, human rights defenders, interns and program coordinators, most of the civil society organizations working in the human rights sector and towards torture prevention were in operation between 12 and 22 years. 23 out of 30 respondents gave valid views on the role of the previous governments in perpetrating torture acts and the role of the current government in preventing torture, that although it is within the law to practice interrogation, it was a form of torture to use intimidation to have people volunteer information. Intimidation was a practice used since colonialism and even in the present government.

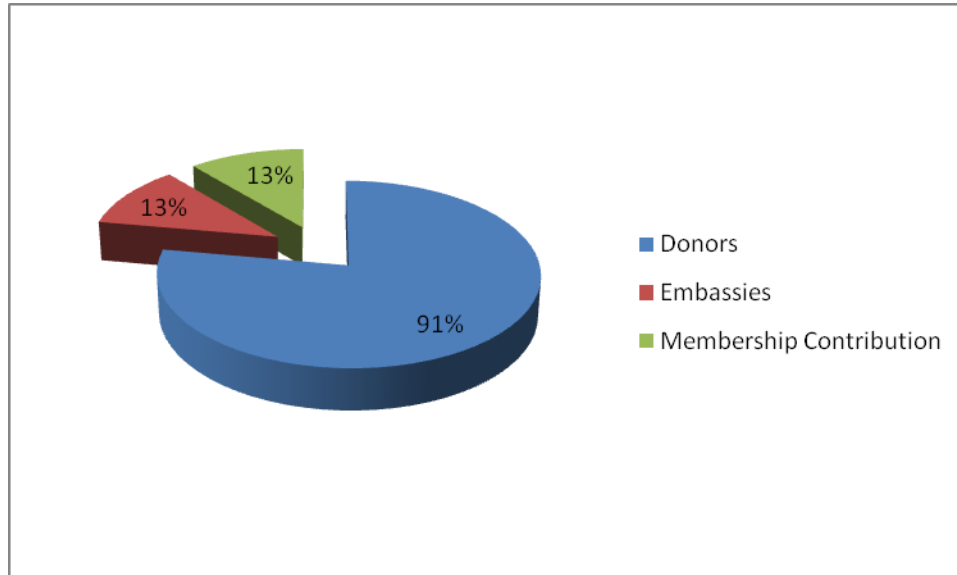
### **6.2.1 Responses on Role of Past and Present Governments towards Torture**

Majority of the respondents felt that during the Moi and Kenyatta regimes and especially in the Moi regime, state agents used violence against the political elites and academicians to suppress divergent views, but in today's government torture is done to the poor. Also in the past regimes,

the constitution did not provide for torture prevention, however since then the parliamentary bill on torture prevention has been and is an effort of the current governments towards prevention of torture. There is need nevertheless for CSOs to push for this bill to be passed into law for torture incidences to drastically reduce in this country. There isn't much that was documented in the Kenyatta regime, where as in the Moi regime torture existed and was documented.

Respondents mentioned that in any government, the ruling power controls its systems for it to survive therefore it uses state instruments such as the police in what is seen as to drive its agenda. In this regard, the Kenyan government is not any different. The main culprits' being the police is a clear indication that there is lack of police reforms in Kenya. Mental torture is highly practiced in the current governments so that victims are summoned and kept in police or detention cells for hours under duress. The present regime is a continuation of the Kibaki regime as it uses lip service to condemn torture acts but there is lack of implementation of the processes as required by the Convention against Torture. Respondents felt that with the passing of the anti terrorism bill by President Kibaki, avenues for torture were opened up. Other respondents said that torture was characterized by the Nyayo torture chambers but the torture chambers were opened in the Kibaki regime. It was strongly felt that due to the rise in technology the police get away with torturing hundreds of people.

**Figure 6.2: Responses on Sources of Funding**



Source: Author; August 2013

### **6.2.2 Responses on Sources of Funding**

Figure 6.2 shows that 91 percent of the respondents acknowledged donors as their main source of funding, 13% of the respondents mentioned that funds come from membership contribution and 13 % said that their funding comes from the Embassies. Some of the donors mentioned were GIZ- German Development Cooperation, The Norwegian Embassy, UNDP and other local and foreign donors. Some organizations were challenged that funds had dwindled because of competition and mushrooming of human rights activities hence preventing thorough work done on torture prevention.

