



**PRELIMINARY REPORT OF MEDICO-LEGAL
INVESTIGATION OF TORTURE BY THE
MILLITARY AT MOUNT ELGON
“OPERATION OKOA MAISHA”**

April 2008

**An Investigative report by the
Independent Medico-Legal Unit (IMLU)**

**Released by:
International Commission of Jurists-Kenya Section
Child Legal Action Network
IMLU**

David Osieli Road, off Waiyaki Way, Westlands
P.O. Box: 1271-0606 Nairobi, Kenya
Tel: +254-020-4450598
E-mail: medico@imlu.org
Website: www.imlu.org

TABLE OF CONTENTS

Executive Summary	3
About Imlu	4
Investigating Torture Allegations	5
Methodology.....	5
Profile of survivors.....	6
Age analysis.....	6
Systematic nature of torture (as reported by clients).....	7
Medical findings.....	9
Information related to the legal process.....	10
Case Studies.....	11
Summary Findings.....	12
Action Points.....	13



Executive Summary

Since the January post election violence and subsequent mediation and resultant national accord by the political elites there continues massive appeals on reconciliation by the grand coalition government behind the scenes the government has and continues to engage in massive infringement of fundamental rights of historical proportions never witnessed before on the civilian population in Mount Elgon district and surrounding areas.

The much touted joint military operation that has been conducted under the secrecy veil since early march 2008 and has resulted in mass arrests and subsequent prosecution of over twelve hundred persons and most of the persons arraigned have raised complaints of torture and exhibited injuries that remain to be accounted for by the state, the government has on its part termed allegations of torture as propaganda and argued that no complaints have been lodged with relevant agencies. Government denial has three stages, starting with saying torture did not happen, continuing by saying that what happened was something else, and finally saying that what happened was justified for the protection of national security or some other purpose.

Currently denial, passivity, and indifference exist and the government through the minister of defence has alleged that the torture was perpetrated by the local residence a clear admission of acquiesce by the state in condoning torture.

This report seeks to independently analyse and make public findings by a joint team of medical and legal professionals and seek to hold to account all relevant agencies involved and bring to book all individual perpetrators of the crime.

It is apparent that a crime against humanity has been committed and continues to be committed on a civilian population that has been victim of atrocities by the SDLF¹ for more than one year.

This work has been made possible thro the tireless sacrifice by IMLU Doctors and other members of the Kenya medical association, the Law Society of Kenya North rift branch, the international commission of jurists-Kenya section and countless human rights defenders within the region.

Finally, the report makes recommendations for proper and conclusive investigations in the interest of truth and justice following this great misfortune to our beloved country. It is our hope that such tragedies can quickly become a thing of the bitter past and all perpetrators are brought to book.

Samwel Mohochi
Executive Director
IMLU

¹ Sabaot Land Defence Force



About IMLU

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 state perpetrated torture.

Over the years, IMLU has emerged as the lead agency in the fight against torture. As a key member of regional human rights network of torture organizations, East Africa and Great Lakes Network (EAGLENET) IMLU is also a member of similar regional and international human rights networks such as African Network of Torture Rehabilitation Centres, Human Rights Defenders Network (East Africa & Horn of Africa), OMCT, International Federation of Health and Human Rights Organizations (IFHHRO) and Consortium Against Torture. IMLU has also been accredited by International Rehabilitation Council for Torture Victims (IRCT) as a centre for rehabilitation of torture victims and by the Law Society of Kenya as an authorized Continuing Legal Education (CLE) provider.

Vision

IMLU seeks a torture-free society

Mission

We seek promote the rights of torture victims and protect Kenyans from all forms of state perpetrated torture by advocating for legal and policy reforms, monitoring government adherence to human rights, rehabilitating victims of torture and building the capacity of key stakeholders.

