



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

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Committee against Torture

**Third periodic report submitted by Kenya under
article 19 of the Convention pursuant to the
optional reporting procedure, due in 2017* ** *****

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* The second periodic report of Kenya (CAT/C/KEN/2) was considered by the Committee at its 1146th and 1149th meetings, held on 15 and 16 May 2013 (see CAT/C/SR.1146 and 1149). Having considered the report, the Committee adopted concluding observations (CAT/C/KEN/CO/2 and Corr.1).

** The present document is being issued without formal editing.

*** The annex to the present report is on file with the Secretariat and is available for consultation. It may also be accessed from the web page of the Committee against Torture.

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Acronyms and abbreviations

ACCIK	Association of Charitable Children Associations of Kenya
ARP	Alternative Rite of Passage
ATPU	Anti-Terrorism Police Unit
CAT	Convention against Torture other forms of Cruel, Inhuman or Degrading Treatment or Punishment
CCI	Charitable Children Institutions
CS	Cabinet Secretary
DRA	Department of Refugee Affairs
EACC	Ethics and Anti-Corruption Commission
FGM	Female Genital Mutilation
GBV	Gender Based Violence
IG	Inspector General
IPOA	Independent Policing Oversight Authority
KDHS	Kenya Demographic & Health Survey
KNCHR	Kenya National Commission on Human Rights
KPS	Kenya Prison Service
NCCS	National Council for Children Services
NGEC	National Gender and Equality Commission
NPS	National Police Service
NPSC	National Police Service Commission
OCS	Officer in Charge of Station
TJRC	Truth Justice and Reconciliation Commission

Introduction

1. The Republic of Kenya welcomes this opportunity to submit its Third Periodic Report on the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention) to the United Nations Committee on Torture.
2. The Report provides replies to the list of issues (CAT/C/KEN/QPR/3) transmitted by the UN Committee on Torture prior to the submission of Kenya's periodic report. The Report further discusses various challenges faced by the Government in its efforts to ensure the full implementation of its obligations.
3. In developing the report wide consultations were undertaken with Government Ministries Departments and Agencies, the Kenya National Commission on Human Rights, the National Gender and Equality Commission, Civil Society Organizations and other stakeholders.

Articles 1 and 4

Response to List of Issues 1–4 (CAT/C/KEN/QPR/3)

4. Freedom from torture and cruel, inhuman or degrading treatment or punishment is an absolute and non derogable right protected by the Constitution of Kenya. The Prevention of Torture Act, 2017 gives effect to the State's obligations outlined in the Convention as well as Constitutional provisions on the right to freedom from torture and cruel, inhuman and degrading treatment or punishment. The legislation provides a comprehensive definition of torture and other cruel, inhuman and cruel treatment and punishment in line with the Convention.
5. The Prevention of Torture Act proscribes heavier penalties for the crime of torture as compared to the Children's Act of 2001 and the National Police Service Act. A person who commits the crime of torture is liable to imprisonment for a term not exceeding twenty-five years without option of a fine. Torture that results in the death of a person attracts imprisonment for life. Section 7 of the Act provides for a penalty of a term not exceeding fifteen years or a fine of shillings one million or both for an offence of cruel, inhuman or degrading treatment or punishment.
6. The Prevention of Torture Act repeals certain other pieces of legislation to ensure consistency in the penalties for torture and cruel, inhuman and degrading treatment. The Committee's concern, outlined in concluding observation para 8, on the low imprisonment term of those who commit torture or ill-treatment against children, is addressed by section 31 of the Act, which stipulates that where there is any conflict between the provision of the Prevention of Torture Act and any other law with regard to the crime of torture or cruel, inhuman or degrading treatment or punishment, the provisions of the Prevention of Torture Act will prevail. Finally, the Act confers upon the Kenya National Commission on Human Rights (KNCHR) the duty to investigate alleged violations of the provisions of the Act upon receipt of a complaint or on its own initiative and the power to monitor the compliance by the State with international treaty obligations relating to torture and cruel, inhuman and degrading treatment and punishment.
7. A review of the Children's Act is being undertaken to ensure conformance with the new constitutional order. Several amendments have been proposed. However due to the large number of amendments required the government elected to overhaul the entire Act and develop a comprehensive framework that gives effect to the rights of children in Kenya in line with the constitution and other relevant regional and international treaties. It is noteworthy that the bill proposes a higher penalty for torture against children consistent with the Prevention of Torture Act.
8. With reference to paragraph 3 of the list of issues, it should be noted that the Prevention of Torture Act is a relatively new Act. Therefore, the police prosecutors and magistrates still find scaling the prosecution threshold under the Penal Code and the

