



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

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## Committee against Torture

### Concluding observations on the third periodic report of Kenya\*

1. The Committee against Torture considered the third periodic report of Kenya<sup>1</sup> at its 1897th and 1900th meetings,<sup>2</sup> held on 4 and 5 May 2022, and adopted the present concluding observations at its 1908th meeting, held on 11 May 2022.

#### A. Introduction

2. The Committee welcomes the submission of the third periodic report of the State party. It regrets, however, that the report was submitted over a year late.

3. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party's delegation, and the responses provided to the questions and concerns raised during the consideration of the periodic report.

#### B. Positive aspects

4. The Committee welcomes the State party's initiatives to revise and introduce legislation in areas of relevance to the Convention, such as:

- (a) The Refugees Act (No. 10 of 2021);
- (b) The Prevention of Torture Act (No. 12 of 2017), which establishes torture as a separate offence and provides for strict penalties, as well as the ability for the State party to exercise universal jurisdiction over perpetrators of torture present on its territory;
- (c) The National Coroners Service Act (No. 18 of 2017);
- (d) The Legal Aid Act (No. 6 of 2016);
- (e) The Witness Protection (Amendment) Act (No. 45 of 2016);
- (f) The Protection against Domestic Violence Act (No. 2 of 2015);
- (g) The Persons Deprived of Liberty Act (No. 23 of 2014);
- (h) The Victim Protection Act (No. 17 of 2014).

5. The Committee commends the State party's initiatives to amend its policies and procedures in order to afford greater human rights protection and to apply the Convention, in particular:

\* Adopted by the Committee at its seventy-third session (19 April–13 May 2022).

<sup>1</sup> CAT/C/KEN/3.

<sup>2</sup> See CAT/C/SR.1897 and CAT/C/SR.1900.



- (a) The launch of standard operating procedures on the investigation and prosecution of serious human rights offences committed by police officers in 2021;
- (b) The creation of the National Multi-Agency Consultative Forum on Election Preparedness in 2021;
- (c) The adoption of the diversion policy and guidelines in 2019, which aim to guide prosecutors on the diversion of cases from judiciary procedures to out-of-court settlements;
- (d) The adoption of the revised national policy for the eradication of female genital mutilation in 2019, the creation of a unit within the Office of the Director of Public Prosecutions to prosecute female genital mutilation and child marriage in 2014, and the establishment of steering committees in all the 22 priority counties to combat female genital mutilation;
- (e) The establishment of a Victim Protection Board in 2017;
- (f) The creation of a child protection unit within the National Police Service in 2016;
- (g) The creation of the Departmental Human Rights Committee within the Kenya Prisons Service in 2015;
- (h) The national policy on the prevention of and response to gender-based violence in 2014 and the establishment of a specialized court in Shanzu to expedite hearings on sexual and gender-based violence cases;
- (i) The adoption of a free maternity services policy and the presidential directive on free maternity services, in 2013.

## C. Principal subjects of concern and recommendations

### Pending follow-up issues from the previous reporting cycle

6. In its previous concluding observations, the Committee requested the State party to provide information on its implementation of the Committee's recommendations on: extrajudicial killings and disproportionate use of force, fundamental legal safeguards, lynchings and investigation of the post-election violence.<sup>3</sup> While noting with appreciation the replies submitted by the State party on 22 August 2014<sup>4</sup> and referring to the letter dated 29 August 2016 from the Chair of the Committee and the Rapporteur for follow-up to concluding observations addressed to the Permanent Representative of Kenya to the United Nations Office and other international organizations in Geneva,<sup>5</sup> the Committee considers that the recommendations set out in paragraphs 9, 10, 17 and 18 of its previous concluding observations have not yet been fully implemented. Those issues are covered in paragraphs 10, 12, 24 and 36 of the present concluding observations.

### Definition and criminalization of torture

7. While considering the new definition of the offence of torture enshrined in article 4 of the Prevention of Torture Act to be broadly in line with the provisions of article 1 of the Convention, the Committee is concerned that it lacks a direct analogue to the language in article 1 of the Convention to cover "any other person acting in an official capacity" and that the list of purposes for torture contained in the Act seems to be of a limitative rather than an illustrative nature. It is also concerned that a person convicted of acts of ill-treatment may be liable to a fine, which is a penalty that is not commensurate with the grave nature of the crime. Moreover, article 2 of the Act stipulates that torture "has the meaning assigned to it in section 4 ... unless the context otherwise requires" and this may be interpreted as a derogation from

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<sup>3</sup> CAT/C/KEN/CO/2, paras. 9, 10, 17 and 18 and CAT/C/KEN/CO/2/Corr.1.