Programmes

1. *Rehabilitation and Documentation*: Conducts Forensic investigations and documentation² in torture cases, physical and psychological rehabilitation of survivors.
2. *Legal Redress and Training*: Offers legal assistance to survivors and victims of torture, public interest litigation as well as referrals and follow-up of torture cases; involves enhancing capacity of key stakeholders through training and advocates for legal and policy reforms.
3. *Communication and Advocacy*: disseminates information on torture and other related violations to the public and advocates against torture and other human rights violations.

² Thompson K. and Gifford C. *Reporting Killings as Human Rights Violations: How to Document and Respond to Potential Violations of the Right to Life within the International System for the Protection of Human Rights*. Human Rights Centre, University of Essex, 2002.



4. *Research and Programme Evaluation*: Carries out continuous monitoring and research into the state of torture and related human rights violations; as monitoring project implementation.

Investigating allegations of torture

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³ article 1 and 2 not only stipulates the purpose by state parties to wit' clarifications of facts identification of measures for prevention of recurrence and bringing to book of perpetrators but also is quite categorical of the state party's obligation to investigate such allegations even where no complaint has been lodged with relevant authorities a fact that has been ignored by the government so far⁴

IMLU and its partners commissioned this investigation based on the apparent disregard and or refusal by the government to investigate. This report is a preliminary finding that has been conducted while exercising the international standards of investigating torture which includes obtaining consent from complainants, obtaining detailed statements, interviewing witnesses if any, conducting physical and medical examinations in line with the Istanbul protocol on investigations and documentation of torture.

Methodology

IMLU engaged in this exercise with the remarkable assistance of prison department, human rights monitors in the area, overwhelming support by Health personnel in relevant areas and the following were the steps undertaken;

- a). Organising a fact finding mission by Lawyers;
- b) Obtaining informed consent from complainants.
- c) Recording of detailed statements from the complainants.
- d) Recording of witness statements if any.
- e) Medically examining and documenting all complainants;
- f) Preparation and certification of individual medical reports;
- g) Offering legal representation; and
- h) Offering medical treatment where necessary.

The fact-finding mission was conducted by three lawyers, two from IMLU and the Law Society of Kenya Upcountry Representative for that region. The Mission visited Bungoma Prison and spoke with the officer –in-charge and his deputy about the matter. They established that more than 400 torture survivors had been remanded at the prison in March and April 2008 after being charged at Sirisia and Bungoma Law Courts. They indicated that due to the said developments the total number of prisoners had escalated to a staggering 1380 prisoners as opposed to their normal average of 700 primarily consisting of Accused persons charged with bailable offences.

³ Adopted by General Assembly resolution 55/89 Annex, 4 December 2000

⁴ Art 2. States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.



They had just rejected 40 Accused persons from Mt Elgon related cases before we arrived on account of lack of capacity to hold them. The Accused persons had to be taken to Webuye Police station. The mission established that the Kenya Red Cross had set up a medical camp at the prison to offer first aid exclusively to the more than 400 torture survivors from Mt Elgon remanded at the prison.

The mission spent a whole day interviewing survivors of torture from the military operation in Mount Elgon remanded at the prison. They recorded witness statements and obtained written consents for legal representation, medical treatment & documentation and media publicity. The fact-finding mission only lasted that day.

IMLU also instructed a team of medical practitioners from its network to carry out forensic medical examination and documentation of the injuries sustained by the torture survivors during the subsequent week. This was undertaken over a period of three days. Plans are still underway to assist the rest of the survivors subject to the availability of funds. The medical practitioners prepared reports based on their examination and forwarded the same to IMLU for analysis and further action.

The above medico-legal investigation on torture was carried out in compliance with the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognized by the UN.

