



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

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List of issues prior to the submission of the second periodic report of Kenya (CAT/C/KEN/2)*

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

Articles 1 and 4

1. According to the Committee's concluding observations (para. 8)¹ and the letter dated 4 May 2010 by the Rapporteur for follow-up on concluding observations, please provide updated information on the status of the draft Torture Bill, with regard to the timetable for its consideration and adoption. Please provide detailed information on the contents of this bill and state whether the bill, or any other legislation, now contains a definition of torture in full conformity with article 1 of the Convention, and whether acts of torture are punishable by penalties which take into account their gravity.

2. With reference to the Committee's previous concluding observations (para. 8), please provide detailed information on the outcome of the reviews conducted by the Law Reform Commission to ensure that the relevant provisions of the Penal Code, Evidence Act and Criminal Proceedings Act are in conformity with the Convention.² What stage has the review process reached, and has a deadline been set for the consideration of these laws?

3. Please state the steps that have been taken to comply with the Committee's previous concluding observations (para. 11) to raise the age of criminal responsibility in order to

* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of a list of issues to be transmitted to a State party prior to the submission of its periodic report. The State party's replies to this list of issues constitute the report which the State party is required to submit under article 19 of the Convention.

¹ Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee and published under symbol CAT/C/KEN/CO/1.

² State party response to the concluding observations of the Committee, sent by note verbale dated November 2009, para. 4. Available at <http://www2.ohchr.org/english/bodies/cat/docs/followup/CAT.C.KEN.CO.1.Add1.pdf>.

bring it in line with generally accepted international standards. Please provide updated information on the status of the Children's Law (Amendment) Bill which seeks to raise the age of criminal responsibility from 8 to 12 years. Furthermore, please provide detailed information on the acts of torture that the Children's Act proscribes and the nature of penalties it prescribes for such acts.³ Please state whether the Children's Law (Amendment) Bill proposes amendments to any provisions relating to torture.⁴ If so, please provide detailed information on the content of the current provisions relating to torture under the Act, and the proposed amendments to these provisions and what they entail.

4. With reference to the Committee's previous concluding observations (para. 26), please provide detailed information on the legal and administrative measures taken to protect women and children from all forms of violence since the consideration of the initial report. Please provide detailed information on the progress made to enact the Domestic Violence (Family Protection) Bill, the Anti-Trafficking in Persons Bill, the Equal Opportunities Bill, and the Matrimonial Property Bill. Have any of these bills been enacted into law? Please provide detailed information on the content of these bills and how they protect women and children from domestic violence in practice. Please provide detailed information on the steps taken to disseminate information on the laws relating to domestic violence and other relevant laws. Please also provide information on any other steps taken to combat domestic violence, such as training for judges, prosecutors, police and health officers and awareness-raising campaigns for women on their rights and available remedies.

Article 2⁵

5. With reference to the Committee's previous concluding observations (para. 9), please provide information about the efforts made to comply with the Committee's earlier recommendations concerning reforms to the judicial system to enhance its integrity, efficiency and transparency, with a view to improving its capacity to effectively deal with matters involving torture and ill-treatment. Please include information on the steps taken, if any, to involve all stakeholders, including civil society organizations, in these reform processes.

6. With reference to the Committee's previous concluding observations (para. 10), please provide information on the measures taken to ensure that access to justice is not hampered by lack of resources. Furthermore, please provide information on the steps that have been taken to fully implement the newly established legal aid scheme and to set up an office of public defender. Please report on what efforts or measures are being taken to expedite this process.

7. With reference to the Committee's previous concluding observations (para. 12), please provide detailed information on the measures taken to combat the prevalent practice of unlawful and arbitrary arrest, and the widespread corruption among police officers, which particularly affects the poor living in urban neighbourhoods. Please provide

³ Ibid., para. 4.

⁴ Ibid., para. 5.