Criminal Procedure Code, with regard to offences, such as murder and grievous harm, committed by police officers less complicated than under the National Police Service Act (NPSA) and the Prevention of Torture Act. Additionally, they find that the Penal Code has higher penalties for the offences of grievous harm and murder. However, through seminars and training sessions, the police prosecutors/investigators are being trained on how to successfully prosecute under the NPSA and the Prevention of Torture Act. They are also being trained on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. With regard to paragraph 4 – all law enforcement officers suspected of committing extrajudicial killings, enforced disappearances and excessive use of force are promptly investigated and if found culpable charged and prosecuted for the offence. The courts have also remained steadfast in ensuring protection of the fundamental rights of all persons residing in Kenya. In the civil suit of *Titus Barasa Makhanu v Police Constable Simon Kinuthia Gitau & 3 others (2016) eKLR* the court awarded general damages amounting to approximately US\$ 2,500 to the petitioner for the pain inflicted on him by the 1st Respondent, who beat him with a baton. In *Kenneth Stanley Njindo Matiba Vs Attorney General, petition no.94 of 2014 eKLR*, the Court declared that the Petitioner's right to be free from torture, cruel and inhuman treatment under Section 74(1) of the repealed Constitution were violated by agents of the State. The petitioner was awarded compensation for the violations.

10. Further in the case of *Republic v Elly Waga Omondi, criminal case no. 24 of 2012 eKLR* the Court made a ruling in a trial within a trial whereby a confession made by the accused in respect of the trial was rendered inadmissible in evidence because it was obtained after the accused person was threatened and tortured by the investigating officer.

11. During the reporting period, criminal files number CR. 207/2016 and HC No. 67/2016 have been opened where four Administration police officers have been charged in court for the offence of murder. They have been accused of torturing and killing human rights lawyer Mr. Willie Kimani, his client, Mr. Josephat Mwenda and the taxi driver Mr. Joseph Muriuki after unlawfully detaining them at an Administration Police Camp on 23rd June 2016.

12. In *Republic v IP Veronicah Gitahi & another [2016] eKLR* the two accused persons, who were police officers were charged with the offence of manslaughter contrary to section 202 of the penal code. They had been accused of killing a 14-year-old school girl in Kwale County. This offence was committed while in the line of their duties. The court found them guilty of the offence and sentenced them to 7 years.

13. In addressing claims of excessive use of force and brutality by municipal guards, the County Assembly of Nairobi in June 2017 introduced the Nairobi City County Inspectorate Services Bill, which seeks to criminalize excessive use of force by 'city askaris'. The bill states that any 'askari' who subjects a person to cruel or inhumane treatment commits a criminal offence; whose punishment is life imprisonment. It will be unlawful for inspectorate officers to subject any person to torture or other cruel, inhumane or degrading treatment.

Article 2

Response to Paragraph 5(a–d) of the List of Issues

14. Constitutional imperatives offer significant safeguards for persons who find themselves in police or prison custody. The Person Deprived of Liberty Act enacted in 2014 affirms the fundamental rights and freedoms of persons in police or prison custody. All persons in such custody are provided with an opportunity to communicate with any person of his/her choice, including an advocate and family member. A person deprived of liberty is also entitled to medical treatment and healthcare. All prisoners may lodge complaints with the officer in charge of the facility, or the cabinet secretary, in the event that they feel their rights have been violated. Recourse to the Commission on

Administrative Justice of the Kenya National Commission on Human Rights is also available.

15. Law enforcement Agencies and prison wardens are required to attend various sensitization fora on the treatment of persons, detained, held in custody or imprisoned.

16. Persons deprived of liberty also benefit from affordable, legal aid provided by the National Legal Aid Service established by the Legal Aid Act 2016. Additional information on Legal Aid as a component of access to justice is included in paragraph 15 of this report.