Profile of survivors

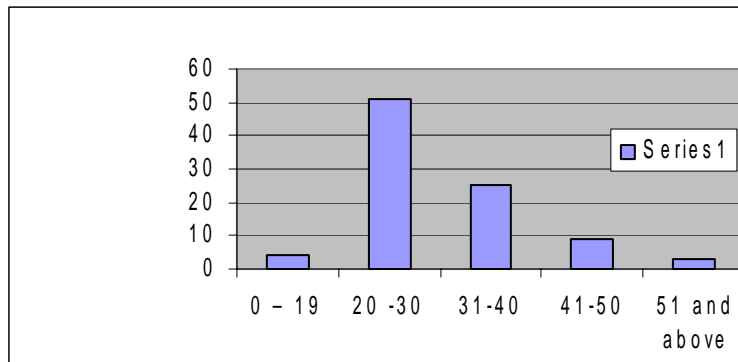
All the torture survivors who are the subject of this report are male persons between the ages of 17 and 55 drawn from the Sabaut Ethnic Community save for one who claimed to be from the Bukusu community. Most of them are farmers while others consist of School going children, farmers, hoteliers, vegetable sellers, drivers, market collectors, teachers, athletes, cooks and a chief.

Age analysis

The majority of persons tortured ranged from age 20 to 30 at a percentage of 55%. This is the most productive age group in a family and the economy of a nation. The next most tortured age group was between 31 and 40 at 27 %.

The analysis is shown bellow.

Age distribution graph



Systematic nature of torture (as reported by clients)



Information drawn from clients' statements and interviews clearly revealed that the nature of torture is quite systematic.

(a) Arrests

The torture survivors were arrested from as early as 6:00am to as late as 4:00pm. The arrests were effected by police officers, some of who are known to the survivors and military officers in uniform. However, when military officers were asked to identify themselves the officers declined to do so and turned violent.

The arrests took the form of various degrees of physical violence but in some cases police officers deceived the survivors to accompany them to a place where they would be given a card showing that they are not members of the Sabot Lands Defence Force, in which case they willingly complied.

Many arrests took place at houses of survivors some of which military officers violently broke into as early as early as 6:00am when the survivors were still asleep. Others took place while survivors were in their farms, at shopping centres, market places, schools and public service vehicles at bus stops.

They were effected at Cheptais, Bungosi, Kapsiku, Sansa, Burkenwo, Meriko, Chesikaki, Kamarang, Kihii Village and Mayanja areas in Mt Elgon area. Those arrested from public service vehicles were singled out on account of their tribes as implicated by their identity cards and branded as escapees from Mt Elgon region. All arrests were characterized by an element of ambush by the military officers and surprise on the part of the torture survivors and applied to all males in the areas targeted with no distinction whatsoever.

Some Survivors arrested far from Mt Elgon area were first detained at Police stations before they were transferred to Kapkota using police vehicles. All the survivors were eventually transferred to Kapkota using trucks, land rovers and canters belonging to the military or police department. Kapkoto Military Camp located on a field allegedly belonging to Kapkoto Primary School where they found a large number of military officers with their commanders (i.e. senior officers). Here they were all asked to strip naked before being subjected to the most severe forms of torture.

(b) Perpetrators of torture

Virtually all the survivors were tortured by military officers but a few confessed to having been also tortured by police officers from the Kenya Police Service, Administration Police and General Service Unit at the point of arrest or while being transferred to police stations or law courts.

(c) Place of torture

All the survivors identified Kapkota Military Camp as the main place where torture took place.

(d) Methods of torture

All the survivors who reached Kapkota were first beaten indiscriminately for about 2 to 3 hours without being questioned. Their pleas of innocence were completely ignored. The methods of torture employed included the following:

- Beatings (slaps & kicks)



- Beatings with weapons such as gun butts, rungas (i.e. clubs), wires, whips and wood planks
- Insertion of barrels of guns into anus
- Stripping naked
- Forced to move on knees for up to 2 hours
- Forced postures
- Survivors forced to open mouths and water poured in
- Blindfolding
- Survivors made to move hands as if calling the rain and rained on for more than 1 hour while sleeping on their already bruised and injured backs.
- Forced to bite fellow detainee
- Forced to pull each other's genital organs
- Forced to suck each other's breasts
- Forced to whip every other detainee in turns
- Frog jumps
- Forced to move on the ground using bare stomach
- Forced to carry victims who succumbed to torture and died at the military camp.
- Forced to sing '*jeshi ni moja*' (i.e. the army is one, only the Armed Forces) and also in vernacular while being beaten
- Survivors forced to lie and crawl on their bellies on barbed wire rolls while military officers stepped on them.
- Denial of food.