Respondents used the terms many, hundreds and several to describe victims and survivors of torture who come to their organizations to report cases. Due to lack of proper baseline data respondents would only give estimates but it was clear that torture is rampant in Kenya and there

are avenues for cases of torture to be reported. Respondents observed that only 20% of the cases reported were female and he attributed it to lack of rights awareness and also fear of intimidation. Majority of the respondents agreed to the age bracket of 21 and 30, a few others agreed to the age bracket 31 and 40 experiencing torture. Although they pointed out that today the younger bracket of youth and families of victims and survivors of torture are also tortured.

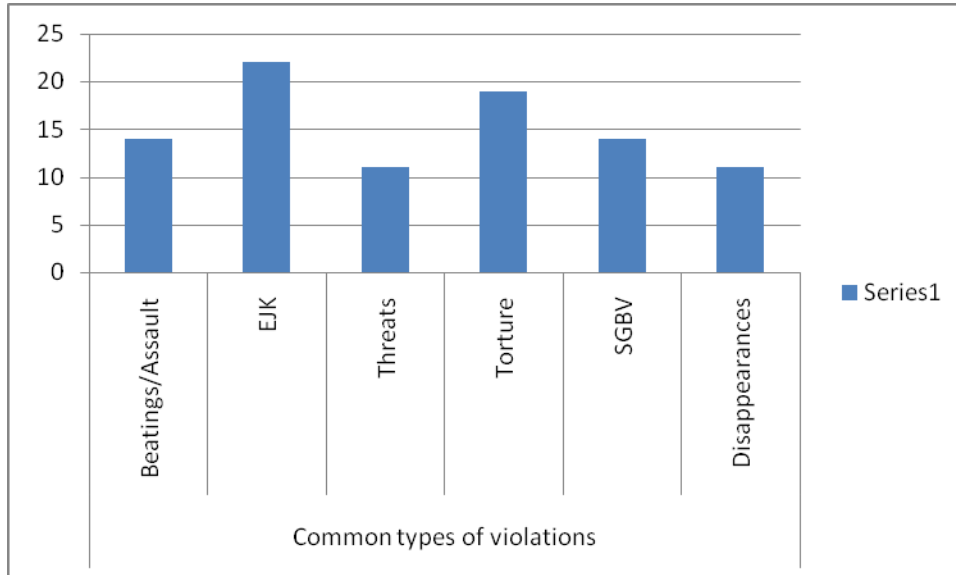
**Table 6.2: Response on Locations where Torture is reported**

Location	Respondents
Nairobi	20
Coast	2
Eastern	1
Total	23

Source: Author; August 2013

The above table shows the locations where torture cases are most reported to the civil society organizations. This usually occurs because of proximity to the nearest organization to bring complaints. Nairobi is one such case county because of ease in proximity hence many torture cases are documented.

**Figure 6.3: Responses on Common Types of Violations**



Source: Author; August 2013

Figure 6.3 represents responses on the common types of violations used to commit atrocities. 22 respondents agreed that Extra Judicial Killings are a common violation in many parts in Kenya.

### **6.2.3 CSOs Support to victims and survivors of torture in the last 20 years**

The majority responded that they give support to hundreds of victims and survivors of torture in terms of advice on what to do when tortured, offering referrals for victims and relatives of victims and survivors of torture. Respondents acknowledged that support for medical care is given depending on availability of funds. Respondents also said that they direct the victims to the police stations to report the incidences of torture and assist to file cases and make follow up. Many organizations refer victims to IMLU. A number of the respondents said that they offer legal aid and also visit families of victims and survivors of torture. A few of the respondents receive funds which are channeled to litigation and to support investigations for evidence.

#### **6.2.4 Response on Support of Donor Funds**

Respondents agreed that they were a medium through which victims and survivors of torture could receive direct funding. Majority responded negatively that they would refer cases to agencies which deal in funding victims and survivors directly. This type of mandate was dependent on available funding and the nature of programme implementation. 26% of the respondents agreed that aid has significantly helped reduce torture incidences through awareness campaigns, where as 70% of the respondents agreed moderately. the reasons for the drastic reduction is that civil society organizations have made steps to reduce torture and have pushed for reforms, as seen in opened detention cells and torture chambers. Persons who may feel endangered have the right to *'habeas corpus's* that such persons can be released from unlawful detention. Some of the reasons given by the respondents who agreed moderately were that donor conditionality has prevented complementing of local solutions and that there isn't sufficient funding. They also felt that processes to mitigate torture are lacking but this would be possible with institutional reforms. They explained that the law is a stumbling block when there still are hidden torture incidences happening in prisons.