⁵ The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As general comment No. 2 (2007) on implementation of article 2 by States parties, paragraph 3, states: "the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chap. V of the same general comment.

statistical data, firstly, on unlawful and arbitrary arrests; and secondly, on police officers under (a) investigation, (b) prosecution, and (c) sanctions, and the nature of those sanctions.

8. With reference to the Committee's previous concluding observations (para. 12), please provide updated information on the reform measures that have been taken to improve the bail system in order to ensure that it is more reasonable and affordable.

9. With reference to the Committee's previous concluding observations (para. 13) on the allegations of widespread use of torture and ill-treatment in police custody:

(a) Please state the steps that have been taken since the consideration of the initial State party report to prevent acts of torture and ill-treatment of suspects in police custody and to announce a zero-tolerance policy of all acts of torture or ill-treatment by State officials or others working in their capacity;

(b) Please further provide detailed information on the steps and measures taken, since the consideration of the initial State party report, to ensure that all detained persons are afforded, in practice, the fundamental legal safeguards during detention, including the right to a lawyer, to an independent medical examination and to notify a relative.

(c) Please provide detailed updated statistical data, disaggregated by age, sex and rank, on the number of officials who have been prosecuted for torture or ill-treatment, the number been convicted and the penalties that have been imposed, including criminal and disciplinary actions against law enforcement officials found guilty of torture and ill-treatment.

(d) Please also indicate whether there have been complaints or reports of Somali and Ethiopian refugees or asylum-seekers being tortured and, if so, how many and what steps have been taken in each instance to provide redress.

10. With reference to the Committee's previous concluding observations (para. 14), please provide detailed information on the measures that are being taken to ensure that the Kenya National Commission on Human Rights is, without exception, provided with the necessary financial and human resources to carry out its mandate and to independently monitor all places of detention, including police stations.

11. With reference to the Committee's previous concluding observations (para. 23), please provide detailed information on the steps taken to implement the Committee's recommendation to set up a specific legal framework focusing on the elimination of impunity for perpetrators of acts of torture and ill-treatment and ensuring that all allegations are investigated promptly, effectively and impartially. If the legal framework has been set up, please further explain whether it ensures that perpetrators are prosecuted and convicted in accordance with the gravity of their acts, and victims are compensated as required by the Convention.

12. Please provide detailed information on the measures taken to protect women from domestic violence, especially legal reforms of the law on unequal property rights upon separation or divorce, which discourages women from leaving violent marriages.⁶

13. With reference to the Committee's previous concluding observations (para. 27), please provide detailed information on the measures taken to eradicate the practice of female genital mutilation besides its prohibition by the law. Furthermore, please provide detailed information on the steps taken to comply with the Committee's recommendation to

⁶ See compilation prepared by the Office of the High Commissioner for Human rights for the universal periodic review (A/HRC/WG.6/8/KEN/2), para. 29. See also report of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/11/6), para. 49.

intensify nationwide awareness-raising campaigns against female genital mutilation, and to punish perpetrators of such acts.⁷

14. Please provide information on the steps taken to prosecute and punish trafficking and child prostitution offences and to afford adequate protection to victims.⁸ Please provide detailed statistical data disaggregated by gender, age and ethnic origin on: (a) the prevalence of trafficking, (b) the number of prosecutions, (c) convictions, and (d) sanctions imposed on persons involved in human trafficking.

15. According to information before the Committee, women seeking reproductive health services in Kenya suffer serious physical harm, mental abuse and detention in health facilities. Please indicate the measures being taken by the State party to eradicate practices that amount to torture, inhuman and degrading treatment which are allegedly pervasive in health facilities especially for women seeking reproductive health facilities. Please provide detailed information on the measures being taken to improve – by removing all impediments for redress – access to justice by women that have been subjected to acts of torture, inhuman or degrading treatment when seeking reproductive health services. Furthermore, please specifically respond to reports that women seeking reproductive health services in Kenya:

(a) Wait for extended periods of time for post-delivery stitching for those that experience rips and cuts during child birth;

(b) Are subjected to enormous abuse and negligence during stitching which is usually poorly performed resulting in severe pain;

(c) Are sometimes mutilated under the guise of performing a post-delivery stitching operation; and

(d) Are detained for extended periods of time after delivery for failure to pay medical bills thereby causing serious physical and mental suffering.

