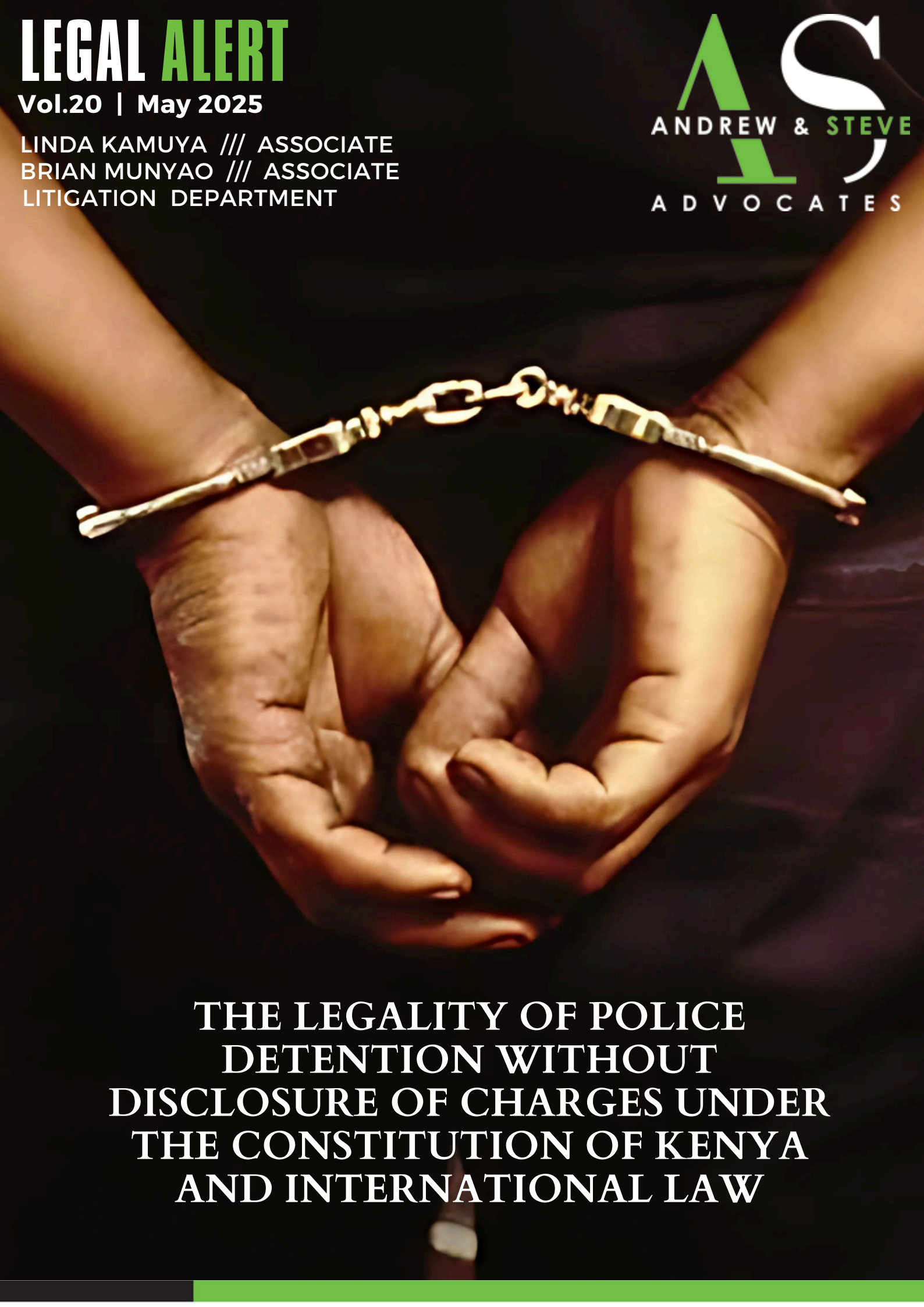


LEGAL ALERT

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THE LEGALITY OF POLICE DETENTION WITHOUT DISCLOSURE OF CHARGES UNDER THE CONSTITUTION OF KENYA AND INTERNATIONAL LAW

INTRODUCTION

The phrase "**Utajulia mbele**" (you will know your charges later) has become a common refrain among Kenyan police officers when arresting individuals. This practice raises significant legal concerns regarding the Rights of Arrested Persons, particularly when they are detained without being promptly informed of the charges against them. Such actions may constitute violations of constitutional and international human rights standards, necessitating comprehensive legal analysis.

I. Constitutional Protections: Article 49 of the Constitution of Kenya, 2010

Article 49 of the Constitution of Kenya, 2010, enshrines the rights of Arrested Persons, emphasizing the protection of personal liberties within the Kenyan legal system. Specifically:

- **Right to be Informed of Reasons for Arrest:** Article 49(1)(a) mandates that an arrested person must be informed promptly, in a language they understand, of the reasons for their arrest and their right to remain silent.
- **Right to be Informed of Charges:** Article 49(1)(g) stipulates that at the first court appearance, the arrested person must be charged or informed of the reason for continued detention or be released.
- **Right to Fair Trial:** Article 50 guarantees every accused person the right to a fair trial, which includes being informed of the charge with sufficient detail to answer it.

The practice of withholding charges until court appearance contravenes these constitutional provisions by delaying the disclosure of charges, thereby infringing upon the individual's right to be informed promptly of the reasons for their arrest and the charges against them.

II. International Legal Obligations: Article 9 of the International Covenant on Civil and Political Rights (ICCPR)

Kenya is a state party to the ICCPR, which is incorporated into domestic law under Article 2(5) and (6) of the Constitution. Article 9 of the ICCPR provides:

- **Right to be Informed of Reasons for Arrest and Charges:** Article 9(2) requires that anyone who is arrested shall be informed at the time of arrest of the reasons for their arrest and promptly informed of any charges against them.
- **Prohibition of Arbitrary Detention:** Article 9(1) prohibits arbitrary arrest and detention, emphasizing that no one shall be deprived of their liberty except on such grounds and in accordance with such procedure as are established by law.

The practice of withholding charges until court appearance violates Kenya's international obligations under the ICCPR, particularly the prohibition of arbitrary detention and the requirement to inform arrested persons of the reasons for their arrest and any charges promptly.

III. Judicial Interpretation: High Court Precedents

Kenyan courts have consistently upheld the rights of arrested persons. In **Kenneth Omondi Ochieng & 38 others v Republic [2019] KEHC 7452 (KLR)**, the High Court emphasized that the police must inform an arrested person of the reasons for their arrest promptly. The court held that detaining individuals without informing them of the reasons for their arrest breaches their constitutional rights to a fair trial and personal liberty.

Furthermore, in **High Court Petition E004 of 2024**, the court reiterated that the power of arrest must be exercised within the confines of the law, and any deprivation of liberty must be justified and lawful. The

court emphasized that detention should be a measure of last resort, used only when less severe measures are insufficient to safeguard public interest.

CONCLUSION

The practice of detaining individuals at a police station without informing them of the charges against them, under the guise of "Utajulia mbele," is unconstitutional and

violates both domestic and international legal standards. It infringes upon the rights of arrested persons as enshrined in the Constitution of Kenya and the ICCPR. Law enforcement agencies must adhere to legal requirements by promptly informing arrested persons of the reasons for their arrest and any charges against them to uphold the rule of law and protect individual rights.

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