17. The Government of Kenya, through the Kenya Prisons Service, in collaboration with the National Counter-Terrorism Centre and the UN Office on Drugs and Crimes has established various programmes to support high risk offenders who are held in detention for more than one year. These individuals are put through de-radicalization programs. The number of individuals detained between the year 2013 and 2016 pursuant to the Prevention of Terrorism Act 2012 as amended by the Security laws of 2014 totals to 146 as illustrated in the table 1 below;

Table 1
Number of Persons accused of terrorism in detention

<i>S/No.</i>	<i>Period in Detention</i>	<i>No. of Accused Terrorists</i>
1.	Less than one year	1
2.	More than one year but less than three years	139
3.	More than 3 years	6
Total		146

Source: National Prisons Service, 2016.

18. Operation Usalama Watch which was carried out in March 2014 was an operation aimed at fighting terrorism in the wake of terror attacks in Nairobi and other parts of Kenya. Among the aims of the operation was the flushing out of illegal immigrants in the country. The Government of Kenya, through the then Department of Refugee Affairs mandated by the Refugees Act, 2006 to provide for the protection of refugees in the country mobilised all its officers to ensure refugee rights were protected. The Department was involved in the screening of persons detained at the Kasarani Sports stadium and ensured the genuine refugees were not deported but were instead relocated to the designated areas. This was done through verifying the documents of all the arrested asylum seekers and other persons of concern.

Response to Paragraph 6 of the List of Issues

19. Legal aid is a key component of enhancing access to justice. Kenya has made great strides in enabling the poor and vulnerable seek and obtain remedies for their grievances from informal and formal justice institutions through the enactment of the Legal Aid Act, 2016. The Act establishes a National Legal Aid Service, managed by the National Legal Aid Board. The Board not only provides formal legal representation but also offers legal advice and awareness, provision of legal information and law-related education, undertaking law-reform and advocacy work on behalf of the community, psychosocial support.

20. The Act also establishes the Legal Aid Fund, to finance legal aid activities. The Government has allocated Approx USD 1 Million to the Legal Aid Fund in the financial year 2017/2018.

21. To further enhance access to justice, the Judiciary is in the process of clearing the backlog of cases. More court rooms are being set up to enable more citizens to access justice easily even in the remote areas of the country. The Judiciary is also focusing on improving its registry management so as to enable efficient dispensation of justice. This is being done under the blueprint- 'Sustaining Judiciary Transformation' that emphasises on clearance of cases that are over five years old and above in the system as a key on service

delivery initiative in accordance with the international best practices. The judiciary has hired more than 200 new judges and magistrates and established 25 new court stations since 2011 in an effort to increase capacity and access to the judiciary in remote areas.

Response to Paragraph 7 of the List of Issues

22. The government has not ratified the Optional Protocol to the Convention against Torture. This scenario is occasioned by the fact that the Constitution turns Kenya from a dualist into a monist state. Article 2(6) provides that: 'Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.' Also, Article 94(5) of the Constitution provides, 'no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this constitution or by legislation.' Ratification of an instrument would fall under this considering the provision of Article 2(6) of the Constitution. While all efforts are being made, it must be appreciated that these constitutional provisions have made the procedure of ratifying international instrument very rigorous. However, various stakeholder consultative workshops have been held to sensitize stakeholders mainly in government on the provisions and duties arising from the optional protocol.

Response to Paragraph 8 of the List of Issues

23. Kenya has put in place the Counter Trafficking in Persons Act of 2010. This law implements Kenya's obligations under the United Nations Convention Against Transnational Organized Crime, particularly its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and to provide for the offences relating to trafficking in persons.

24. The Counter Trafficking in Person's Advisory Committee, has the responsibility to enhance the implementation of preventive, protective and rehabilitative programmes for trafficked persons. The Advisory Committee developed the National Plan of Action for Combating Human Trafficking – Strategic Framework 2013–2017. The Action Plan emphasizes co-operation between different stakeholders from all sectors in Kenya as well as co-operation with other countries in the region and beyond. Other interventions include: The Guidelines on the National Referral Mechanism for assisting victims of human trafficking in Kenya launched on 15th December 2016, the County Government Policy on Sexual and Gender Based Violence 2017, which elaborates a comprehensive framework to progressively eliminate sexual and gender-based violence through the development of a preventive, protective, supportive and transformative environment; and the National Guidelines on the Management of Sexual Violence 2014 – a guiding policy framework on procedures and services for management of survivors of sexual violence. The policy recognizes sexual violence as a serious human rights and health issue, which calls for imperative attention by all concerned. In addition, the policy guides medical practitioners on steps to be taken when treating a survivor of sexual based violence, preservation of evidence for court use, issues of psycho-social support and other ethical issues related to the management of health- related problems of based sexual violence.