Article 3

16. With reference to the Committee's previous concluding observations (para. 16), please provide detailed information on efforts to comply with the Committee's recommendation that the State party should adopt necessary measures to bring current expulsion and refoulement procedures and practices into line with article 3 of the Convention. Please provide updated information on the measures taken to fulfil obligations under article 3 of the Convention by guaranteeing the absolute right to non-refoulement. Please further indicate the measures that have been adopted to ensure that the expulsion of individuals is decided after a careful assessment of the risk of being tortured in each case and that any decision taken should be subject to appeal with suspensive effect.

17. With reference to the Committee's previous concluding observations (para. 16), please provide information on whether any expulsions, returns or extraditions have taken place since the consideration of the initial report and, if so, which judicial mechanisms for the review of these decisions have been put in place. Please indicate the countries to which individuals have been returned, expelled or extradited, and if diplomatic assurances were

⁷ See also the report of the Working Group on the Universal Periodic Review (A/HRC/15/8), paras. 101.53–101.55.

⁸ See concluding observations of the Human Rights Committee (CCPR/CO/83/KEN, para 25) and of the Committee on the Rights of the Child (CRC/C/KEN/CO/2, para. 65).

provided. Please indicate if any post-return monitoring arrangements have been adopted and with what result.

18. With reference to the Committee's previous concluding observations (para. 16), please provide current information on the number of applications for asylum and refugee status submitted, granted and denied during the period since the consideration of the initial report, together with statistics, disaggregated by sex, age and ethnic origin, on applicants for asylum and refugee status and the number of persons that currently have asylum and refugee status.

19. With reference to the Committee's previous concluding observations (para. 17), please provide information on the measures taken to investigate allegations about the practice of returns and renditions of individuals, nationals and non-nationals, to Somalia, Ethiopia and Guantanamo Bay, including the case of Mr. Abdulmalik, on the basis on national security and actions against terrorism. What was the outcome of the investigations, and the measures taken, if any, to provide redress?

Articles 5 and 7

20. With reference to the Committee's previous concluding observations (para. 17), please indicate whether the State party has, since the consideration of the previous report, rejected, for any reason, any request for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result. If so, please provide information on the status and outcome of such proceedings.

21. With reference to the Committee's previous concluding observations (para. 17), please state whether the State party has, since the consideration of the initial report, signed any extradition treaty on torture with any country. If so, please provide detailed information on any persons accused of torture that have been extradited pursuant to such treaties.

Article 10

22. With reference to the Committee's previous concluding observations (para. 18), please indicate whether any measures have been taken to reinforce and expand the human rights training programmes on the absolute prohibition of torture and other provisions of the Convention for law enforcement personnel with the objective of bringing about a change in attitudes and behaviour. Please explain whether these programmes include the prohibition of torture as a specific crime of grave nature, and whether they are available to all law enforcement personnel enumerated in article 10 of the Convention, at all levels, including to the military and health personnel who are in direct contact with persons deprived of their liberty. Furthermore, please provide information about:

- (a) Budgetary allocations made available for these programmes;
- (b) The impact that existing programmes have in changing attitudes and behaviour; and
- (c) Whether assessments and appraisals are done to these programmes to ensure that they are continuously revised to meet the challenges and needs of law enforcement personnel.

23. With reference to the Committee's previous concluding observations (para. 26), please provide detailed, up-to-date information on all the steps taken to comply with the Committee's recommendation that the State party should provide necessary training to all

law enforcement personnel, particularly to personnel who are in direct contact with women victims of violence. Please state whether the investigation of cases of torture are conducted in full compliance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). Please further provide information on whether the State party has developed and implemented a methodology to assess the effectiveness and impact of the training/educational programmes on the reduction of cases of torture, violence and ill-treatment.

