



International Covenant on Civil and Political Rights

Distr.: General
23 July 2012

Original: English

Human Rights Committee 105th session

Summary record of the 2906th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 17 July 2012, at 3 p.m.

Chairperson: Ms. Majodina

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Third periodic report of Kenya (CCPR/C/KEN/3; CCPR/C/KEN/Q/3 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Kenya took places at the Committee table.*
2. **Mr. Wamalwa** (Kenya) reaffirmed his Government's commitment to the creation of conditions conducive to the full realization of civil and political rights. Kenya had made significant progress in that regard since the submission of its third periodic report in June 2010 and he assured the Committee that the process was irreversible. Admittedly, a great deal of work remained to be done, including the formulation of new policies, the revision and enactment of legislation, and the development of programmes and strategies.
3. The adoption of the new Constitution in August 2010 had been a major step forward. It stipulated that general rules of international law and treaties ratified by Kenya formed part of domestic law. The Bill of Rights contained in the Constitution provided for equity, freedom from discrimination, human dignity, freedom of religion and education, and economic, social and political rights.
4. The Kenyan courts had invoked the provisions of the Covenant to enforce basic rights, as reflected in a growing body of jurisprudential rulings. The process of reform of the justice sector, to which the Government attached high priority, had been given further impetus by the adoption of the new Constitution. The judiciary had been transformed by major legislative and administrative measures and was now a fully independent and impartial arbiter, a development that would instil confidence in the rule of law.
5. The Constitution also promoted accountability and value-driven national governance institutions, including the executive, the judiciary, Parliament, the Public Service Commission and the electoral system. It introduced a devolved system of government, which ensured the participation of the people in the management of public affairs and the equitable sharing of national resources, and established guiding principles of leadership and integrity. It also listed legislation to be enacted within specific timelines.
6. The Kenya National Commission on Human Rights and the National Gender and Equality Commission had been upgraded from statutory to constitutional bodies. The Government had taken practical steps to promote equality between men and women, and also non-discrimination. The Constitution guaranteed the representation of women, young people and persons with disabilities by reserving seats for them in the Senate, the National Assembly and other governance structures. The Constitution would be amended to ensure that neither gender accounted for more than two thirds of the membership of the Senate or National Assembly.
7. The HIV and AIDS Prevention and Control Act had become operational in 2009. It raised public awareness of the causes and consequences of HIV, and also of modes of transmission and means of prevention. It also addressed the issues of stigma and discrimination.
8. The Government had enacted legislation to enhance the efficiency, effectiveness and accountability of the police in line with the provisions of the Constitution. The legislation included the National Police Service Commission Act, the National Police Service Act and the Independent Policing Oversight Authority Act, which provided for civilian oversight. The police had a responsibility to protect citizens and their property, to enforce the law in the interest of society and to respect the rights of the individual. As the Government was aware that the police might exceed their powers while discharging their responsibilities, the

Constitution stipulated in detail the rights of arrested persons and established the right to a fair trial.

9. The National Police Service Act made it unlawful for any police officer to perpetrate torture or any form of cruel, inhuman or degrading treatment or punishment. The training curriculum had been reviewed and now covered the prohibition of torture and ill-treatment. More than 18,000 police officers had undergone such training to date. In addition, the terms and conditions of police service had been improved. A Prevention of Torture Bill prohibited torture and other cruel, inhuman or degrading treatment or punishment. When enacted, it would render inadmissible any evidence, information, confession or admission obtained through torture.

10. The Government had also drafted legislation on the humane treatment of detainees and prisoners. Measures to improve conditions of detention included the development of a draft correctional policy that dealt with the functions of prisons and probation departments. Community service was being used to reduce overcrowding in prisons. The Power of Mercy Act (2011) established an advisory committee to advise the President on granting pardon to convicted persons, postponing the imposition of penalties for a specified or indefinite period, substituting a less severe form of punishment, and commuting all or part of a punishment.

11. Access to justice was guaranteed by the Constitution. The Kenyan Court of Appeal had recently reaffirmed the State's responsibility to provide legal aid in the case of *David Njoroge Macharia v. the Republic* and the new Constitution affirmed that State-funded legal representation was a right in certain instances. The National Legal Aid and Awareness Programme launched in 2007 on a pilot basis was being evaluated with a view to its countrywide implementation. The Government was also formulating a national legal aid policy and drafting a National Legal Aid Bill to create a comprehensive and coherent national framework for the provision of legal aid.