Majority of the respondents (91%) agreed that aid has affected the level of training experts in torture prevention in Kenya. They argue that funding for training is expensive and limited and with the increase in professionalism it has become difficult and has not moved to levels that huge impacts can be caused. It was pointed out that Article 5 of the UNCAT is clear on training of experts on torture which has made the difference. 87% also agreed that with aid, training of experts has reduced torture acts. 78% strongly agreed that there has been an increase in documentation of cases.

Respondents felt that there is need for more funding to be able to document torture cases adequately. Areas that have brought about a reduction of torture are the awareness creation, capacity building for CSOs to understand the security operations and instruments of accountability. Respondents also had faith in the police and the Independent Police Oversight Authority (IPOA) that they have improved.

#### **6.2.5 Responses on the Role played by International Donor agencies in preventing torture**

Majority of the respondents pointed out that International donor agencies have played a crucial role in supporting torture prevention. CSOs have received funding to engage in torture prevention work and as a result there has been impact; some of the victims of the Nyayo torture chambers have been supported by donors, funds have been used to change the constitution in terms of sustainability of victims although the level is low. Despite state agencies' continuous use of torture, there is a new perspective on torture that has caused an increase in awareness levels. Some respondents felt that conditions of international donors hinder creativity and offer no independence. They added that donors are driven by their own agenda so that before giving funds they tie them to their own interests. A respondent discussed that Kenya is a capitalistic economic powerhouse system and is a man eat man society where there are contradictions. This was evidenced by the post election violence of 2007 and 2008. The ruling classes want to maintain the status quo but these contradictions keep them from achieving their objectives. Therefore donors pump funds on one hand to support welfare and on the other hand to benefit from those resources.

### **6.2.6 Responses on Role guidelines play in fostering the realization of torture prevention**

One respondent from the Kenya Human Rights Commission felt that guidelines have played a big role in realizing human rights work generally and help to check that objectives are achieved. He added that in the 80s and 90s conditions were lax but today the donors set conditions which can affect achievement of goals, although for them their interaction with donor guidelines is a 'carte blanche' where the donors do not drive the substance of their work. He warned however that this interaction varies from one donor to the other and is dependent on the organizations so that sometimes achievement of objectives can be difficult. Difficult in the sense that donors may give parameters which can influence their work where as the organizations feel that they have their own local solutions. Majority of the respondents generally felt that by and large with donor support, there must be guidelines so that resources are put where they should be and objectives can be met.

Most of the respondents agreed that by and large torture incidences in Kenya will reduce with sufficient flow of aid in the way it is channeled and utilized but they added that the challenge was that the face of human rights has changed and human rights activities has become a career as opposed to a passion. Some respondents explained that CSOs should use their mandate to push regulatory mechanisms because the law is integral and aid will support in implementation to mitigate torture. That is funding should assist reforms from top to bottom if supplied within advocacy for torture prevention: there is need for donor aid to support the poor, their families and give medical care to victims and survivors of torture, there is need for policy on torture, there is need to enable legislation, there is need to grade the government to domesticate instruments such as CAT and CSOs need to schedule these frameworks.

### **6.3 Recommendations**

The findings of this study indicate a need for further research on the work of torture prevention and the practice of torture in Kenya among students and organizations. There is a need to hold the government accountable for torture, to bring to light all those un- documented and not reported torture violations and hence impact positively the victims and survivors of torture and their families. Kenya as a state needs a rehabilitation policy and redress programmes within its legal framework for victims of torture to be provided for compensation, restitution, rehabilitation, financial compensation and satisfaction that the dignity of the victims will be restored or a public apology or tribute to the victims to be given.

Article 29 of the constitution provides for protection of human dignity and freedom of security<sup>101</sup> for citizens when dealing with security officers. The security officers need not subject citizens to humiliating practices but with respect. The Kenyan government and the civil society need to undertake an assessment of the impact of financial aid flows on the policy work of civil society as part of its ongoing work in engaging with donors on financial aid flows to strengthen its work around supporting increased aid flows to civil society for them to be able to effectively influence policy to overcome poverty and prevention of torture in Kenya. In spite of best willpower and support from the international agencies, the national mechanisms need to do most of the work to bring change.