Article 11

24. With reference to the Committee's previous concluding observations (para. 13), please provide detailed information on the measures being taken to ensure that interrogation rules, instructions, methods and practices are kept under systematic review in order to prevent cases of torture.

25. With reference to the Committee's previous concluding observations (para. 15), please provide detailed information on the measures that have been taken to bring the conditions of detention in line with the Standard Minimum Rules for the Treatment of Prisoners. Please provide detailed information on the measures that have been taken to allocate sufficient material, human and budgetary resources in order to:

- (a) Reduce overcrowding in prisons, in particular, the high number of persons in pretrial detention by, inter alia, enforcing the relevant provisions which provide for alternative non-custodial measures for minor offences and by reforming the abusive bail system;
- (b) Ensure that adequate health services are available in all prisons by increasing the number of medical practitioners working for the penitentiary system;
- (c) Reduce the high levels of violence inside prisons, including inter-prisoners violence, and punish those responsible; and
- (d) Strengthen judicial supervision of conditions of detention foreseen in the Prison Act.

Articles 12 and 13

26. With reference to the Committee's previous concluding observations (para. 19), please provide detailed information on the actions taken to undertake prompt, impartial and effective investigations of all allegations of excessive use of force and torture by the police during the post-election violence, including sexual violence and gang rape, with the aim of prosecuting and punishing perpetrators with penalties appropriate to the grave nature of their acts.

27. With reference to the Committee's previous concluding observations (para. 20), please describe the steps that have been taken to conduct impartial investigations into allegations of extrajudicial killings and enforced disappearances by law enforcement personnel, particularly, special security operations such as the "Chunga Mpaka" Operation in the Mander district in September 2008, and operations against criminal bands such as the "Mathare Operation" in 2007. Please provide detailed information on the number of complaints, investigations and cases prosecuted, convictions and sentences handed down. Please state whether the penalties are appropriate and reflect the grave nature of the acts as required by the Convention.

28. Please provide detailed information on measures taken to deal with post-election violence, urban crime, general insecurity and activities by such militia groups as the Mungiki and Kisungusungu, made up mainly of unemployed and disenfranchised youth, who have committed various atrocities, including extrajudicial executions. What measures have been taken to arrest and prosecute members of these groups and deal with the climate of impunity that prevails among its members?⁹ Furthermore, provide detailed statistical data disaggregated by age, sex, ethnicity and location, on complaints relating to violence perpetrated during the post-election period.

29. With reference to the Committee's previous concluding observations (para. 20), please provide detailed information on the steps that have been taken to prevent acts such as the alleged extrajudicial killings and enforced disappearances by law enforcement personnel. How many officers have been prosecuted and how many sentences have been handed down? Please also indicate the ranks of those found guilty and provide information on the enforcement of their sentences. Furthermore, please provide detailed statistical data, disaggregated by crime, ethnicity, sex and rank, on complaints relating to torture and ill-treatment of detainees and prisoners allegedly committed by law enforcement officials, as well as on related investigations, prosecutions, and criminal and disciplinary sanctions imposed, if any

30. With reference to the Committee's previous concluding observations (para. 21), please provide information on the steps taken to ensure that the perpetrators of torture during the "Operation Okoa Maisha" are prosecuted and punished according to the grave nature of their acts, that the victims that lost their lives are properly identified and that their families, as well as other victims, are adequately compensated.

31. With reference to the Committee's previous concluding observations (para. 22), please describe the steps taken to provide specific training to police officers on the conduct of evictions. Furthermore, please explain the steps taken to ensure that complaints concerning forced evictions are thoroughly investigated and that those found responsible are brought to trial. Please provide detailed information indicating how many public officials have been brought before the courts for having committed offences related to forced evictions.