12. The Government was steadily implementing the Persons with Disabilities Act and mainstreaming disability issues in all ministries and Government agencies.

13. Elections in Kenya had over the years been fraught with ethnic and social tensions, and the December 2007 elections had ended in unparalleled violence. Anything less than peaceful and credible future elections would nullify the gains made in the reform process and the implementation of the Constitution, which guaranteed the integrity and peaceful nature of national elections. Relevant laws included the Political Parties Act and the Election Act. The Supreme Court of Kenya would have exclusive original jurisdiction to hear and determine disputes relating to presidential elections.

14. The Government had taken measures to ensure that the perpetrators of the post-election violence were held accountable and that justice was done on behalf of the victims. It was currently undertaking a countrywide review of all local post-election violence cases that were under investigation and pending before the courts in order to promote fair and speedy outcomes.

15. As a constitutional democracy, Kenya attached importance to freedom of speech and expression, and believed that a free press and an informed public guaranteed human rights. The country's vibrant and free press enjoyed the right to express its convictions and opinions freely.

16. The Government was seriously concerned about the threat posed by terrorism. Indiscriminate terrorist attacks were claiming the lives of innocent Kenyans, destroying property and disrupting economic activity. Attacks by the militant Somali terrorist group Al-Shabaab constituted a threat to peace and security and to the social, political and economic development of the nation. The Government was therefore committed to routing

the terrorists and had initiated measures to enact a Prevention of Terrorism Bill. It would be guided by the provisions of the Covenant and the Constitution.

17. **Mr. Kibara** (Kenya) said that the third periodic report had been drafted with the involvement of many stakeholders, including ministries and departments, civil society organizations, the Bar Association and the National Commission on Human Rights.

18. Under the old constitutional order, international treaties to which the State was a party had had no effect unless Parliament enacted national legislation for their implementation. Article 2 (6) of the new Constitution provided for the direct application of treaties ratified by Kenya. The country's judges had been highly proactive in giving effect to the provisions of the Covenant.

19. The Government had also taken a number of measures to give effect to the Covenant provisions on discrimination, which were reflected in article 27 of the Constitution. The measures included: mainstreaming of disability issues in all ministries and government agencies; implementation of the People with Disabilities Act; cash transfers to older persons, orphaned and vulnerable children, and persons with severe disabilities; establishment of the Youth Enterprise Development Fund; development of a national land policy that recognized the vulnerability of marginalized groups; and drafting of a Community Land Bill to provide for the use, transfer and management of community land in accordance with the Constitution. Another important measure was the establishment of the National Gender and Equality Commission as a constitutional commission with an expanded mandate.

20. The Constitution proclaimed that women and men had the right to equal treatment, including the right to equality of opportunity in the political, economic, cultural and social spheres. The Political Parties Act (2011) and the Elections Act (2011) reserved seats for women in the Senate, the National Assembly and other governance structures. That was a tremendous gain for women in view of the current wide disparity between men and women parliamentarians.

21. Constitutional provisions concerning equality of opportunity were also resulting in the recruitment of a large number of women to senior positions in the public service and the judiciary.

22. The recognition of the Kenya National Commission on Human Rights by the Constitution meant that it could now rely on the allocation of adequate funds by Parliament and would therefore be able to carry out its mandate effectively in line with the Paris Principles. Although the Commission was not empowered to issue orders for the release of unlawfully detained persons, the inspections it had conducted had led to tremendous improvements in conditions of detention. The Independent Civilian Police Oversight Authority, which was empowered to visit detention facilities, would complement the Commission's work and ensure that action was taken when violations of human rights occurred.

23. Kenya had been a victim of a number of terrorist attacks. However, the countermeasures taken by the Government had been and would continue to be consistent with the provisions of the Bill of Rights.

24. Rendition of a suspect to another country without due process was unlawful. Suspects could be transferred for trial to another country only on the basis of an extradition treaty.

25. The Constitution outlawed discriminatory attitudes, beliefs, practices and administrative actions that adversely affected women and girls. The long-term plan known as Vision 2030 outlined strategies for the economic empowerment of women in order to remedy serious disadvantages in access to and control of resources, economic opportunities,

and access to power and political influence. Other initiatives included the Women Enterprise Fund and the National Development Fund for Persons with Disabilities, which enabled women with severe disabilities to take advantage of a monthly cash transfer programme.