25. The Training Manual on Sexual and Gender based Violence for Prosecutors is useful to investigators, medical practitioners, and civil society organizations among other stakeholders. The Manual is an important resource that Prosecutors refer to when preparing for Court Cases. It has also expansively specified the ingredients of the offences under the Sexual Offences Act, 2006. The manual explains the process of reporting a Sexual Offence, process of investigation with particular emphasis to critical areas of investigations that should be given special attention such as recording of statements, how to handle a scene of crime, medical evidence, identification of offenders, expert witnesses and challenges relating the same. The user is also informed on the arrest and Pre-trial procedure with emphasis being laid on the rights of the Accused as contained in our Constitution.

26. Amendments proposed to the Sexual Offences Act include: provisions relating to the definition of sexual offences, prevention and the protection of all person from harm from unlawful sexual acts, minimum sentence for offences; prohibition of different types of sexual violence committed against men, women and children, including attempted rape, rape, sexual assault, indecent acts, defilement, gang rapes, sexual harassment, child

pornography, child prostitution, child sex tourism, exploitation of prostitution, incest, deliberate transmission of HIV including other life threatening sexually transmitted diseases, offences based on culture and religion.

27. The Government has implemented new measures to eliminate mistreatment of Kenyan domestic workers in Middle Eastern countries through a vetting and licensing program for all agents that recruit domestic workers to the Gulf countries. Only those agencies that are licensed and accredited will be allowed to recruit workers. The Government has also sent labour attaches to the Kenyan missions in three Gulf countries – United Arab Emirates, Qatar, and Saudi Arabia. The attaches will be tasked with helping Kenyan workers settle in the countries, and handle cases of those workers who report abuse by their employers.

28. In September 2014, Parliament passed the Victim Protection Act which improves support to victims of crimes, including the establishment of a Victim protection fund. The Victim Protection Fund has been allocated Approx 600,000 USD. Regulations for the Act as well as trust fund rules are currently being developed.

29. The table below provides statistical data on the prosecutions and convictions of cases on human trafficking for the period June 2013–June 2016.

Table 2
Prosecution of Human Trafficking Offences

Category of Offences	2013/14		2014/15		2015/16	
	Newly Prosecuted cases	Convictions	Newly Prosecuted cases		Newly Prosecuted cases	Convictions
Trafficking in Persons			57	18	31	4
Child Trafficking			4	0	9	1
Trafficking in persons for organized crime			29	14	2	1
Other offences related to human trafficking			77	52	114	71
Total	526	436	167	84	156	77

Source: Office of the Director of Public Prosecutions.

Response to Paragraph 9 of the List of Issues

30. Kenya is a signatory to a wide spectrum of international legal instruments that obligate the State to take action against Gender Based Violence (GBV). Premised on national commitment to uphold and protect human rights and gender equality the government of Kenya has developed a raft of policies and spectrum of legal instruments that focus on forestalling the occurrence of GBV and mitigating consequences.

31. The Government has also put in place other administrative measures to address Sexual Gender Based Violence. Some of these measures include:

(a) The establishment of Gender Based Violence Recovery centres in the largest public hospitals in Nairobi (Kenyatta National Hospital), Mombasa, Nakuru, Kisumu and Eldoret. The Centres are very active and help to address the plight of women survivors of Sexual Gender Based Violence who more often are not able to access services;

(b) The provision of Post Exposure Prophylaxis and Emergency contraception to victims of sexual violence who report to health facilities;

(c) The establishment of GBV Hotline 1195 and referral mechanism. This National Domestic Toll-Free Short Code was allocated to Health-care Assistance Kenya by

Communication Authority of Kenya and launched on 21st February 2013. The Toll-free helpline 1195 enhances support for survivors of rape, defilement, FGM and physical assault;

(d) The development of a National Policy+ on Prevention and Response to Gender Based Violence. The Policy provides a framework towards the Elimination of Gender Based Violence in the Country. It lays out key objectives which seek to ensure a coordinated approaching and effective programming, enhancement of laws and policies towards GBV prevention and response.