The entire duration of torture lasted between 2 hours and 6 hours during the day and in some cases went on for up to 5 days.

(e) "Screening" Process

All the torture survivors were subjected to an alleged computer/satellite screening processes where they were taken to a nearby camouflaged vehicle and asked to look up and shout their name. Unknown to most of them, which some of them later discovered, some informers had hidden in the vehicle amidst the bushes and trees to identify those they believed to be members of Sabaoth Lands Defence Force or "Janjaweed". Their identity was revealed when the wind blew their cover and their faces were positively identified by some of the survivors at the camp. At this screening stage some were branded as 'red' and taken through another session of torture others branded as blue were subsequently set free.

Only one survivor was interrogated by questioning. The rest were only tortured with no regard for what they had to say. At the end of the torture session, all the survivors' photos were taken and names were taken down by the military officers before they were transferred to police stations.

(f) Complicity of police department in torture

The torture survivors indicated that police officers assisted the military in arresting the torture survivors and victims and in transferring them to waiting military vehicles and Kapkota military camp where they were tortured. Police also waited and picked torture survivors from the camp and transferred them to police station, brought them back to Kapkota for further torture or took them to court. The survivors also pointed out that police also provided their vehicles to be used in ferrying survivors from one place to another.



(g) Places of detention involved in the operation

The torture survivors identified the following as the places where they were detained:

- Cheskaki Police Station
- Bungoma Police Station
- Kakamega Police station
- Kimilili Police station
- The Administration Police camp near Mayanga Police Station

(h) Number of torture survivors

The report deals with a total of 119 torture survivors who consist a sample of almost 30% of the more than 400 survivors held at Bungoma G.K. Prison. However, inferences drawn from interviews conducted with survivors and perusal of charge sheets availed to IMLU lawyers by HRD⁵s from the region indicate that the number of survivors is likely to exceed Four thousand (4000) given that others were freed after torture in Kapkota military base while others were taken to different police stations and prisons.

Medical findings

Nature and degree of injuries

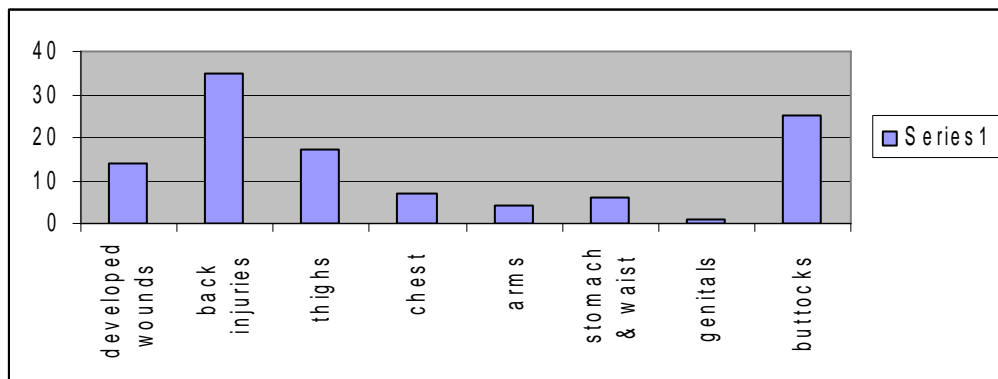
85% had severe soft tissue injuries with wounds