26. The Kenya Education Sector Support Programme enabled women who had become pregnant or been forced into early marriage to return to school and finish their studies. Public universities in Kenya had also taken affirmative action, lowering the pass marks required for women to be admitted.

27. The Family Protection Bill, the Family and Reproductive Health Bill (2008), the unified Marriage Bill (2007) and the Matrimonial Property Bill (2007) provided a comprehensive legislative framework designed to outlaw all discriminatory practices. They were currently being reviewed by the Commission on the Implementation of the Constitution and would soon be submitted to Parliament.

28. Article 25 of the Constitution set forth the fundamental rights and freedoms that were non-derogable during a state of emergency. They included freedom from torture and from cruel, inhuman or degrading treatment or punishment, freedom from slavery or servitude, the right to a fair trial, and the right to habeas corpus.

29. The Government had established a Multi-Agency Task Force to undertake a countrywide review of all cases involving post-election violence. It would prepare the cases for prosecution where adequate evidence had been adduced and provide for investigations where adequate evidence was not yet forthcoming.

30. The Government continued to cooperate with the International Criminal Court on all relevant cases before it.

31. Various reform measures had been introduced to enhance the efficiency, effectiveness and accountability of the police service. The newly established Independent Civilian Police Oversight Authority was mandated to hold the police accountable to the public. The Independent Witness Protection Agency, which enjoyed direct funding under the relevant legislation, provided witnesses with solid protection against threats and intimidations. The police were attending training courses on human rights issues, including the prohibition of torture and cruel, inhuman or degrading treatment. The National Police Service Act criminalized torture and cruel, inhuman and degrading treatment perpetrated by police officers. The Prevention of Torture Bill was currently under discussion. The Commission on Administrative Justice, i.e. the Office of the Ombudsman, would also serve as an effective tool for addressing issues relating to police conduct.

32. While the death penalty remained in force, it had been subject to a moratorium since 1987. In August 2009, the President had commuted over 4,000 death sentences to life imprisonment. In a judgement delivered on 30 July 2010, the Court of Appeal had declared that the mandatory nature of the death penalty in the Penal Code was unconstitutional. Although Kenyans were overwhelmingly against abolition of the death penalty, action was being taken to persuade them of the desirability of its abolition.

33. The following legislation had been enacted or reviewed to address the problem of domestic violence: the Constitution, the Sexual Offences Act (2006), the Employment Act (2007) and the Female Genital Mutilation Act, which outlawed that practice throughout Kenya.

34. The Children's Act was being reviewed with the aim of raising the age of criminal liability from 8 to 12 years in accordance with international standards.

35. The recently established Judiciary Fund would greatly enhance the independence of the judiciary.

36. The freedoms of expression, opinion, assembly and association were fundamental human rights protected by the Constitution. However, the Constitution permitted restrictions on the right to freedom of expression when they were necessary in a democratic society to protect a limited list of public interests, provided that the restrictions were permissible under international law. A Freedom of Information Bill spelled out the relevant parameters. The Media Council established under the Media Act ensured media self-regulation and disciplined journalists who abused media freedom. The Media Bill (2010) was designed to align the Media Council's functioning with the new Constitution, and the Independent Communications Commission of Kenya Bill sought to establish a fully independent body to regulate broadcasting.

37. The Department of Civil Registration was mandated to register all births and deaths in Kenya and those of Kenyans occurring abroad. There was no Government policy aimed at denying or delaying birth registration. However, some children in remote areas were either not registered or registered late due to difficulties in accessing such services. The fact that every child now required a birth certificate to register for national examinations was expected to motivate parents to register their children. Both governmental and civil society organizations were undertaking training sessions to alert Kenyans to the value of the prompt registration of births.

38. **Mr. Neuman** noted that, while the periodic report was a little over two years late, the delay was rather short considering the unrest the State party had experienced in 2007 and 2008. In addition, it had adopted a new Constitution which contained many provisions that improved the protection of rights enshrined in the Covenant.

39. With regard to question 1 of the list of issues, it was unclear whether the Covenant had ever been invoked directly in domestic courts. Reports from sources including the Kenya National Commission on Human Rights indicated that litigants sometimes raised claims under the Covenant directly, although the courts usually decided cases on other grounds. He asked whether the provision in article 2 (6) of the Constitution that treaties formed part of the law of Kenya had been fully clarified and whether the Covenant was in fact directly applicable or whether it had to be implemented under article 21 (4) of the Constitution. He also requested clarification whether a Covenant right prevailed if it was contradicted by a provision in the Bill of Rights.