32. The Protection against Domestic Violence Act, 2015 provides for the protection and relief of victims of domestic violence, a spouse and any children or other dependent persons.

33. There is no legislation in place that addresses marital rape as a distinct criminal offence in Kenya. However, Article 45 of the Constitution recognizes that parties in a marriage are equal. That means that all things have to be done with the knowledge and agreement of the parties once you get married. Further Article 29 guarantees all, including spouses the freedom from inhuman and degrading treatment.

34. The table below provides statistical data on the prosecutions and convictions of cases on sexual and Gender Based Violence for the period June 2013–June 2016.

Table 3

Prosecution of Sexual and Gender Based Violence Cases (Violence against Women and Girls)

Category of Offences	2013/2014		2014/2015		2015/2016	
	Newly Prosecuted cases	Convictions	Newly Prosecuted cases		Newly Prosecuted cases	Convictions
Rape	922	76	669	104	491	95
Attempted Rape			149	49	187	42
Defilement	74	43	2 652	180	2 827	562
Attempted Defilement			221	36	320	68
Gang Rape			48	4	75	25
Sexual Assault	144	27	331	85	77	11
Trafficking for Sexual Exploitation	9	10	15	1	12	0
Child Prostitution/ Tourism/ Pornography	182	14	7	1	8	2
Indecent act with child			198	36	302	66
Total	1 331	170	4 290	496	4 299	871

Source: Office of the Director of Public Prosecutions.

Response to Paragraph 10 of the List of Issues

35. Kenya has made huge progress in abandoning female genital mutilation. According to the 2014 Kenya Demographic and Health Survey (KDHS), the national prevalence of FGM is 21 per cent, down from 27 in 2008/9 and 32 in 2003. Despite the decline, prevalence remains high among some communities such as the Somali, Kisii, Samburu and Maasai. Some of the greatest challenges in the prevention of FGM include deep seated cultural practices and the low education levels in some of the practicing communities and poverty among the women in areas where it is practiced. However, despite this challenge the government has put in place various measures to address the practice of Female Genital Mutilation (FGM). Some of these efforts include:

(a) The establishment of an Anti- FGM Board, a Semi-Autonomous Government Agency that was established in December 2013 following the enactment of the Prohibition of Female Genital Mutilation Act, 2011. The Board's mission is: 'To uphold the dignity and empowerment of girls and women in Kenya through the coordination of initiatives, awareness creation and advocacy against FGM;

(b) The board has since its creation carried out awareness-raising and education campaigns. As part of the efforts to reach the grassroot groups and communities, the Board in collaboration with other implementing partners has conducted sensitization campaigns aimed at protecting the girl-child and women from FGM in several counties in the country. These include Tharaka Nithi, Narok, Kajiado, West Pokot, Baringo, Nakuru, Kisii, Nyamira, Migori (Kuria), Bungoma (Mt. Elgon), Samburu, Isiolo, Elgeyo Marakwet and Marsabit counties;

(c) The Establishment by the Office of the Director of Public Prosecutions of an Anti-FGM and Child Marriage Prosecution Unit to fast-track the prosecution of FGM and child marriage cases;

(d) Prosecution officers have been trained on FGM prevention and response in order to handle FGM cases properly. This has strengthened the officers' response through activation of an FGM Hotline; 0770 610 505;

(e) With support from UN Agencies such as The UNFPA-Unicef joint programme, the government is encouraging Alternative Rites of Passage (ARP). This consists of a series of activities replacing the harmful FGM with non-harmful traditional rituals highlighting girls' initiation into adulthood. It is a way for the family and community to mark this important moment in an adolescent girl's life, without any alteration of any type to the girl's body;

(f) The media has played a crucial role in highlighting FGM as an issue of national concern, providing an enabling platform for community dialogue on FGM.

36. The table below provides statistical data on the number of prosecutions and convictions on cases of FGM for the financial years 2013/2014, 2014/2015 and 2015/2016.

