



MEDICO-LEGAL INTERVENTION ON THE POST-ELECTION VIOLENCE

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 through medical and psychological rehabilitation, forensic medical documentation, legal redress, advocacy and research.

Following the recent post election violence witnessed in the country, IMLU carried out a sample of 80 post-mortem examinations in public mortuaries in Nakuru, Molo, Kericho, Kisumu, Eldoret, Webuye, Bungoma Mumias and Nairobi and came up with the following findings:

1.0 Age analysis

The ages of the victims ranged between 12 years and 84 years. Out of the 80 post mortem examinations, 10 % were carried out on minors, 50% on person's aged 12-40. Elderly persons, above 60 years of age, contributed to 9% of our sample. It is generally noted that 50% of the deceased persons were below the age of 40 and can be termed as youths and persons approaching their mid-years

2.0 Gender analysis

Of the 80 post-mortems conducted, only two victims were female. And regrettably, one was a 12-year-old schoolgirl from Kondele area of Kisumu.

3.0 Cause of death

43% of the examined bodies had gunshot injuries to various parts, including the head, abdomen and chest. The remaining 57% showed various injuries inflicted by assorted crude weapons. These resulted in arrow wounds, cut wounds; blunt objects trauma, stab wounds, amputations, decapitations and even burns.

Of the 40 post-mortem examinations conducted in various towns in the Rift Valley, only 8 had gunshot wounds. Thus **20%** of the victims whose deaths were documented in Rift Valley had suffered from gunshot injuries and **80%** from crude weapons. Nairobi revealed a mixed picture, with **38%** having gunshots and the remaining **62%** having sharp and blunt force injuries. All the 8 cases sampled in Kisumu had gun shot wounds. Of the post-mortems from western province the case of death was attributed to gunshot injuries was **91%** while **9 %** related to death caused by crude weapons.

4.0 Perpetrators

In **29%** of the cases, family members alleged that the police shot the victims. This was the case where eyewitnesses were available to offer corroborative statements. For the remaining (**14%**) of victims of gunshots, the families had no information on the circumstances of death and no witnesses had been forthcoming with this category falling amongst the unknown perpetrators. **63%** of cases were killed by unknown people, under either known or unknown circumstances. **9%** of cases had been clearly witnessed as having been occasioned by mobs wielding machetes and other crude weapons such as wooden clubs, metal rods, bows and arrows, etc.

CHALLENGES

In the course of conducting the post mortems IMLU encountered the following challenges:

- Difficulty in tracing families to identify dead bodies in mortuaries, which remain, marked as unidentified.
- Ethical considerations restricting IMLU from conducting post-mortems without consent from relatives (there is a provision within the Kenyan Law for forensic autopsies to be done irrespective of consent or presence of the victim's relatives, but IMLU's policy is that written consent must be freely given by a close family member).
- **Most of the investigations revealed an abdication of the police in complying with the statutory requirements as contained in sections 386-387 of the Criminal Procedure Code (Cap75, Laws of Kenya) in institution of inquests (judicial inquiries in respect of suspicious deaths).**
- Religious and cultural influences that dictate how dead bodies are interred, resulting in quick burials and inability for consent to autopsies.
- Strong claims that many dead victims were buried without due legal processes being followed like being taken to mortuaries.
- Strong claims that bodies were disposed of in unconventional ways and places, up to and including pit latrines.
- **That with the passage of time and over crowding of the mortuaries, the government will dispose of the unclaimed bodies without collection of specimens to aid in future identification. Those prescribed in such disasters include fingerprinting,**

radiological techniques and tissue sampling and preservation for DNA analysis.

- Overstretching of available mortuary resources, including personnel and facilities, leading to deplorable storage and preservation conditions. The poor preservation of bodies makes it harder to identify and to maintain evidence.
- Victims died of injuries which under normal circumstances and reasonable access to medical services could have been treated.
- Difficulty in accessing certain areas due to major insecurity.
- Few Forensic Pathologists in the Kenyan health system and lack of countrywide distribution of the existing pathologists.

CONCLUSIONS

- The findings above arise from a sample of 80 out of the estimated 1000 (or more) deaths. This sample can be termed to be representative of the general nature of deaths occasioned by this violence.
- Natural illnesses were ruled out as being possible causes of death in all 80 cases.
- **43%** of sampled cases died of gunshot injuries.
- **57%** of sampled cases had severe injuries in keeping with severe blunt force trauma or sharp object trauma.
- Because many bodies have been buried without following compliance with requisite legal procedures or disposed off in unconventional ways, it can be assumed that the number of deaths arising from the post election violence is higher than the estimated 1,000.

TOLL FREE CALLING SERVICE

Following the December 2007 elections, a situation has prevailed in Kenya where numerous lives have been lost. We have established that there are many unidentified bodies lying in mortuaries across the country; bodies are being buried before post mortems are done while many families cannot trace their kin and friends. You can help Independent Medico Legal Unit (IMLU) assist people with missing and/or dead relatives and friends by calling 0800-720006(IMLU) between 8.00 a.m. and 8.00 p.m.

RECOMMENDATIONS

In view of the fore going IMLU recommends that:

- The full magnitude of killings is thoroughly investigated in a framework included in the ongoing Dr. Kofi Annan led mediation agreements and all perpetrators be held accountable.
- **That such mediation should not immunize any perpetrator from criminal liability.**
- All families of the deceased persons should be adequately compensated for the loss.
- The Government must revert to mechanisms laid down to effectively investigate and document all such deaths. These include the Police Department, provincial administration, Office of the Attorney General through the Magistrate Courts, and the Ministry of Health.
- **Need to build systems that will support forensic procedures that are the minimum prescribed international standards regarding investigations into suspicious deaths and mass deaths.**
- The government should step up efforts to ensure the accuracy of the number of deaths is reflective of the situation on the ground through a system that captures missing persons consequent to the violence. It is in this context that **Independent Medico-Legal Unit has set up a toll free calling service to report on missing and dead persons due to the post election violence. (Toll free No. 0800-720006).**

Signed:

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IMLU is a member of the KENYANS FOR PEACE WITH TRUTH AND JUSTICE (KPTJ) coalition.