<sup>4</sup> CAT/C/KEN/CO/2/Add.1.

<sup>5</sup> See

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fFUL%2fKEN%2f25016&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fFUL%2fKEN%2f25016&Lang=en).

the absolute prohibition on torture referred to in article 2 of the Convention. Lastly, the Children Act (No. 8 of 2001) and the National Police Service Act (No. 11a of 2011), which provide for more lenient penalties for acts of torture and other forms of ill-treatment, are still in force (arts. 1, 2 and 4).

**8. The State party should:**

(a) **Amend the Prevention of Torture Act to ensure that the definition of torture is fully in line with article 1 of the Convention and that penalties for acts of ill-treatment reflect the grave nature of these crimes in accordance with article 4 (2) of the Convention;**

(b) **Ensure that the principle of absolute prohibition of torture is incorporated into its legislation and ensure its strict application, in accordance with article 2 (2) of the Convention, which stipulates that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture;**

(c) **Harmonize all national provisions, including by expediting the enactment of the children (amendment) bill 2018 into law and by amending the National Police Service Act (No. 11a of 2011), to ensure the consistent application of appropriate penalties for acts of torture and other forms of ill-treatment.**

**Fundamental legal safeguards**

9. While noting the existing constitutional and legislative provisions regulating police custody, the Committee is concerned that, in practice, the implementation of fundamental safeguards is subject to numerous shortcomings, including:

(a) Reported instances in which persons are held in police custody beyond the legal time limit under Kenyan law of 24 hours without being brought before a judicial authority, which may leave suspects vulnerable to an increased risk of torture or ill-treatment;

(b) Allegations of arbitrary arrests of persons, frequently connected to the extortion of those detained, without their being allowed to contact a relative or person of their choice, and the absence of the systematic and consistent use of registers of persons deprived of liberty at all stages of detention, including the details thereof;

(c) Reports that the right to have timely access to a lawyer and an independent medical examination from the outset of detention is often denied (arts. 2, 11 and 16).

**10. The Committee urges the State party to ensure that all fundamental legal safeguards against torture are guaranteed in practice for all detained persons from the outset of their deprivation of liberty, including:**

(a) **The right to be informed in a language they understand of the reasons for arrest, the nature of any charges against them and their rights;**

(b) **To be assisted by a lawyer, including during the interrogation stages;**

(c) **To request and receive a medical examination by an independent medical doctor that is conducted out of hearing and out of sight of police officers and prison staff, unless the doctor concerned explicitly requests otherwise;**

(d) **To have access to an independent doctor of their choosing, on request;**

(e) **To have their medical record immediately brought to the attention of a prosecutor whenever the findings or allegations may indicate torture or ill-treatment;**

(f) **To inform a family member or any other person of their choosing about their detention;**

(g) **To be registered at the place of detention;**

(h) **To be brought before a judge without delay;**

(i) **To challenge the legality of their detention at any stage of the proceedings.**

**The State party should also provide adequate and regular training for those involved in detention activities on legal guarantees and monitor compliance and penalize any failure on the part of officials to comply.**

#### **Extrajudicial killings, enforced disappearances and excessive use of force**

11. The Committee is seriously concerned at the allegations received of extrajudicial killings, enforced disappearances and excessive use of force by law enforcement officers. It is particularly concerned about:

(a) Reported cases of enforced disappearances and excessive use of force, including lethal force by shooting, during arrests or the policing of demonstrations in the period surrounding the 2017 elections, and the low number of investigations, prosecutions and convictions of perpetrators;

(b) The excessive use of force, including lethal force, by law enforcement officers in informal urban settlements and in the context of the enforcement of measures designed to control the coronavirus disease (COVID-19) pandemic;

(c) The sixth schedule of the National Police Service Act (Act No. 11 of 2011), which allows for the use of firearms by law enforcement officers to protect property, and the criminal law, which does not define all forms of enforced disappearance as criminal offences;

(d) The delay in establishing the National Coroners Service, which will be tasked with supporting investigations into deaths caused by violent criminal acts, extrajudicial killings or deaths in custody (arts. 2, 11, 12 and 16).