And 2 % has minor soft tissue injuries

5% had moderate severe tissue injuries

It is noteworthy that all the injuries concentrated in the following regions, back injuries, thigh injuries, chest wounds, knees, wrists, swollen genitals and injuries on the buttocks,

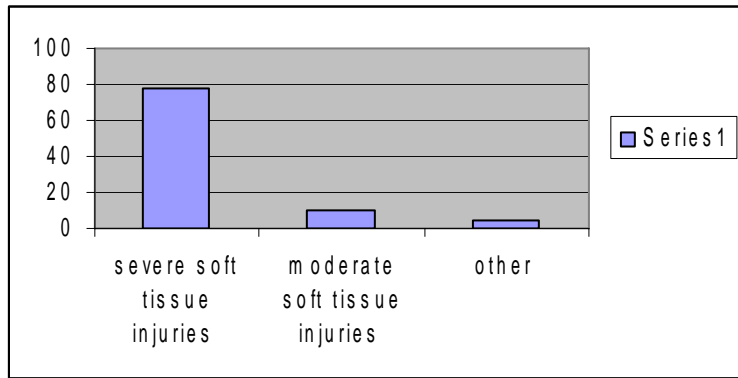
Types of injuries



Degree of injuries

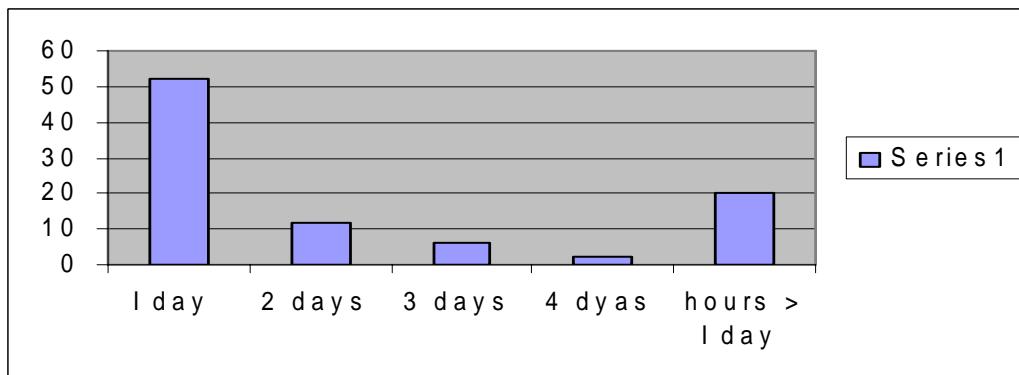
⁵ Human Rights Defenders





Duration of torture

79% of alleged tortured persons had been tortured continuously more than a day while 21% had been tortured continuously between 2 and 3 hours.



2. Information related to the legal process

IMLU's fact-finding team established that all the survivors interviewed who and received medical attention were charged at Sirisia Law Courts with 'Promoting War-like Activities' in cases numbers (a) 104/08 (b) 106/08 (c) 110/08 (d) 112/08 (e) 114/08 (f) 115/08 (g) 107/08 (h) 108/08 (i) 201/08 (j) 210/08 and denied bail.

The cases mentioned above have over 70 accused persons in each

Most of them do not understand and have not been informed⁶ of the nature of charges they are facing and have wrongly interpreted the offences by direct translation as 'Incitement to Violence'. Most are unable to raise bail if they are awarded the same by the court and cannot afford to pay for legal representation.

⁶ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (principle number 10) Adopted by General Assembly resolution 43/173 of 9 December 1988



That in cases number **107/08, 108/08, 201/08 and 210/08** there are 15 children/ minors still in school uniform charged and currently remanded and the Kakamega Borstal institution.

The judiciary has failed and or ignored to inquire on the conditions of accused persons that are clearly exhibiting visible injuries and where the accused persons have raised their concerns the courts have ignored them.