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<sup>101</sup> Article 29 a)deprived of freedom arbitrarily without just cause, b) Detained without trial, except during a state of emergency, subjected to any violence from either private or public sources, d) subjected to torture in any manner whether physical or psychological. e) subjected to cruel and inhuman or degrading manner

The UNDP, civil society and democratic governance need to develop initiatives to help grassroots movements in the community with organizational skills, expertise, financial support, capacity building and people to people engagement to lead from below because change comes from below. They should also enable community-based and civic groups to network, share information, knowledge and build a nation founded on the principles of equality, social justice and fairness.

#### **6.4 Conclusion**

The study analyzed the role and impact of aid in the delivery of prevention of torture in Kenya. In this study, torture is looked at from the perspective and definition of the United Nations Convention against Torture, Inhumane and Degrading acts. After the research findings from several civil society organizations that are implementing agencies of human rights activities including torture prevention activities, it was observed that donor funding has aided significantly in the reduction of torture; however there are a number of parameters which come into play and hence hinder by and large, the achievement of advocacy for torture prevention. Firstly the current government lacks political will by the current governments to schedule frameworks and implement standards that have been placed by the Convention against Torture Act to which Kenya ratified in 1997. Secondly, the parliamentary torture bill is still pending and CSOs need to push the state agencies of the government to be accountable to its people.

Donor aid has played a crucial role in supporting activities of the civil society organizations to defend the plight of the poor, victims and survivors and families of torture. It is envisaged that with sufficient funding for capacity building and trainings, more experts will be better equipped

in documenting and rehabilitating victims of torture. Much more accomplishments will be relished by civil society organizations in the fight against torture.

The findings from Independent Medico Legal Unit (IMLU) which has been the case study and majority other civil society organizations supported the hypothesis of this study; that donor aid has had a positive impact on torture prevention, the activities of torture prevention have not been sufficiently funded, the activities of implementing agencies are largely dependent on donor funding and finally that donor agencies' work is shaped by clear principles and guidelines.

## REFERENCES

- (AFRODAD) 2007 Aid Effectiveness in Africa A synthesis African Forum and Network on Debt and Development
- Anangwe, A. (1995) '*NGO-State Relations in Kenya*', mimeo, University of Nairobi.
- Anthony Bebbington and Roger Riddell (1997) *Donors, NGOs and Civil Society Organizations*
- Burk, P. (2003). *Donor Centered Fundraising: How to Hold on to Your Donors and Raise Much More Money*. Chicago, IL: Cygnus Applied Research, Inc
- Burnett, K. (2002). *Relationship Fundraising: A Donor-Based Approach to the Business of Raising Money*. San Francisco, CA: Jossey-Bass.
- David Hulme (1992) and Michael Edwards (1995) *NGOs, States and Donors Too Close for Comfort*; Save the Children: International Political Economic Series; General Editor, Timothy M. Shaw
- Djankov S, Montalvo J. G and Reynal-Querol M (2006), *Does Foreign Aid Help?* Cato Journal.
- Draft Anti Torture Bill
- Effective Prevention of Torture – A guideline for security forces pg 37 – The Kenyan Section of the International Commission of Jurists and IMLU. Godfrey M Musila LLB, LLM, PHD
- Finnemore M (1997), Redefining Development at the World Bank. In Cooper, F. and Packard, R. eds. *International Development and the Social Sciences: Essays on the History and Politics of Knowledge*, Berkeley and Los Angeles: University of California Press, 203-227.
- Grace, K. S. (2005). *Beyond Fundraising*. Hoboken, NJ: John Wiley & Sons, Inc
- Grunig, J. E., & Hunt, T. (1984). *Managing public relations*. New York: Holt, Rinehart & Winston
- Graham H, (1989) *The Lords of Poverty*; published by United Kingdom ; Macmillan London Ltd
- Harry B. (1993) *Donors, Democratisation and Civil Society*; Relating Theory to Practice; Blair, Harry, *Doing Democracy in the Third World: Developing an Applied Theory of Democracy*, Paper for the annual meeting of the American Political Science Association, Washington, 2-5 September