40. The written replies indicated that many people in rural areas who lived too far from courts to have real access to the formal legal system could resort instead to traditional dispute resolution mechanisms. It would be useful to know whether that involved local, informal procedures that applied customary law and, if so, whether the Constitution and the formal legal system therefore applied to those who had access to the formal courts and a different body of law applied to those who lacked such access. It would be interesting to learn how article 2 (4) of the Constitution was enforced, as it provided that any customary law that was inconsistent with the Constitution was void. Could the State party assure the Committee that customary law that was inconsistent with the Covenant was not applied? Given that many poor Kenyans in rural areas were reportedly unaware of their rights, and that the National Legal Aid and Awareness Programme had been underfunded and had not yet reached many people, he asked what other steps the Government was taking to ensure that citizens knew about and could exercise their rights. The Committee also wished to know what measures the State party was taking to remedy the fact that many executive officials failed to comply with court judgements.

41. As to question 4 of the list of issues, while it was clear that significant steps had been taken to establish gender equality, deep-rooted stereotypes remained and efforts to change both men's and women's expectations were needed. He asked when additional legislation would be enacted to give effect to the constitutional norms for elective political office, and in particular, whether the two-thirds rule would be enacted and come into effect

before the forthcoming parliamentary election. It would be useful to hear about the effects of the Employment Act and whether the principle of equal pay for work of equal value was upheld. The Committee was concerned at reports of the widening gap between the number of girls and boys attending school. It would welcome details of the measures the Government was taking to persuade parents to send their daughters to school.

42. Turning to question 5, he asked when the draft legislation on traditional discriminatory practices harmful to women was expected to come into force. He enquired whether it would address customary practices such as “wife inheritance”, ritual “cleansing” of widows and the discriminatory provisions that treated widows differently from widowers with regard to property inheritance. He wished to know whether the State party was implementing educational measures to discourage traditional harmful practices and whether it was Government policy to discourage polygamy. Under the Constitution, abortion was permitted when the life or health of the woman was in danger and in other situations, to be defined by legislation, which could include rape. He urged the State party to enact legislation to implement that protection for the lives of women and to provide more family planning information and services, which could prevent unwanted pregnancies, reduce the high rate of maternal mortality and reduce the need for abortions.

43. With regard to question 12, it would be useful to know what steps were being taken to enforce the legislation prohibiting female genital mutilation, whether it had been publicized, particularly among the relevant populations, what training law enforcement personnel had received and whether there had been any prosecutions. He asked whether there had been any publicity campaigns to raise awareness among the relevant communities about the harm caused by that practice. Was it true that the board responsible for overseeing the implementation of that legislation had not yet been set up? If it had not, when would that happen?

44. In relation to question 13, the report of the Kenya National Commission on Human Rights indicated that, despite the prevalence of torture, no police officers had been charged with the offence of torture, there were no reports of disciplinary action against police and prison staff implicated in torture, and cases of death in custody were not investigated. He therefore asked when the prevention of torture bill and a bill providing for coroners’ inquests in cases of death in police custody or in prison would be enacted. It would be useful to know when the Civilian Police Oversight Authority would be fully operational, whether it had the power to make decisions with legal effect and whether it would be sufficiently funded to carry out its mandate. He asked whether the constitutional right of detained persons to communicate with their lawyers and relatives was fully respected in practice. It would be interesting to learn how the State party ensured that detainees with no counsel were not in pretrial detention longer than the law permitted. He would welcome the delegation’s comments on NGO reports that incommunicado detention continued to be practised.

45. As to question 17, the Committee urged the State party to expedite its legislative amendment to raise the age of criminal responsibility to 12. He asked whether any steps had been taken to extend the juvenile justice system outside Nairobi and, if not, whether that was dependent on the forthcoming Children’s Act. Since juveniles were placed in adult prisons, he wished to know whether they received special services appropriate to their age and status, and whether the State party realized that bringing adults and juveniles together for meals and sporting events violated the requirement in article 10 of the Covenant to separate juveniles. He asked whether juveniles in adult prisons were subject to the same overcrowded and unsanitary conditions as adult prisoners.

46. **Ms. Waterval** commended the Kenya National Commission on Human Rights for achieving “A” status for its compliance with the Paris Principles. She requested more specific information on how the State party implemented the Commission’s

recommendations. In the light of reports that the Commission Chairperson's term of office had already elapsed, she would appreciate additional details on the composition of the Commission, particularly the duration of the term of office of the other members and procedures for electing members.