32. With reference to the Committee's previous concluding observations (para. 23), please provide detailed and up-to-date information regarding torture related deaths without inquest, and the status of individual cases of torture that are pending in court since the consideration of the initial report.

33. With reference to the Committee's previous concluding observations (para. 24), please provide detailed information on the measures taken to ensure that all individuals who may have been subjected to torture and ill-treatment have the possibility to complain and their cases promptly and impartially examined by competent authorities. Furthermore, please describe the steps taken to ensure that all necessary steps to file a complaint are facilitated, including access to medical assessment as required by the "P3 complaint form".

34. With reference to the Committee's previous concluding observations (para. 30), please provide detailed and up-to-date data, disaggregated by age, sex and ethnic origin on the number of people held in custody, including remandees and prisoners, and the length of sentences that they are serving.

⁹ A/HRC/WG.6/8/KEN/2, para. 26. See also A/HRC/15/8, paras. 101.43 and 101.44.

Article 14

35. With reference to the Committee's previous concluding observations (para. 19), please provide detailed information on the measures that have been taken to ensure that the victims of post-election violence obtain redress and adequate compensation. Please provide statistical data disaggregated by age, sex and ethnicity on the number of persons that have sought redress, cases pending before courts, those completed and the redress and/or amount of compensation awarded to the victims.

36. With reference to the Committee's previous concluding observations (para. 25), please provide detailed information on the number of cases before the courts involving victims of torture, including victims of special police and military operations, seeking redress and compensation. Please provide detailed and up-to-date information on whether any of these cases have been resolved by the courts and the outcome thereof. Please further provide information on any new cases that have been filed since the State party's response to the Committee's concluding observations was prepared.

37. With reference to the Committee's previous concluding observations (para. 25), please provide detailed information about the steps taken to make reparation or compensate and rehabilitate victims of torture and/or cruel treatment. Please include up-to-date information on the types of programmes that have been developed and implemented to provide victims with comprehensive support and care. Please also include current information on the number of victims served under these programmes.

Article 15

38. Please indicate steps taken to ensure that, in practice, evidence obtained by torture is not invoked as evidence in any proceedings, in accordance with article 15 of the Convention. Please indicate which provisions of the Penal Code are applicable.

Article 16

39. With reference to the Committee's previous concluding observations (para. 28), please provide detailed information on the steps taken to ensure that all persons reporting on acts of torture and ill-treatment are protected from intimidation and from any form of reprisal as a result of their activities. What measures has the State party taken to seek closer cooperation with civil society in preventing torture especially in the process of investigating and holding persons accountable for the post-election violence?

Other issues

40. With reference to the Committee's previous concluding observations (para. 29), please provide detailed information on the steps taken to establish an official and publicly known moratorium for the death penalty, with a view to eventually abolishing the practice. Furthermore, what measures have been taken to improve the conditions of detention for persons serving on death row in order to guarantee basic needs and rights?

41. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005), 1373 (2001) and 1566 (2004). Please explain the extent to which the provisions of

the Anti-terrorism Bill of 2006, especially the definition of terrorism, accords with those Security Council resolutions.¹⁰

42. With reference to the Committee's previous concluding observations (paras. 31 and 32), please indicate what steps the State party has taken to become a party to the Optional Protocol to the Convention. Please also indicate what steps have been taken by the State party to accept the competence of the Committee under articles 21 and 22 of the Convention.

43. The Committee notes that it has not received the follow-up information from the State party's initial responses of November 2009, as requested by the Rapporteur for follow-up on concluding observations in his letter dated 4 May 2010. Please provide the information requested.

General information on the human rights situation in the country and the implementation of human rights at the national level

44. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level that have occurred since the initial report and the relevant parts of the follow-up information submitted, including any relevant jurisprudential decisions.

45. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level that have occurred since the initial report and the relevant parts of the follow-up information submitted, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

46. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the initial report in November 2008, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention.

¹⁰ See communication by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/4/26/Add.1), para. 37.