- Hattori T (2002), Reconceptualizing Foreign Aid. *Review of International Political Economy*, 8(4). 1243-1255.
- Hyden, Goran (1995) *Assisting the Growth of Civil Society; How might it be improved?*, paper for workshop on civil society and democracy, arranged by Development Assistance committee of the OECD, Uppsala University Sweden 12-13 June
- Kaete Hamburger Dialogue; Elections, Violence and International Criminal Justice; the Case of Kenya on 15<sup>th</sup> April 2013. 1<sup>st</sup> Discussions in Bonn- Germany from the report The Centre for Global Cooperation Research
- ack S (2003), Effective Aid: How Democracy Allows Development Aid to Improve the Quality of Life. *World Development*, 31(1), 931-945.
- Kelly, K. S. (1998). *Effective fund-raising management*. Mahwah, NJ: Lawrence Erlbaum Associates
- Killick, T *Principals, Agents and the Failings of Conditionality*; Journal of international Development Vol 9
- Lumsdaine, D.H. (1993) *Moral Vision in International Politics: The Foreign Aid Regime, 1949-1989*. Princeton: Princeton University Press.
- McCracken, G. (1988). *The Long Interview*. Newbury Park, CA: Sage Publications, Inc.
- Mosse, David and Lewis, David, eds. (2005) *The Aid Effect: Giving and Governing in International Development*. London; Pluto press
- National Torture Prevalence Survey 2007 of IMLU
- Odondi Lynnette O,(2011) Masters Thesis: ‘*The effects of donor conditionality on EU/ACP Policy Implementation: The case of Community Development Trust Fund (CDTF)*’
- Odhiambo, M. (2007) The influence of Foreign Aid Conditionalities on Domestic Policy Making: a Case Study of Kenya, 1995 to 2005. MA Research Project. University of Nairobi, 2007
- Pierre Landell-Mills, (1992) “*Governance, Civil Society and Empowerment in Sub-Saharan Africa*”, paper prepared for the Annual Conference of the Society for the Advancement of Socio-Economics

P. Landell Mills and I. Serageldin, (1991) “*Governance and the External Factor*”, *Proceedings of the World Bank Conference on Development Economics* (Washington, DC: The World Bank, 1991); and P. Landell-Mills and I. Serageldin, “Governance and the Development Process”, *Finance and Development*(1991), retrieved from [http://ccs.ukzn.ac.za/files/Mistaking\\_Governance\\_Politics.pdf](http://ccs.ukzn.ac.za/files/Mistaking_Governance_Politics.pdf)

Prepublication version of a paper published in Sudipta Kaviraj and Sunil Khilnani (eds.), *Civil Society: History and Possibilities* (Cambridge: Cambridge University Press, 2001), pp. 250-68.

Preventing Torture; an Operational Guide for National Human Rights Institutions May 2010

Rodney, W (1982) *How Europe Underdeveloped Africa*.(Nairobi: East African Educational Publishers

*The Reality of Aid (2002) An Independent Review of Poverty Reduction and Development Assistance; Focus on Conditionality and Ownership*; Edited by Judith Randel, Tony German and Ewing Development Initiatives

The State of Mental Health in Kenya, Victimization and Torture among Persons with Mental and Psychological Disabilities IMLU

Todaro, M.P (1992). *Economics for a Developing World*. Pearson Education. Harlow.

United Nations, 2006

Constitution of Kenya

IMLU; Annual Report and Financial Statement 2011

United Nations Convention against Torture (CAT)

The State of Mental Health in Kenya, Victimization and Torture among Persons with Mental and Psychological Disabilities IMLU

Wall, D. (1973 ) *The Charity of Nations*, London; The Macmillan Press Ltd

<http://www.misereor.org>, retrieved on 6<sup>th</sup> May 2013

<http://www.cabdirect.org/abstracts/> Does Aid work in India? A country study of the impact of official development assistance. By Lipton M. Toye, J retrieved on 27<sup>th</sup> April 2013

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1702480/> retrieved 7<sup>th</sup> May 2013

<http://www.netzkraft.net/mitglied>, retrieved on 18<sup>th</sup> February 2013

<http://oxforddictionaries.com>

[www.thefreedictionary.com](http://www.thefreedictionary.com)

<http://www.globalgiving.org/projects/end-torture-africa>, retrieved on, 18th February 2013

<http://www.ohchr.org/EN/Issues/Torture/UNVFT/Pages/WhattheFundis>

Paris Declaration; *Aid Effectiveness*, retrieved on 12<sup>th</sup> August 2013 from