#### **12. The State party should:**

(a) **Ensure that prompt, impartial and effective investigations are undertaken into all allegations relating to extrajudicial killings, enforced disappearances and the excessive use of force by law enforcement officers and military personnel, and ensure that the alleged perpetrators are prosecuted and the victims adequately compensated;**

(b) **Revise the legal framework to ensure that all forms of enforced disappearance are clearly defined in criminal law with associated penalties that are proportionate to the severity of the offence;**

(c) **Review the sixth schedule of the National Police Service Act (Act No. 11 of 2011) to ensure that it is fully compliant with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and adequately train all relevant State officers, in particular police officers, on the use of force;**

(d) **Expedite the establishment of the National Coroners Service in order to ensure that any investigation into allegations of extrajudicial executions entails independent forensic examination, including, if necessary, an autopsy, in line with the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016).**

#### **National Human Rights Commission**

13. While noting that the Kenya National Commission on Human Rights has been granted A status in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) since 2005, the Committee is concerned that the resources allocated to the Commission are insufficient to allow it to perform all its functions effectively, notably its role in conducting visits to places of detention and in receiving and investigating complaints about alleged human rights violations. It is also concerned that the statutory mandate of the Kenya National Commission on Human Rights Act (No. 14 of 2011) may as a practical matter be insufficiently explicit regarding its right to monitor and inspect detention facilities run by the military. It is further concerned about the lack of information regarding concrete measures taken by the State party to ensure effective implementation of the Commission's recommendations (art. 2 (1)).

**14. The State party should, without delay, take the necessary measures to ensure the Commission's functional independence by guaranteeing it an adequate budget that allows it to recruit staff, set up regional offices and fulfil the mandate entrusted to it.**

**The State party should also clarify the meaning of its legislation (or if necessary amend it) so that it is clear that the Commission's remit includes the right to monitor and inspect detention facilities run by the military. Lastly, the State party should take all necessary measures to ensure effective implementation of the Commission's recommendations, including measures to monitor whether public agencies are in fact appropriately following up on those recommendations.**

#### **Pretrial detention**

15. While taking note of the information provided by the State party on the measures to address the overuse of prolonged pretrial detention, which is causing chronic overcrowding in detention facilities, the Committee remains concerned by the high number of detainees awaiting trial, who account for 48 per cent of the overall prison population and are often being held for long periods in detention. In this regard, the Committee notes with appreciation the improvements to the bail system, including through the adoption of the bail and bond policy guidelines in 2015, but is concerned that the bail conditions are still too prohibitive to be effective in practice (arts. 2, 11 and 16).

#### **16. The State party should:**

(a) **Ensure that the regulations governing pretrial detention are scrupulously respected and that such detention is resorted to only in exceptional circumstances and for limited periods and in accordance with the law, taking into account the principles of necessity and proportionality;**

(b) **Intensify efforts to significantly reduce overcrowding in detention facilities by increasing judicial capacity to reduce the backlog of cases and by making more use of alternatives to detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);**

(c) **Ensure systematic oversight of the lawfulness of pretrial detention by the public prosecutor's office.**

#### **Conditions of detention**

17. While acknowledging the steps taken by the State party to improve conditions in places of detention, such as the refurbishment of several penitentiary institutions, the Committee remains concerned at reports indicating overcrowding (up to 400 per cent) in some prisons and poor material conditions of detention in places of deprivation of liberty, in particular insalubrity and inadequate hygiene, lack of ventilation, the poor quality and insufficient quantity of the food and water provided, and limited recreational or educational activities to foster rehabilitation. Furthermore, the limited access to quality health care, including mental health care, and the lack of trained and qualified prison staff, including medical staff, remain serious problems in the prison system. The Committee is also concerned at reports indicating the prevalence of prison violence, including violence perpetrated by prison staff on detainees and inter-prisoner violence and sexual abuse, and the practice of detaining children with adults (arts. 2, 11 and 16).