Some of the torture survivors have been arraigned in court more than 24 hours period after arrest without any justification by the police and or inquiry by the courts.

A. Case Studies

1. W.N.

On 13/3/2008 at about 6 am in the morning I was with my wife and our child at our home in Cheptais, Mt Elgon. About five officers entered our house when I was just about to light my jiko. They told me that they wanted to take me to the D.O so that I could be given a document that would clear me from participation from any warlike activities by the Sabaot Lands Defense Force. They were quite polite. One of the police officers known as Njuguna and is based at Chesiro.

We came out with my wife and child. I saw that there were other officers doing the same to other people in the village. We proceeded with the officer to Cheptais Market About one and half km from my house. 200 police officers were involved in this. At the market we found two land rovers and the women were separated from the men. The women were released. The military officers then started beating us and they bundled us into 4 trucks belonging to the military.

We were taken to Kapkota Primary School. 7 helicopters came to the field at that time and dropped off military officers. The officers asked us to remove all our clothes. The officers started beating us and they told us that we should shout 'Jeshi ni moja' every time they beat us. I was beaten with a whip and wire; I was lying on the ground on my stomach.

They beat me on my back, buttocks and legs. They told us to stand up and I was beaten on the chest again. We were beaten from about 7-1pm. We were then taken to a vehicle that was allegedly for screening and it had a computer inside. We were asked to stand facing the window. I realized that this was a hoax because at some point the wind blew the cover of the vehicle and revealed the faces of men who identified as local residents and were supporting the government position on Mt Elgon. One of them is even nicknamed 'Monka'. We were then beaten after the screening till 6 pm. We were then taken to Kakamega police station that night and arraigned at Sirisia court on Monday 17th March 2008. we were charged with promoting war like activities. Those of us who were taken to the police station were 150. We were denied bail and remanded at Bungoma prison. About 408 of us have been charged with the same case. They are all remanded in Bungoma Prison.

The next hearing date is coming up on 21st April 2008. About five advocates appear in this matter representing specific client but one of them says that he is appearing for all the accused persons.

2. B.K.K

On the 12th of March at 9.30 am I was cultivating my land at Kapsika area when I saw an air force plane that was accompanied by three other helicopter gunships after some time the plane landed while the helicopter continued circling. I then saw the soldiers coming in a formation they were heading towards my home and I could identify them as the military. I tried to identify myself but they rebuked me and they did not identify themselves. They then ordered me, P.M and S.M to stand and head towards burukenwa market. Upon crossing the stream I was ordered to kneel down. Other people were brought and we proceeded to the market. We were then ordered to lie on our bellies and a police lorry came and we were forced to board. From there we were taken to Karkota Military base. There I was interrogated by two senior army officers, an army major and a Lt. Colonel. They immediately framed me as being a trainer fro the Sabaot



Defense Land Force. The D.C.I.O Mbaruk came and I was ordered to lie down on my belly and I was being flogged by a nyahunyo by 4 soldiers. All along they wanted me to produce a firearm and this session lasted 3 hours. I had been stripped of my shirt. We were forced into different postures and forced to bend and all this time we were being beaten. We were forced to open our mouths and the officers would pour water into our mouths and at 5 pm we were given dry biscuits. We were then all blindfolded with masking tape of different colours for 30 minutes and then they started the psychological torture.

I was transferred to Kakamega police station for 2 days and then returned to Kapkoto and asked to join the red group. I was stripped of my shirt and 4 soldiers descended on me with whips. I saw a soldier who I was with in KAFTE/C Embakasi, he prevailed on his colleagues to stop torturing me. I was placed in the lorry and escorted to my office in Chepkube Coffee factory where I collected 2 files that were work related, I handed it to them and then after that I was not tortured.

That evening I was not taken to Bungoma Police Station for a weekend before being arraigned in court the following Monday.

3.P.K.K.