47. **Mr. Kälin** said that, as the former Representative of the Secretary-General on the human rights of internally displaced persons, he had visited the State party on several occasions and had witnessed the significant progress that had been achieved in recent years.

48. With regard to the reply to question 14 of the list of issues, he commended the State party for its incorporation of the provisions of article 9 of the Covenant into domestic legislation, specifically articles 23 and 49 of the Constitution on judicial relief for human rights violations and the rights of detainees respectively. He asked what measures had been taken to ensure that the right to be brought before a court no later than 24 hours after being arrested was upheld for all people, especially in rural areas. It would be useful to know whether detainees who were arrested the day before judicial vacations began had to wait until the next ordinary court day.

49. The Committee had received many reports from reliable sources about frequent arbitrary arrests by the police, and credible allegations that young people of Somali origin in Eastleigh were particularly vulnerable to arbitrary arrest and were sent to jail or refugee camps if they did not pay bribes. While acknowledging the State party's admission that corruption was a major problem in the police, he wished to know what specific measures had been taken to address the issue and how effective they had been. He asked whether there were any sanctions for police officers who carried out arbitrary arrests and, if so, whether they were purely administrative or also criminal. Given the apparent pervasiveness of the problem, it would be useful to know whether the State party planned to criminalize arbitrary arrest. Updated information would be welcome on the individuals who had allegedly been arbitrarily arrested during the 2008 Okoa Maisha operation in the Mount Elgon area, particularly whether they had received any compensation. The Committee would also appreciate information on any investigations into the cases of alleged disappearances during the security operations in the Mount Elgon area between 2006 and 2008.

50. While the Committee agreed that States had the duty to protect people against violence, it insisted that all counter-terrorism measures should uphold international human rights guarantees, including those enshrined in the Covenant. In that context, he requested information on the powers of the counter-terrorism police unit, including any special powers not shared by other units. It would be useful to know whether any measures had been taken, including human rights training, to ensure that counter-terrorism operations did not violate basic human rights obligations. Were operations by the counter-terrorism police unit overseen by any supervisory mechanism? Were there legal or de facto restrictions on access to remedies for victims of anti-terrorism operations? He would appreciate the delegation's comments on reports that in late 2006 and early 2007 the Kenya National Commission on Human Rights had been denied access to over 1,500 individuals who had been arrested and held in police stations on suspicion of terrorist activities. Several countries had allegedly been denied consular access to their citizens on the same grounds. It would be useful to have assurances that the definition of terrorism in the forthcoming legislation on the prevention of terrorism and the content of the law would be in line with human rights requirements. Many of the Committee's concluding observations would provide useful guidance in that regard.

51. Paragraph 94 of the written replies stated that crime suspects could be transferred to another country only on the basis of an act of Parliament or a treaty ratified by the State party. It would be useful to learn about the legal basis for the rendition of Mr. Mohammed Abdulmalik, who, after his arrest by the counter-terrorism police, had been sent to

Guantánamo Bay. If the handover had not taken place on a legal basis, the delegation should indicate whether the incident had been investigated and, if so, what the outcome had been. He also asked for details of the legal basis for the rendition to Somalia of a considerable number of those persons who had been arrested in late 2006 and early 2007.

52. He commended the State party for the hospitality it had extended to a huge number of refugees. Bearing in mind the Government's repeated commitment to the principle of non-refoulement, he asked whether refugees could nonetheless be sent back to countries of persecution if they were deemed a threat to national security. It would be useful to know how the State party ensured respect for the absolute ban on returning individuals to a country where they faced a real risk of torture. The Committee would welcome information on the inclusiveness of the process of drafting the new national refugee policy. In particular, he asked whether consultations were being held with refugees, host communities, civil society organizations, international and national NGOs, and United Nations agencies. He recommended that those responsible for that process should follow the model provided by the drafting of the Policy on Internally Displaced Persons (IDPs).

53. On the subject of the personal security of refugees and IDPs in camps, he welcomed the setting-up of police posts in camps but asked whether investigations into the bomb explosions in the Dadaab camp in late December 2011 had been undertaken and those responsible brought to justice. A high level of sexual and gender-based violence was common in refugee and IDP camps, including in Kenya. What had the Government done to prevent and investigate such violence and to bring those responsible to justice? What was being done to provide psychosocial help to victims?

54. He welcomed the ratification of the Great Lakes Protocol on Protection and Assistance to IDPs by Kenya and asked when to expect ratification of the draft IDP Policy and bill, which had been pending for a number of years.