**18. The Committee calls on the State party to intensify its efforts to bring conditions of detention into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), including by appropriately amending the Prisons Act, chapter 90, and the Borstal Institutions Act, chapter 92. It should also:**

(a) **Reduce overcrowding in prisons by making more use of alternatives to detention and continue to implement plans to develop the prison infrastructure and improve detention conditions;**

(b) **Ensure the necessary resources are allocated for the proper medical and health care of prisoners, in accordance with rules 24 to 35 of the Nelson Mandela Rules;**

(c) **Increase the number of trained and qualified prison staff, including medical staff, and strengthen the monitoring and management of inter-prisoner violence, including sexual violence;**

(d) **Ensure that prompt, impartial and effective investigations are undertaken into all allegations relating to acts of torture and ill-treatment by prison personnel and that the alleged perpetrators are prosecuted and adequately punished;**

(e) **Ensure that juveniles are strictly separated from adults in all detention facilities and that they are deprived of their liberty only as a last resort and for as short a period of time as possible, in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).**

#### **Deaths in custody**

19. The Committee regrets the lack of reliable information on the total number of prison deaths, their causes and follow-up investigations (arts. 2, 11, 12 and 16).

20. **The State party should:**

(a) **Ensure that all instances of deaths in custody are promptly and impartially investigated by an independent entity, including by means of independent forensic examinations and, where appropriate, apply the corresponding sanctions;**

(b) **Assess the effectiveness of programmes for the prevention, detection and treatment of infectious diseases in prisons;**

(c) **Compile and provide to the Committee detailed information on deaths in all places of detention, their causes and the outcome of the investigations.**

#### **Monitoring of detention facilities**

21. The Committee is further concerned about the lack of information on access by monitoring bodies, such as the Kenya National Commission on Human Rights, to certain places of detention, notably those within the remit of the army and the National Intelligence Service (arts. 2, 11 and 16).

22. **The State party should:**

(a) **Ensure that monitoring bodies with a mandate to visit places of deprivation of liberty are able to carry out independent and unannounced monitoring activities of all places of deprivation of liberty in the country and to speak confidentially to all detained persons;**

(b) **Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

#### **Investigation into post-election violence**

23. The Committee is concerned that the public finance management (Reparations for Historical Injustices Fund) regulations of 2017, which were designed to operationalize the Restorative Justice Fund, remain at the consultative stage, which prevents victims from obtaining access to full redress for the gross human rights violations that occurred in the context of the 2007 elections. It also regrets the lack of information on the status of implementation of the recommendations of the Truth, Justice and Reconciliation Commission. It is further concerned, in particular in the light of the elections scheduled for 2022, that limited progress has been made in ensuring access to justice and remedies, including guarantees of non-repetition, for victims of the grave human rights violations that occurred in the context of the 2017 elections, including lethal use of force, assaults, torture and sexual violence by police officers, and that the regulations to govern the Victim Protection Fund await parliamentary approval, which is necessary before victims can gain access to reparations. Moreover, the Committee is concerned about the lack of information regarding the prosecution of these cases (arts. 2, 12, 13, 14 and 16).

24. **The State party should:**

(a) **Intensify efforts to ensure the full and effective implementation of all the recommendations of the Truth, Justice and Reconciliation Commission, including expediting the process of making the Restorative Justice Fund fully operational;**

(b) **Step up efforts to provide access to remedies for victims of the post-election violence in 2017, including accelerating the process of operationalizing the Victim Protection Fund;**

(c) **Take concrete steps ahead of the 2022 elections to address impunity for the violence that occurred in earlier election cycles, including the investigation, prosecution and punishment of all perpetrators, in particular police and security officers.**

**Treatment of refugees, asylum seekers, migrants and stateless persons**

25. While taking note of the adoption of the Refugees Act (No. 10 of 2021), the Committee is concerned about the provisions of clause 19 (2), which allows for broad exceptions to the principle of non-refoulement on the basis of public morality. The Committee is particularly concerned that lesbian, gay, bisexual, transgender and intersex refugees and asylum seekers could be subjected to refoulement on the de facto basis of their sexual orientation and gender identity. Other issues of concern include the inclusion of prisons, police stations and remand homes in the definition of refugee transit centres; the detention of non-citizens solely for irregular entry into the country; the intention of the State party to close both the Dadaab and Kakuma refugee camps by June 2022, citing alleged security risks, which may result in mass expulsions, involuntary repatriations and the refoulement of a very large number of Somali and South Sudanese refugees, which may put them at risk of being detained, tortured or killed upon their return to their country of origin (arts. 3 and 11).