On 13/3/2008 at 9 am I boarded a matatu to Nairobi at Mayanja stage. I had gone to Mayanja from Wamono. Police officers came to the matatu which we had boarded and asked us to come out. They asked us for our I.D's. We were 14 passengers and two of us were arrested. The other person was Benson Maghasi. They told us that we were janjaweed. They took us to the nearby chief's camp and locked us in a cell from 9-6 pm. Five other people who had been arrested like us were brought to the same cell.

The AP officers came for us took us to Bungoma Police station. We were booked and spent the night there. In the morning about 7am CID officers came to see us and told us that we were people fleeing from Mt. Elgon. About 10 more people who had been arrested were brought to the cell and they told us that they had been badly beaten by the police and they had visible injuries.

The CID officers took us to Chwele market where we waited for another land rover. Here those who had been beaten were separated from those who had not been beaten. We were taken to the field for Kapkoto primary school. On the way there the CID told us that they were going to deal with us ruthlessly. I told them that I was not from Mt Elgon and that I was in fact going to Nairobi for treatment. They did not listen to me.

At Kapkoto they started to beat us. All this time they were asking us to produce firearms. We were beaten from 11-1pm, they used whips and sticks. I was beaten on my legs and buttocks. The officers went for lunch and when they came back they beat us from 3-5pm. They then left us in the rain.

We were taken to Kimilili police station by the AP police officers and they beat us with their gun butts. We spent the night at the police station until 17/3/08. We were about 200 people charged with the same case. The police who took us to court also beat us. The next hearing of our case is on the 21st April 2008

Summary Findings

- The systematic nature of torture and accompanying magnitude targeting a specific communal group amounts to a crime against humanity as enshrined in the Rome statute of the international criminal court which Kenya has signed and ratified⁷.
- That all persons arrested for screening/interrogations have been subjected to torture whether subsequently charged in courts or not.
- That the mass arrests, subsequent prosecution and denial of bail, has not only clogged the administration of criminal justice system in the region but has

⁷ Article 5 1(B) Article 7 1(F) Article 25 Article 27 ,Article 28 Rome Statute Of The International Criminal Court



created congestion of historical proportion in penal facilities in Bungoma, Kakamega and Kitale as well as most of police stations in the region further aggravating the already poor conditions in detention facilities thereby amounting to cruel inhuman degrading treatment.

- That the government response so far is an abuse of the intelligence of Kenyans and that Kenya as state party to the Convention Against Torture (CAT) and other international instruments is obligated to ensure that torture does not occur under any circumstance even during war and any allegations are to be promptly and impartially investigated.⁸
- That “*operation okoa maisha*” characterised by secrecy and lack of transparency, accountability and is not intended to preserve law and order but rather systematically engage in gross human rights violation on a population hitherto terrorised by criminal gangs.
- That the military operation must and should be subject to public scrutiny and accountable to the tax payers and the military officers are subject to civilian jurisdiction over crimes committed in the course of their duties
- The operation discloses a coordinated effort and cover-up by all security agents and state departments as well as complacency on the part of senior state officials including the president Hon Mwai Kibaki and the Prime minister Hon. Raila Odinga.

Action points

- IMLU intends to continue with documentation and investigations of all allegations of torture in mount Elgon “operation okoa maisha”
- IMLU shall where possible continue offering medical and psychological rehabilitation.
- Free legal defence representation of all torture survivors facing criminal charges shall be offered.
- IMLU and ICJ-Kenya section intends to institute relevant civil and criminal processes against senior military officers and other government officials supervising and overseeing torture in both municipal and internal tribunals.
- The findings and related evidence shall forthwith be submitted to special rapporteur on torture through the office of the United Nations High commissioner for human rights for appropriate action.
- All evidence gathered shall generously be shared with the Kenya national commission on Human rights for purposes of affording justice to the victims and survivors

⁸Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted by General Assembly resolution 55/89 Annex, 4 December 2000