Table 4
Prosecution and Conviction of FGM Cases

Category of Offences	2013/2014		2014/2015		2015/2016	
	Newly Prosecuted cases	Convictions	Newly Prosecuted cases		Newly Prosecuted cases	Convictions
Conducting FGM	13	0	10	Conducting FGM	13	0
Aiding and Abetting FGM			5	Aiding and Abetting FGM		
Procuring a person to perform FGM			6	Procuring a person to perform FGM		
Other related FGM Cases			1	Other related FGM Cases		
Total	13	0	22	Total	13	0

Source: Office of the Director of Public Prosecutions.

Response to Paragraph 11 (a–d) of the List of Issues

37. The Government of Kenya has undertaken several measures since the last reporting period to ensure the reproductive health rights of women in Kenya are protected. Some of these measures include:

(a) Initiation of the free maternity services policy in 2013 in a bid to address the problem of high maternal deaths as well as women being detained after they have given birth because they are unable to pay their bills. Since then, the Government has committed over Kshs. 30 Billion approx 300 Million USD to maternal health alone. The Government has also committed funds to increase staffing so as to ensure quality of health care provided is of the highest attainable standard;

(b) Procurement of 99 containers (to be used as mobile clinics) used to render health services to the most remote areas in the country. This will see maternal deaths and

complications reduce as mothers in remote areas will not have to walk long distances to get to the hospitals/dispensaries.

38. From December 2014 to March 2015, the National Gender and Equality Commission (NGEC) conducted an audit of implementation of presidential directive on free maternal health care program in selected public health facilities in Kenya with a view to establish the application of principles of equality and inclusion in the program. The audit which was conducted across 4 counties namely, Laikipia, Nyeri, Kilifi and Busia established among other findings that free maternal services have led to increased access to quality maternity services to women and girls in Kenya as evidenced by the upsurge in number of deliveries in public health facilities. About 43% of all public health facilities reported a doubling of daily deliveries following the presidential directives. There was also a high level of awareness of free maternity services program among respondents in all the four counties. A high number of women and girls were able to access maternity services for free. However, the program still faces a challenge relating to inadequate human resources and lack of a proper financing framework.

39. The courts have also provided further protection of the reproductive rights for women. In the matter of *MA & Another v Honorable Attorney General & 4 others [2016] eKLR* (Constitutional Petition 562 of 2012), the court held that detention of expectant mothers because of failure to pay is not only unlawful but also unconstitutional. The court also held that the detention of the petitioners violated their right to be free from discrimination. In this case, two women had been detained and subjected to mental and physical abuse at Pumwani Maternity Hospital due to failure to pay maternity services. The two women had been detained at different times. The High Court of Kenya at Nairobi found that such detention amounted to an arbitrary deprivation of liberty and a violation of the right to freedom of movement.

40. Kenya is also a state party to several regional instruments regarding health/reproductive health. Kenya signed the Maputo Protocol on the rights of Women of 2003, which recognizes reproductive rights and commits state parties to establishing and strengthening existing pre-natal, delivery and post-natal health and nutritional services for women. As a member of the African Union, Kenya launched the Campaign on Accelerated Reduction of Reduction of maternal Mortality in Africa in November 2010 reiterating the campaign slogan that “no woman should die while giving life.”

41. Abortion per se is illegal in Kenya. Article 26 (4) of the Constitution on the Right to Life provides that ‘Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law’. Further sections 158–160 and 228 of the Penal Code criminalize abortion in Kenya. However, despite these legal provisions, unsafe abortions still take place. One of the greatest challenges facing provision of post abortion care is the lack of guidelines in place to guide medical practitioners on how to deal with cases of unsafe abortions or how to perform abortions where the law permits i.e. when the life or health of the mother is in danger. The ‘Standards and Guidelines on Reducing Maternal Mortality and morbidity from unsafe abortion’ 2012 that provided guidelines for medical practitioners were revoked in December 2013. Plans are underway to review the documents.

42. Policy measures in place to address the challenges of unsafe abortions. The Ministry of Health 2009 National Guidelines on Management of Sexual Violence in Kenya permit abortion in cases of rape or defilement. The National Adolescent Sexual and Reproductive Health Policy 2015 acknowledges that there are high rates of unsafe abortions amongst adolescents. One of its key policy priority areas then is the prevention of early and unwanted pregnancies. It however does not make any mention of abortion as a policy priority area.