26. **The State party should:**

(a) **Strictly uphold the principle of non-refoulement in both law and practice;**

(b) **Amend the Refugees Act, including section 19 (2) and provisions that include prisons, police stations and remand homes in the definition of transit centres, to ensure its full compatibility with article 3 of the Convention;**

(c) **Put an end to the practice of detaining non-citizens solely for irregular entry into the country;**

(d) **Consider revising its decision to close the Dadaab and Kakuma refugee camps to avoid the mass deportation and involuntary repatriation of Somali and South Sudanese refugees, who may face arbitrary detention, torture or other forms of ill-treatment upon their return to their country of origin.**

**Counter-terrorism measures**

27. While acknowledging the State party's national security concerns, the Committee remains deeply concerned about reports of arbitrary arrest and detention, extortion, forcible relocation, refoulement, extrajudicial killings, torture, sexual and gender-based violence and enforced disappearances being perpetrated by State officials, in particular by members of the police anti-terrorist unit, in the context of counter-terrorism operations, including during the Usalama Watch Operation in April 2014, and regrets the lack of information on the investigations and prosecutions conducted and their outcome, including redress for victims. It is also concerned that the Prevention of Terrorism Act (No. 30 of 2012) contains a definition of terrorism that is vague, overly broad and has been used to oppress those critical of the Government. The Committee is further concerned that article 35 of the Act provides for excessive restrictions on the rights of persons suspected or accused of involvement in terrorist acts, including the right to due process and a fair trial and the right to liberty and security of person. The Committee notes the efforts by the State party to amend the sections of the Security Laws (Amendment) Act (No. 19 of 2014) deemed by the High Court judgment

to be unconstitutional, but regrets the lack of information about when such changes are likely to take effect (arts. 2, 11, 12 and 16).

**28. The State party should:**

**(a) Ensure that the measures taken to combat terrorism are in conformity with the Convention and strictly necessary in the light of the situation and the requirements of the principle of proportionality;**

**(b) Review the definition of terrorism in the Prevention of Terrorism Act (No. 30 of 2012) to ensure that it is in line with international standards and amend article 35 of the Act to guarantee that the rights of persons suspected or accused of involvement in terrorist acts are duly protected;**

**(c) Expedite the process of amending the Security Laws (Amendment) Act (No. 19 of 2014) in line with the judgment of the High Court;**

**(d) Carry out prompt, impartial and effective investigations into allegations of human rights violations, including acts of torture and ill-treatment, committed in the context of counter-terrorism operations, prosecute and punish those responsible and ensure that victims have access to effective remedies and full reparation.**

**Allegations of torture and impunity**

29. The Committee appreciates the efforts made by the State party to combat impunity for acts of torture and ill-treatment, such as the development by the Office of the Director of Public Prosecutions of a reference guide and draft charge sheets to ensure effective enforcement of the Prevention of Torture Act. However, in view of the numerous allegations and complaints of torture and ill-treatment by State officials, especially by police officers, in places of deprivation of liberty and during policing activities, and the reports that the police oversight mechanisms remain ineffective, the Committee is deeply concerned at the lack of accountability, which contributes to an environment of impunity. The Committee notes with concern that there are no documented cases of persons prosecuted for and convicted of torture under the Prevention of Torture Act. It is also concerned at reports indicating that, despite the adoption of the Legal Aid Act (No. 6 of 2016) and the National Action Plan on Legal Aid (2017–2022), victims face difficulties in obtaining free legal assistance. In addition, it is concerned about reports that members of the military and the National Intelligence Service are benefiting in practice from sweeping immunity from prosecution (arts. 2, 4, 11, 12, 13 and 16).

**30. The State party should:**

**(a) Expedite finalizing and rolling out the reference guide and charge sheets developed by the Office of the Director of Public Prosecutions and take the necessary measures for the wide dissemination of the Prevention of Torture Act and the familiarization of judges and prosecutors with it, so as to help ensure its effective enforcement;**

**(b) Ascertain that all allegations of acts of torture or ill-treatment by police officers, members of the military or National Intelligence Service personnel are promptly, effectively and impartially investigated, duly prosecuted as torture or other cruel, inhuman or degrading treatment or punishment, and that perpetrators are punished appropriately if found guilty;**

**(c) Ensure that the Independent Policing Oversight Authority and the Kenya National Commission on Human Rights are allocated sufficient financial and human resources to effectively carry out their mandates, including the collection of independent data on complaints, investigations, prosecutions, convictions and penalties against law enforcement officials for acts of torture and ill-treatment; and that the internal affairs unit within the National Police Service is sufficiently funded and that it prioritizes the use of a vetting system under which alleged offenders are suspended from duty, pending investigation, and appropriately prosecuted;**