55. What was the Government doing to ensure durable solutions for the still considerable number of persons displaced by post-election violence in 2007 and 2008 who had still not been able to return, particularly in the light of the coming elections in August 2012? It appeared that only some of those IDP groups, known as "self-help groups", had been recognized by the Government. Furthermore, what measures was the Government planning to prevent a repeat of violence at the August elections?

56. In its concluding observations in 2005 (CCPR/C/83/KEN), the Committee had expressed its concern at forced evictions from slums and informal settlements and made recommendations thereon, but the State party had stated in paragraph 171 of its report (CCPR/C/KEN/3) that there had been no developments under the relevant articles of the Covenant. What then was the status of the Eviction and Resettlement Guidelines Bill (2011) and when would it be submitted to Parliament?

57. **Mr. Rivas Posada** said that the Committee was particularly interested in the situation of Kenya, given the importance of clarifying the State party's will to implement human rights in the light of the constitutional changes made in recent years.

58. Referring to question 6 of the list of issues, he asked what the scope of the state of emergency was and to what extent certain rights could be suspended or limited thereunder. In its replies to the list of issues, the State party referred to article 58 of its Constitution, which, read in conjunction with article 25, provided for rights that could not be suspended. Was that an exhaustive list? If exhaustive, it would not be fully compliant with article 4 of the Covenant. All the rights that could not be suspended under the Covenant should be included. He asked if a state of emergency had been declared in Kenya since the new Constitution had come into force in 2010 and how the new provisions for a state of emergency would be applied.

59. On the phenomenon of domestic violence, he asked precisely what impact it could have on daily life and noted that violence could be inflicted on not only women and children but also men. Had the State party fully gauged the scale of the problem? The Government had stated that it had taken a number of initiatives to raise public awareness of domestic violence and, provide training for civil servants, had initiated Vision 2030 — a long-term development model based on economic development and other measures that could affect discriminatory behaviour towards women — and had overseen the adoption of the Sexual Offences Act (2006) and the Employment Act (2007). However, all the measures were geared only to practices in which women were the victims. He requested more precise information on the current situation and reiterated the Committee's request for statistics (question 11 of the list of issues).

60. He noted the measures mentioned in paragraphs 99 and 100 of the replies on measures to address at least in part prison overcrowding and the lack of medical and other assistance in prisons. With regard to the power of mercy granted to the President, which allowed the President to pardon prisoners in order to reduce the prison population, he asked whether the President alone could exercise that power or whether it could be delegated to the judicial authorities.

61. In paragraph 100 of the replies, it was stated that prison officers had been interdicted for allegations of torture as a disciplinary measure. Such acts demanded more radical sanctions. Could officers found guilty of torture be given criminal sanctions and could victims be compensated?

62. **Mr. Flinterman**, referring to question 10 of the list of issues, recalled the Committee's recommendation to consider abolishing the death penalty in its previous concluding observations (CCPR/C/83/KEN) and remove the death penalty from the books for crimes that did not meet the requirements of article 6, paragraph 2. Although he welcomed Kenya's maintenance of the moratorium on the death penalty, he noted that the Government did not yet intend to abolish the death penalty or to pass a law on the ratification the Second Optional Protocol to the Covenant; it argued that the population as a whole were not yet ready for abolition. He asked if the aim of the educational campaigns on abolition mentioned by Mr. Wamalwa was to educate the population concerning the Government's intention to abolish the death penalty.

63. In relation to the *David Njoroge Macharia v. the Republic* judgement, he asked how many other prisoners had been on death row under section 204 of the Penal Code at the time of the judgement and whether the Government had since commuted all those sentences. One High Court judge had in 2011 criticized the Court of Appeal's decision in the case. What action was the Government taking to make members of the judiciary aware of the implications of article 6, paragraph 1, of the Covenant? He also reiterated the Committee's request in question 10 of the list of issues for statistical data relating to the death penalty.

64. Referring to question 9, he recalled the obligation of the State party under article 6 of the Covenant to investigate the killing of two human rights defenders who had cooperated with the Special Rapporteur on extrajudicial, arbitrary and summary executions during his visit in 2009. He noted that the State party had not provided any specific information on an investigation or on whether the perpetrators had been brought to justice. According to the replies to the list of issues, protecting human rights defenders was a key priority of the Government and the Independent Witness Protection Agency had been set up. How often had the agency been used and what other measures had been taken to protect other human rights defenders who had been in contact with the Special Rapporteur during his visit? He further noted that the current Special Rapporteur on extrajudicial, arbitrary and summary executions had stated in his 2011 report on follow-up recommendations on Kenya

to the Human Rights Council (A/HRC/17/28/Add.4) that a number of his predecessor's recommendations had not been implemented.