43. The High Court of Kenya in *Petitions 605 and 606 of 2014* is in the process of hearing and determining a case challenging the unconstitutional sterilization by way of tubal ligation of four women living with HIV. The petitions were filed on 10 December 2014 to challenge the unconstitutional sterilization by way of tubal ligation of the five women living with HIV. The case is yet to be decided.

Response to Paragraph 12 of the List of Issues

44. The Constitution of Kenya (Article 53) recognizes the need for all children to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhumane treatment and punishment, and hazardous or exploitative labour. It affirms that children have basic rights, including the right to education, nutrition, shelter, health care and parental care. These provisions are aligned with those cited in both the Convention on the Rights of the Child and the Africa Charter on the Rights and Welfare of the Child, to which Kenya is a signatory.

45. The Government of Kenya recognizes that child protection is a multi-sectoral, multidisciplinary issue that requires the involvement of everyone. Two key documents to guide stakeholders in developing a stronger and more effective system were thus developed. The first document, The Framework for the National Child Protection System for Kenya (2011), seeks to “promote linkages between different actors and provide coordinated interventions and responses through statutory mechanisms.” The second, County Child Protection Systems Guidelines, spells out an agenda for “coordinated action at county level and provides work practice direction for all formal and informal actors.”

46. In 2014, the National Gender and Equality Commission (NGEC) conducted an assessment of Charitable Children Institutions (CCIs) in Kenya with the aim of establishing their general status, assessing the level of integration of principles of equality and inclusion, and application of affirmative action. The audit also assessed factors that drive children to Charitable Children Institutions. The assessment took place in 4 counties namely Meru, Nyandarua, Siaya and Bungoma. It covered 16 registered children’s homes both private and public sector. The assessment revealed that the factors driving children to CCIs include; HIV/AIDS, disinheritance, child pregnancy, culture and beliefs, parental neglect and poverty. The assessment recommended a review of the Charitable Children Regulations of 2005 to include guidelines on adequacy of physical environment and standards for infrastructural developments. It also recommended the need to intensify inspections of the homes to ensure that only those who can afford children facilities that offer holistic care and protection of children are registered.

47. The government has been keen to regulate the operations of Charitable Children’s Institutions. In this regard, Charitable Children Institutions are established, regulated and grounded on various legal provisions which include Charitable Children Institutions regulations 2005 and the Constitution of Kenya 2010. In 2013 and 2014 The National Standards for Best Practices in Charitable Children Institutions and Guidelines for the Alternative Family Care of Children in Kenya, respectively were formulated. The standards for registration have also been raised. So far 854 Charitable Children Institutions have been registered, in a process which is renewed on expiry every 3 years.

48. The Department of Children Services and the National Council for Children Services (NCCS) carry out continuous monitoring of Charitable Children Institutions in the country to assess the quality of services being provided. The Children Act (now the Children Bill) is under review and has put in place provisions to ensure the quality of care in institutions and reintegration of children through alternative family care and other programs. The Department of Children Services seeks to process data on children in residential care and as such, is carrying out mapping of Charitable Children Institutions in the country within 2017–2018 financial year. The department also works in collaboration with Association of Charitable Children Associations of Kenya (ACCIK) among other stakeholders to ensure improved services.

49. Child protection units have also been set up at some police stations to cater for the needs of children in conflict with the law and those in need of protection while their cases are being processed. The units ensure that the rights of children while at the police station are safeguarded and that they are not mixed with adults. Kenya’s first police unit dedicated to fighting child sexual exploitation and abuse was officially launched in October 2016. The Child Protection Unit comprising of 12 officers from the National Police Service of Kenya, as well as a member of children’s services has been operational since April 2016 and has already been instrumental in safeguarding 150 children. With support from the National Crime Agency -United Kingdom, the Government through the National Police

Service of Kenya seeks to establish a self-sufficient multi-agency unit, laying the ground for similar child protection units to be set up across the country. As at June 2017, there are 15 child protection units across the country which have been established through the support of partners.

50. To protect children from abuse, Violence, trafficking and exploitation, the Government operates a National Child Helpline 116 which a toll free telephone line where anyone can call to report cases of child abuse. The Centre responds to an average of 5000 to 7000 cases in a year. The main call centre is located at lower Kabete, Nairobi County. It has other two subsidiaries call centers in Eldoret and Garissa counties.