**(d) Put in place an independent, effective, confidential and accessible complaints mechanism in all places of detention, including police custody facilities and**



**prisons, and protect complainants, victims and members of their families from any risk of reprisals;**

**(e) Provide the human and financial resources needed to guarantee the proper functioning of the National Legal Aid Service so as to ensure that lack of resources is not an obstacle to accessing justice, further decentralize the national legal aid programme to cover all regions of the country and intensify efforts to increase the number of lawyers throughout the country;**

**(f) Compile and disseminate up-to-date statistics on the complaints filed, investigations conducted, prosecutions initiated and convictions handed down in cases involving allegations of torture and ill-treatment.**

#### **Mental health institutions**

31. The Committee is concerned about the information received on forced medical treatments, physical and chemical restraints and the isolation faced by persons with disabilities in psychiatric hospitals. It is also concerned about the absence of measures to ensure that persons with disabilities are required to provide their free and informed consent as a condition for medical treatment and scientific experimentation (art. 16).

**32. The State party should:**

**(a) Provide support to persons with disabilities, including information in accessible formats, in order to enable them to give free and informed consent in relation to medical treatment and scientific experimentation;**

**(b) Train health-care professionals on the rights of persons with disabilities, specifically on the right to free and informed consent;**

**(c) Ensure that instruments of restraint and force can only be used in accordance with the law and under appropriate supervision and for the shortest time necessary, and that their use is limited to that which is strictly necessary and proportionate;**

**(d) Ensure that psychiatric hospitals are adequately monitored and that effective safeguards are in place to prevent any ill-treatment of persons in such facilities.**

#### **Death penalty**

33. While noting the de facto moratorium on the death penalty applied by the State party, which has not carried out any executions since 1987, the Committee remains concerned that such sentences are still handed down, including for relatively less serious offences, and that death row inmates face conditions of detention that, in and of themselves, can amount to ill-treatment. The Committee welcomes the steps taken by the State party to implement the judgment in the 2017 Supreme Court case of *Francis Karioko Muruatetu and another v. Republic of Kenya and five others*, which found the mandatory use of the death penalty for murder as outlined in section 204 of the Penal Code to be unconstitutional. It is, however, concerned about the fact that such mandatory use of the death penalty for other crimes has been interpreted as not covered by that decision and about the lack of information as to when the process of legal reform to enact that judgment and the resentencing of eligible death row inmates will likely conclude. It is further concerned that the State party has yet to take concrete steps to implement the recommendation of the Task Force on the implementation of the Supreme Court ruling on the death penalty to abolish the death penalty (arts. 2, 11 and 16).

**34. The State party should:**

**(a) Expedite the process of amending section 204 of the Penal Code and resentencing eligible death row inmates in accordance with the Supreme Court's ruling in the 2017 case of *Francis Karioko Muruatetu and another v. Republic of Kenya and five others*, and consider steps to extend the prohibition on the use of the mandatory death penalty to apply to all crimes, not just murder;**

(b) **Consider the possibility of reviewing its policy with a view to abolishing the death penalty in law or taking affirmative steps to formalize the moratorium on the death penalty;**

(c) **Ensure that conditions of detention for condemned prisoners do not constitute cruel, inhuman or degrading punishment or treatment by taking immediate steps to strengthen legal safeguards and ensure access to free legal aid;**

(d) **Provide the Committee, in its next periodic report, with information on the precise number of death sentences passed, the courts responsible and the crimes for which those sentences were handed down.**

### **Lynchings**

35. The Committee reiterates its concern about reports of cases of lynchings, in particular of elderly women accused of witchcraft, and about the allegations that these acts have not been effectively investigated, prosecuted and punished, even in cases where there is video evidence of the lynching (arts. 2 and 12).<sup>6</sup>

36. **The Committee reiterates its recommendation to amend the Witchcraft Act (1925) to bring it into conformity with the Constitution and international human rights standards in order to prevent and combat the practice of lynching. The State party should investigate, prosecute and appropriately punish the perpetrators of such acts, in order to ensure the security and safety of all persons.<sup>7</sup> The State party should also provide redress to the families of the victims, including adequate compensation.**