65. With reference to question 8, and noting the establishment of the Independent Civilian Police Oversight Authority, he asked how many investigations that body had undertaken and, of those, how many had been on its own initiative and how many had been in response to complaints. In how many of the cases had the authority found wrongdoing by law enforcement officials and how many prosecutions had been made? In addition to investigation, it was equally important to prevent cases of extrajudicial killing and enforced disappearance. What measures had Kenya taken to prevent the recurrence of extrajudicial killings and forced disappearances by law enforcement officials?

66. In paragraph 61 of the replies, the State party had said that arrests to eliminate security threats posed by the Sabaot Defence Force had been carried out by security agents and members of the public. He asked under what provisions ordinary citizens could make arrests and what measures were in place to prevent abuses. The State party had said in paragraph 62 of the replies that a team had been appointed to investigate allegations of human rights abuses by security forces. Who were members of the team and how had they been selected and their impartiality ensured? He further noted that the State party had not provided information on the number of cases dismissed or the number of perpetrators convicted, as requested by the Committee in question 7 of the list of issues.

67. With reference to paragraph 64 of the replies, he asked when the State party expected the Truth and Reconciliation Commission to present its report. With regard to the Government's cooperation with investigators from the International Criminal Court, he asked what was being done and what steps taken to facilitate victims' and witnesses' participation in investigations, and expressed his deep concern as to whether Kenya was genuinely cooperating with the Court in the context of prosecutions.

68. According to a presidential pledge made early in 2012, the Government was pursuing the establishment of a local government justice mechanism. What steps had been taken and what was the time frame for its establishment?

The meeting was suspended at 5 p.m. and resumed at 5.15 p.m.

69. **Mr. Wamalwa** (Kenya) noted that many of the issues raised by Committee members related to policies mentioned in the State party report and stressed that many pieces of legislation implementing the new Constitution in 2010 had to be passed within two years of its adoption, after which many other laws pending before Cabinet or Parliament could be adopted. The Eviction and Resettlement Guidelines Bill and the draft IDP Strategy and Bill, for example, would soon come before Parliament. Kenya as a nation was shouldering great responsibility in the region, including dealing with terrorism, the huge burden of refugees from Somalia and piracy, while carrying out those electoral, judicial and policy reforms.

70. **Ms. Njau-Kimani** (Kenya) said that article 2 (6) of the Constitution served as the basis for the direct application of international instruments ratified by Kenya. The Government was still in the process of establishing procedures and an institutional framework for the implementation of the country's human rights obligations, but that did not negate the fact that the Covenant could be directly invoked in the courts. The provisions of the Constitution were largely informed by the international instruments to which Kenya was a party. Since the adoption of the Constitution, Kenyan judges had given effect to provisions of the Covenant relating to, inter alia, the right to a fair trial, the right to legal representation, equality between women and men, and equal access to public services.

71. **Ms. Lichuma** (Kenya) said that the Kenya National Commission on Human Rights comprised a chairperson and four members. With a view to ensuring continuity within the

Commission, a legislative amendment had been adopted on 12 July 2012 stipulating that the selection process for new members should begin four months before the expiry of the incumbent members' terms. A panel would therefore convene in the coming days to select the new members.

72. **Mr. Maina** (Kenya) said that the Anti-Terrorism Police Unit did not hold any special powers beyond those of other police units, though its members did receive specialized training along with extensive human rights training. No complaints of human rights abuses had been lodged against the unit. Any counter-terrorism legislation passed would be in conformity with the Bill of Rights, and persons whose rights were violated could seek redress by initiating court proceedings pursuant to articles 22 and 23 of the Constitution.

73. **Ms. Lichuma** (Kenya) said her Government recognized that discrimination against women did exist in Kenya, but the Constitution provided mechanisms for resolving the issue, particularly articles 10 and 27. Those mechanisms included affirmative action measures stipulating that not more than two thirds of the members of elective or appointive bodies could be of the same gender. In accordance with a constitutional amendment, following elections additional candidates would be nominated to public office if necessary to ensure compliance with the two-thirds rule. Political participation among women was on the rise but remained low. In 1998, only 4.1 per cent of seats in Parliament had been held by women, rising to 8 per cent in 2003 and 9.5 per cent in 2008. Representation of women was also low at the county, municipality and city council levels, but that would soon change in the light of the two-thirds rule, which applied to all levels of government.