<http://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm>

Windhoek declaration of 1991; *declarations on promoting independent and pluralistic media*,  
retrieved on 12<sup>th</sup> August 2013 from

[http://www.unesco.org/webworld/fed/temp/communication\\_democracy/windhoek.htm](http://www.unesco.org/webworld/fed/temp/communication_democracy/windhoek.htm)

Arthur A. Goldsmith (2001). *Foreign Aid and Statehood in Africa*. International Organization,  
retrieved on 29<sup>th</sup> July 2013 from <http://journals.cambridge.org/action/displayAbstract>

Julie Hearn 1997 foreign aid, democratization and Civil Society in Africa; A Study of South

Africa, Ghana and Uganda, retrieved on 29<sup>th</sup> July 2013 from

<http://testing.ids.ac.uk/files/Dp368.pdf>

Issa G. Shivji's *'Pan-Africanism or Pragmatism 2009'* retrieved on 12<sup>th</sup> 08. 2013 from

<http://pambazuka.org/en/category/books/59117> review by Mohammed Bakari

Julie Hearn (2001) *The 'uses and abuses' of civil society in Africa; Review of African Political Economy* Vol. 28, Iss. 87, retrieved on 29<sup>th</sup> July 2013 from <http://www.tandfonline.com>

[http://humanrightshouse.org/noop/Annual\\_reports\\_2007](http://humanrightshouse.org/noop/Annual_reports_2007)

<http://www.achpr.org/sessions/> retrieved on 6<sup>th</sup> July 2013

[http://covaw.or.ke/Strategic Plan 2012 – 2017](http://covaw.or.ke/Strategic_Plan_2012-2017), COVAW

<http://www.rpprights.org/>, retrieved on 17<sup>th</sup> August 2013

## ANNEX 1

### Questionnaire - IMLU

#### The Impact of Aid in the delivery of Torture Prevention in Kenya

*Kindly read through these questions.*

**I WOULD LIKE TO SINCERELY THANK YOU FOR AFFORDING YOUR TIME TO PARTICIPATE IN THIS IMPORTANT STUDY.**

---

(Kindly tick your answer where applicable)

#### **Section A.**

Section A investigates the place of Independent Medico-Legal Unit (IMLU) within a framework of Civil Society Organizations in Kenya and in global development in the fight against torture.

1. How did IMLU start off? \_\_\_\_\_

As a network of professionals concerned about human rights violations, mostly doctors and lawyers.

2. How many years have you been in operation? \_\_\_\_\_

20 years

3. What was the motivation to register as an NGO? \_\_\_\_\_

Well to legitimately address issues of torture in Kenya.

4. How is the staffing structure in IMLU? \_\_\_\_\_

Two departments (finance and admin department and the programmes department ( three programmes) a secretariat of 15 a bulk of programme staff and work with interns.

5. How is IMLU different from other civil society organizations which deal in prevention of torture? \_\_\_\_\_

IMLU utilizes forensic medico legal documentation to enhance access to Justice (i.e. we embrace a holistic approach i.e. medical psycho social and legal intervention. It also utilizes advocacy interventions)

6. As civil society what was role of previous governments in perpetrating torture acts and role of current government in support of torture prevention?

The police and other state security agencies e.g. CID, special branch were used by powers that be to torture and terrorize people in Kenyatta and Moi government and there was no accountability. There was no political will to eradicate torture in the Kibaki and this continues in the Uhuru government seeing as the torture prevention bill has not been passed – evidence is that EJK cases only in Kenya are up to 100 in 2013.

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## **SECTION B**

The focus of IMLU is a free and just society; torture prevention. IMLU addresses this issue within the national development context in Kenya. This section reviews the impact of donor aid on primary beneficiaries and experts of torture.

7. What are the sources of funding for IMLU over the years? \_\_\_\_\_

Donors from Europe etc, Embassies, United Nations, UNVFT, UNDP, GIZ

8. How many victims and survivors of torture have reported cases to IMLU in the last 20 years? \_\_\_\_\_

4,000 - an estimate as of 2012

Female \_\_\_\_\_ Male \_\_\_\_\_ 85% between 18-35 years

9. What are the ages (years) of victims and survivors of torture? \_\_\_\_\_

18-35 years

10. Which locations do cases of victims of torture occur most?

Central(     ), Nairobi (✓), Rift Valley (     ), Coast (     ), Eastern (     ),  
Western (     ), Northeastern (     )

The cases that are brought to IMLU are majorly from Nairobi because of issue of proximity to access IMLU. But generally torture occurs widely in Kenya.