### **Sexual and gender-based violence**

37. The Committee is concerned about:

(a) High levels of domestic violence, which have significantly increased during the COVID-19 pandemic, and the persistence of sexual violence, including rape, in the private and public spheres;

(b) Weaknesses in the legal and institutional response, including poor enforcement of the Protection against Domestic Violence Act, and a failure to criminalize marital rape;

(c) Underreporting by victims, owing to, among other things, law enforcement and medical staff illegally charging victims for reporting forms, and the low prosecution rate in cases of sexual and gender-based violence;

(d) Reports of election-related gender-based violence, including of a sexual nature, such as gang rapes, against women during the elections in 2017, the majority of which were allegedly perpetrated by police officers or members of other security forces, and the delays in prosecuting perpetrators and providing redress to the victims of such violence, notwithstanding the recommendations of the Commission of Inquiry into Post-Election Violence of 2007/2008;

(e) The persistence of forced and coerced sterilization of HIV-positive women and women with disabilities (arts. 2 and 16).

38. **The State party should:**

(a) **Ensure that all cases of gender-based violence, especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly investigated, that alleged perpetrators are prosecuted and, if found guilty, punished appropriately, and that the victims or their families receive redress, including adequate compensation;**

(b) **Ensure the strict enforcement of the Protection against Domestic Violence Act, including through the allocation of adequate human and financial resources, and**

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<sup>6</sup> CAT/C/KEN/CO/2, para. 17.

<sup>7</sup> Ibid.

**amend the Criminal Code and/or the Sexual Offences Act (No. 3 of 2006) to criminalize marital rape;**

(c) **Ensure that victims, including disadvantaged women, have ready access to reporting and medical forms, including P3 forms, and are not charged for obtaining them;**

(d) **Prosecute the perpetrators of the gender-based violence that was committed after the elections of 2007 and during those of 2017, ensure the full implementation of the report of the Commission of Inquiry and provide adequate reparations and assistance, including psychosocial and material support, to women who have fallen victim to such violence;**

(e) **Issue guidelines on the protection of women and girls, including in educational institutions, during elections, as part of a human rights-based approach to law enforcement during elections;**

(f) **Strengthen its efforts to investigate allegations of involuntary sterilizations or other harmful practices in connection with the reproductive health and rights of HIV-positive women and women with disabilities, identify and punish those involved in such practices and provide adequate remedies for the victims.**

#### **Female genital mutilation**

39. The Committee is concerned that the harmful practice of female genital mutilation continues to be common in some communities. It also notes with concern the lack of accurate data, the relatively low level of prosecutions and the continued impunity of perpetrators, as well as reports, according to which medical practitioners are now carrying out the procedure (the “medicalization” of female genital mutilation) (arts. 2 and 16).

40. **The State party should ensure that the Prohibition of Female Genital Mutilation Act (No. 32 of 2011) is widely known and implemented, and that perpetrators of female genital mutilation, including medical practitioners, are prosecuted and adequately punished. It should take measures to eradicate female genital mutilation, including through cross-border cooperation and increased awareness-raising among religious and traditional leaders and the general public, in cooperation with civil society, about the criminal nature of the procedure, its adverse effect on the human rights and health of women and the need to eradicate it and its underlying cultural justifications.**

#### **Abortion**

41. The Committee is concerned that while article 26 of the Constitution allows for abortion in limited circumstances, articles 158–160, 228 and 240 of the Penal Code criminalize acts relating to the provision of abortion services. The Committee observes with concern that the State party’s restrictive and unclear legal framework on abortion leads women to seek unsafe and illegal abortions. In this respect, it is also concerned about the Government’s withdrawal in 2013 of the standards and guidelines for reducing morbidity and mortality for unsafe abortion and the failure to reinstate them following the High Court ruling in 2019 finding their removal to be unconstitutional. The Committee is further concerned about the withdrawal in 2017 of the national guidelines on the management of sexual violence and the lack of clear policies and guidelines on access to abortion in cases of sexual violence. Lastly, it notes with concern that parliamentary attempts to enact the reproductive health bill of 2019 have been unsuccessful.