74. Data on employment in the private sector had not been properly disaggregated by gender, and the National Gender and Equality Commission was working to improve data collection procedures in that regard. In the civil service, 25.3 per cent of senior-level public officials were women, compared with 41.5 per cent of middle management and 36.9 per cent of support staff. The Constitution provided that the chairperson and vice-chairperson of Government bodies must be of different genders. The development plan known as Vision 2030 identified several strategies to improve the situation of women, including financial support to increase women's income. The Employment Act (2007) prohibited discrimination and harassment on the ground of sex, as well as trafficking and other practices harmful to women. The Women Enterprise Fund promoted women's access to microcredit at the community level.

75. The Youth Enterprise Development Fund conducted various activities to empower young people. The Kenya Education Sector Support Programme 2005–2010 set out a strategic plan to improve literacy and school enrolment rates among girls. Despite the negative attitudes towards girls' education in some communities, enrolment rates for girls had increased and in some cases even surpassed those for boys. In 2000, 43.5 per cent of boys and 42.6 per cent of girls who completed primary school continued on to secondary school, while in 2008 those figures had risen to 54.6 per cent and 50 per cent respectively.

76. **Mr. Wamalwa** (Kenya) said that the bill to implement the two-thirds rule in support of gender equality had been given high priority and should be passed before the next general election.

77. **Ms. Lichuma** (Kenya) said that, while the previous Constitution had discriminated against women in matters pertaining to personal law, that discrimination had been abolished under the new Constitution. The proposed Marriage Bill sought to eliminate customary and religious laws that violated women's rights. The Reproductive Health and Rights Bill (2008) had met with resistance in Parliament and had been withdrawn. While no action was currently being taken to revive the bill, the Constitution did provide for the right to health-care services, including reproductive health. In addition, the draft Health Bill, which was

currently awaiting Cabinet approval before being sent to Parliament, expanded the right to reproductive health care. A Reproductive Health Rights Bill had been drafted in 2009 but had not yet been debated by Parliament. The Family Protection Bill, the Unified Marriage Bill and the Matrimonial Property Bill had all been developed before the adoption of the new Constitution and were now being reviewed to bring them into line with that Constitution. The Equal Opportunities Bill had not been included in that process, although discussions were under way on new equality and non-discrimination legislation that would cover all the issues that the bill would have addressed.

78. Any legal provisions, including in customary law, that were not in line with the Constitution were considered null and void. Article 44 of the Constitution stated that individuals could not be compelled to undergo any cultural practice or rite, though challenges remained in the implementation of that provision. She hoped that within one year the Law of Succession Act would be reviewed and brought into line with the Constitution, eliminating discriminatory practices against women. Recent land laws protected the matrimonial home and stipulated that matrimonial property could be offered as collateral for loans only with the consent of both spouses. The Government was committed to implementing that provision despite resistance from financial institutions.

79. Polygamy was not considered a form of discrimination against women in Kenya. Public consultations had shown that polygamy was accepted among the communities that practised it. The Marriage Bill therefore provided for both monogamous and polygamous marriage, but the latter was allowed only with the consent of the other spouse.

80. **Mr. Wamalwa** (Kenya) said that the aforementioned bills under development had been the subject of wide consultations to ensure that they were in line with the Constitution. The education measures being taken were closing the gap between girls and boys; keeping a school-age child at home was a punishable offence and penalties were strictly enforced. In the most recent elections to the East African Legislative Assembly, four of the nine Kenyan representatives elected were women.

81. **Ms. Chweya** (Kenya) said that, pursuant to article 58 of the Constitution, rights could be limited under a state of emergency only to the extent that doing so was strictly required by the emergency and was consistent with the State party's obligations under international law applicable to a state of emergency. The rights identified in the Covenant as non-derogable could therefore not be limited.

82. **Mr. Kiraithe** (Kenya) said that for some time the Government had been consistently committed to wide-ranging police reforms, and to that end it had established the Police Reforms Implementation Committee in 2009. Due to various constraints, the reforms were being implemented gradually and would take time to complete. The Kenyan security services were certainly not allowed to engage in extrajudicial killings, and all deaths involving police officers were investigated.

The meeting rose at 6 p.m.