11. A) Does IMLU give any kind of financial support to victims and survivors of torture?

Please Explain \_\_\_\_\_

No but we give transport reimbursement for the poor victims

B) How many victims and survivors of torture have received in the last 20 years?

---

12. A) Is IMLU a medium through which victims and survivors of torture can receive direct donor aid?

Yes (     ) No (✓     )

**If yes kindly answer part B.**

B) Are there any victims and survivors who have received direct funding from donors?  
Yes ( ) No (  )

If yes could you kindly explain how many and how much? \_\_\_\_\_

If No, Please explain the reasons\_\_\_\_

That is not our focus area and we have no competencies to run an economic empowerment programme but link to other agencies with this mandate.

13. A) How many victims of torture have been rehabilitated in the last 20 years?

Female\_\_\_\_\_ Male\_\_\_\_\_

B) How many victims of torture are rehabilitated per year in the following categories?  
(See previous Chapter on IMLU)

Numbers	Counseling and Rehabilitation	Forensic Documentation and Rehabilitation
0-200		
201-400		
401-600		
601-800		
800 and above		

14. Please name the types of violations used to commit atrocities (See previous Chapters on IMLU)

---

**SECTION C**

This section reviews the impact of aid on delivery of torture prevention in Kenya in increasing level of awareness, campaigns and trainings in order to manage torture incidences in Kenya.

15. To what extent has aid helped reduce torture incidences through Awareness campaigns?

Very great extent ( )

Significantly (  )

Moderately ( )

Please explain

Push for a new constitution by CSOs who are funded by donor aid has contributed significantly

---

16. In what ways has aid affected level of training experts in torture prevention in Kenya? On the scale of 1-5. (5-strongly agree, 4-agree, 3-neutral, 2-disagree and 1-strongly disagree)

Effects	1	2	3	4	5
Increased Knowledge				√	
Reduced torture incidences				√	
Increased documentation of cases			√		
Others please explain Phase of torture has changed from the middle class; , lecturers, political elite to the poor. . there is a reduction of torture incidences but not significantly					

17. A) How many experts have you trained in the last 20 years towards prevention of torture in per year?

Numbers	Doctors	Clinical Officers	Counselors	Lawyers
0-50				
50-100				
100 and above				

---

## **SECTION D**

Donor agencies have guidelines, policies or principles or what has commonly come to be known as conditionality's so as to foster the development agenda in the third world.

18. What is the role played by international donor agencies in preventing torture?

---

They provide direct funding and also help in pressurizing the government to adhere to human rights standards.

19. What role do guidelines play in fostering the realization of torture prevention?

---

The guidelines are critical in fostering a relationship between the donors and the implementing agencies. The guidelines are also critical in enhancing accountability by the implementing agencies.

20. Which aid agencies supporting IMLU have reviewed and developed what is consistent with achievement of your objectives? \_\_\_\_\_

IMLU works with core funding as opposed to project funding which supports their strategic plans e.g. Norwegian Embassy, UNDP, open society institute, Finnish Embassy and Misereor etc.

- 
21. Do you agree that torture incidences in Kenya will reduce with sufficient flow of aid?  
Please Explain. \_\_\_\_\_
- 

Yes but CSOS need to push government to hold people to account; KNCHR, IPOA as opposed to continuing with normal service provision.

---

*Thank you for your time and contribution. God bless*

*Hadley Muchela - Programme Manager IMLU*



**ANNEX 2**

**CSOS-questionnaire**

**The Impact of Aid in the delivery of Torture Prevention in Kenya (A case Study of IMLU)**

*Kindly read through these questions.*

**I WOULD LIKE TO SINCERELY THANK YOU FOR AFFORDING YOUR TIME TO PARTICIPATE IN THIS IMPORTANT STUDY.**

---

(Kindly tick your answer where applicable)

**Section A.**

Section A investigates the place of Civil Society Organizations in Kenya and in global development in the fight against state perpetrated torture.