42. **The State party should review its constitutional and legislative framework to ensure clear and harmonized provisions, policies and guidelines to govern access to safe and legal abortion, as permitted under article 26 of the Constitution, including in cases of pregnancy resulting from sexual violence. In doing so, the State party should expeditiously enact the reproductive health bill of 2019, repeal articles of the Penal Code criminalizing abortion under the current law and reinstate both the standards and guidelines for reducing morbidity and mortality for unsafe abortion in Kenya and the national guidelines on the management of sexual violence.**

**Sexual orientation, gender identity and intersexuality**

43. The Committee welcomes the adoption of the Registration of Persons (Amendment) Act of 2019, which provides for the legal recognition of intersex persons. It is, however, concerned about:

(a) Sections 162 and 165 of the Penal Code criminalizing same-sex relations, and the High Court ruling in 2019 that declared those provisions to be constitutional;

(b) Reports of lesbian, gay, bisexual, transgender and intersex individuals experiencing harassment, discrimination and violence, including violations perpetrated by law enforcement officers and vigilante groups, and facing barriers to access to justice and remedies;

(c) Cases of non-urgent, irreversible surgical procedures, undertaken without full, free and informed consent, infanticide and abandonment among intersex children (arts. 2 and 16).

44. **The State party should:**

(a) **Amend all relevant laws, including sections 162 and 165 of the Penal Code, to decriminalize consensual sexual relations between adults of the same sex;**

(b) **Intensify its efforts to eradicate all forms of discrimination, harassment and violence on the basis of sexual orientation and gender identity and provide access to justice and remedies for victims;**

(c) **Strengthen measures to end the performance of irreversible medical acts, especially surgical operations, on intersex children who are not yet capable of giving their full, free and informed consent, except in cases where such interventions are absolutely necessary for medical reasons. Access to effective remedies for victims of such interventions should also be ensured.**

**Training**

45. While taking note of the efforts made by the State party to provide general human rights training for members of the police, the judiciary and prison staff, the Committee regrets the lack of training on the provisions of the Convention and the contents of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). It also regrets that no mechanism for evaluating the effectiveness of training programmes has been established, as well as the absence of specific training for the armed forces and relevant medical personnel (art. 10).

46. **The State party should:**

(a) **Further develop mandatory training programmes to ensure that all officials are well acquainted with the provisions of the Convention, especially the absolute prohibition of torture, and that they are fully aware that violations will not be tolerated and will be investigated, and that those responsible will be prosecuted and on conviction, appropriately punished;**

(b) **Ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Istanbul Protocol;**

(c) **Systematically provide training to all law enforcement officials on the use of force, especially in the context of controlling demonstrations, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;**

(d) **Develop a methodology for assessing the effectiveness of educational and training programmes in reducing the number of cases of torture and ill-treatment and in ensuring the identification, documentation and investigation of such acts, as well as the prosecution of those responsible.**

## Redress

47. While taking note of the provisions of the Prevention of Torture Act that stipulate the right of persons to access legal assistance and to claim compensation for torture and ill-treatment, the Committee regrets the lack of information on the actual application of those provisions, including data on victims of torture and ill-treatment who have obtained redress thus far. It also regrets the lack of information on whether victims of torture have received medical or psychosocial rehabilitation, in addition to compensation, and whether specific rehabilitation programmes have been established for them (art. 14).

48. **The State party should:**

(a) **In line with article 14 of the Convention, compile and disseminate up-to-date statistics on the number of victims of torture and ill-treatment who have obtained redress, including medical or psychosocial rehabilitation and compensation, as well as on the forms of such redress and the results achieved;**

(b) **Take the necessary legislative and administrative measures to ensure that civil proceedings for compensation can be initiated by victims of torture or ill-treatment, their families or their defence counsel, independently of any criminal proceedings that might have been initiated or completed;**

(c) **Conduct a comprehensive assessment of victims' needs and ensure that specialized rehabilitation services are promptly made available and are provided with adequate resources.**

## Follow-up procedure

49. **The Committee requests the State party to provide, by 13 May 2023, information on follow-up to the Committee's recommendations on extrajudicial killings, enforced disappearances and excessive use of force; the National Human Rights Commission; and female genital mutilation (see paras. 12 (a), 14 and 40 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations of the concluding observations.**

## Other issues

50. **The Committee encourages the State party to consider making the declarations under articles 21 and 22 of the Convention.**

51. **The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its dissemination activities.**

52. **The Committee requests the State party to submit its next periodic report, which will be its fourth, by 13 May 2026. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its fourth periodic report under article 19 of the Convention.**