1. Name of Your Organization \_\_\_\_\_

2. Number of years you have been in operation \_\_\_\_\_

\_\_\_\_\_

3. What was role of previous government in perpetrating torture acts and role of current government in support of torture prevention?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

---

**SECTION B**

This section reviews the impact of donor aid on primary beneficiaries and experts of torture prevention, within the national development context in Kenya

4. What are your sources of funding over the years?

\_\_\_\_\_

\_\_\_\_\_

---

5. How many victims and survivors of torture have reported cases to you in the last 20 years? \_\_\_\_\_

6. What are the ages (years) of victims and survivors of torture that occur most?

0-10 (     ), 11-20 (     ), 21-30(     ), 31-40 (     ), 41-50(     )

51 and Above (     )

7. Which locations do cases of victims of torture occur most?

Central(     ), Nairobi (     ), Rift Valley (     ), Coast (     ), Eastern (     ),  
Western (     ), Northeastern (     )

8. A) Do you give any kind of support to victims and survivors of torture?

Please Explain \_\_\_\_\_

B) How many victims and survivors of torture have received this support (in A above) in the last 20 years?

---

9. A) Are you a medium through which victims and survivors of torture can receive direct donor aid?

Yes (     ) No (     )

**If yes kindly answer part B.**

B) Are there any victims and survivors of torture who have received direct funding from donors? Yes (     ) No (     )

If yes could you kindly explain how many and how much? \_\_\_\_\_

\_\_\_\_\_

If No, Please explain the reasons \_\_\_\_\_

---

10. Please name the types of violations used to commit atrocities?

---

---

---

**SECTION C**

This section reviews the impact of aid on delivery of torture prevention in Kenya in increasing level of awareness, campaigns and trainings in order to reduce torture incidences in Kenya.

11. To what extent has aid helped reduce torture incidences through Awareness campaigns?

Very great extent ( )

Significantly ( )

Moderately ( )

Please explain \_\_\_\_\_

---

---

12. In what ways has aid affected level of training experts in torture prevention in Kenya? On the scale of 1-5. (5-strongly agree, 4-agree, 3-neutral, 2-disagree and 1-strongly disagree)

Effects	1	2	3	4	5
Increased Knowledge					
Reduced torture incidences					
Increased documentation of cases					
Others please explain _____					

---

**SECTION D**

Donor agencies have guidelines, policies or principles or what has commonly come to be known as conditionality's so as to foster the development agenda in the third world.

13. What is the role played by international donor agencies in preventing torture?

---

---

---

14. What role do guidelines play in fostering the realization of torture prevention?

---

---

---

---

15. Do you agree that torture incidences in Kenya will reduce with sufficient flow of aid?  
Please Explain.

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*Thank you for your time and contribution. God bless*

## ANNEX 3: LETTER TO COMMITTEE AGAINST TORTURE



# INDEPENDENT MEDICO - LEGAL UNIT

Our Ref: IMLU CAT 1/2013  
Your ref: TBA

17<sup>th</sup> April 2013

Human Rights Treaties Division (HRTD)  
Office of the United Nations High Commissioner for Human Rights (OHCHR)  
Palais Wilson - 52, rue des Pâquis  
CH-1201 Geneva (Switzerland)

Tel.: +41 22 917 97 06  
Fax: +41 22 917 90 08  
E-mail: [cat@ohchr.org](mailto:cat@ohchr.org)

Dear sir/madam,

**SUBJECT: ALTERNATIVE REPORT IN RESPONSE TO THE SECOND PERIODIC REPORT BY KENYA TO THE COMMITTEE AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

The above matter refers.

The Independent Medico-Legal Unit (IMLU) is a registered non-governmental organization that seeks to promote the rights of torture victims and protect Kenyans from all forms of torture through rehabilitation of survivors of torture, forensic medical documentation, legal redress, research, capacity building of key stakeholders and advocating for law and policy reforms.

Kindly receive IMLU's report, which is enclosed herein for consideration during the committee's 50<sup>th</sup> session to be held on 6<sup>th</sup> to 31<sup>st</sup> May 2013.

Sincerely yours,

  
**Peter Kiama**  
**Executive Director**

Encl.

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[www.imlu.org](http://www.imlu.org)

*A Just World free from Torture*

**1<sup>st</sup> Runners-up:** Civil Society of the Year Award (CSOYA) 2012  
**Winner:** « Leadership, Governance & Management Category (CSOYA) 2012  
**Winner:** « Community focus and mobilization Category (CSOYA) 2012