Response to Paragraph 13 of the List of Issues

51. The government of Kenya does not condone murders or any form of violence meted on an individual on claims that he/she practices witchcraft. Mob lynching and subsequent violent actions against an individual accused of practicing witchcraft are adequately addressed by the Penal Code under the crimes of Murder, Manslaughter and Assaults.

Article 3

Response to Paragraph 14 of the List of Issues

52. Articles 25 and 29 of the Constitution of Kenya provide that freedom from torture, cruel, inhuman or degrading treatment or punishment is a fundamental right that may not be limited, suspended or waived under any circumstances. Article 28 recognizes the inherent dignity of the human person and the right to have that dignity respected and protected. Kenya has a robust legal framework for ensuring that acts of torture are not committed and that foreigners are not extradited to countries where there are substantial grounds for believing that they would be in danger of being subjected to torture. Some of the legislative texts include the Refugee Act, Counter –Trafficking in Persons Act and the Prevention of Torture Act.

53. The Counter Trafficking in Persons Act in section 18 provides that where a victim of counter trafficking is likely to be exposed to danger if repatriated the state may permit the victim to continue staying in Kenya for such a period that will be deemed fit by the relevant cabinet secretary.

54. The Prevention of Torture Act also seeks to provide for the prevention, prohibition and punishment of acts of torture and other acts of cruel, inhumane or degrading treatment as well as provide for reparations to victims of said acts. The act, in section 22, also specifically prohibits extradition of a person to a country where he or she is believed to be in danger of being subjected to torture or cruel, inhumane or degrading treatment.

55. The Refugee Act in section 18, prohibits refoulement, stating that “no person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or to subjected [sic] any similar measure” if doing so would result in the persecution of the person or endanger his life, physical integrity, or liberty.

56. In 2013, Kenya, Somalia, and the UNHCR signed an agreement to repatriate Somali refugees in the country. One of the provisions of the agreement requires that the repatriation be voluntary, stating that “[t]he parties hereby reaffirm that the repatriation provided for in this Agreement of Somali refugees who have sought refuge in the Republic of Kenya shall take place in conformity with international law pertaining to voluntary repatriation.” This is in line with article 3 of the Convention against Torture.

57. The government has also committed itself in ensuring that all asylum applicants are afforded due process. The Refugee Act and its subsidiary legislation (Refugee Regulations of 2009) require that anyone who wishes to remain in Kenya as a refugee must appear before the Department of Refugee Affairs (DRA) and petition for recognition as such. The legality of the manner in which the person entered Kenya is immaterial to the eligibility to petition for refugee status. Once registered, the applicant is given an “asylum seeker pass” (issued by the DRA), an “asylum seeker.

Response to Paragraph 15 of the List of Issues

58. The Government of Kenya continues to receive refugees from all countries. As of February 2017, the number of refugees and asylum seekers in Kenya stood at 487,688. Of this number, 286, 093 are from Somalia.

59. The voluntary repatriation exercise, emanating from the 2013 Tripartite Agreement with Somalia and the Office of the United Nations High Commissioner for Refugees on the voluntary repatriation of refugees to Somalia is currently ongoing. 52, 591 Somali refugees have been assisted to repatriate under this framework as of 28th February 2017. Voluntariness of return which calls for an informed decision must be viewed in relation to the prevailing conditions in the country of origin. The role of government in the repatriation process is to provide beneficiaries with information that is objective, accurate and updated to enable them to make an informed choice on whether to return. A total of 72, 613 Somali refugees have been voluntarily repatriated back to Somalia.

60. The Statute Law (Miscellaneous Amendments) Bill, 2016 was passed by Parliament vide Kenya Gazette Supplement No. 185 (National Assembly Bills No.45). It is waiting for the President's assent.

Articles 5–8

Response to Paragraph 16 of the List of Issues

61. Section 6 of Extradition (Commonwealth Countries) Act, 1968 provides that a fugitive shall not be surrendered, or committed to or kept in custody for the purposes of surrender, if it appears to the court of committal, or to the High Court on an application for habeas corpus, or to the Attorney-General, that the offence of which the fugitive is accused or was convicted is an offence of a political character; or the request for his surrender (though purporting to be made on account of an extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

62. During the reporting period, Kenya has not received or sent out any extradition requests for individuals suspected of having committed torture. However, Kenya has received extradition requests from countries within the East Africa Community for individuals suspected of committing other offences and such requests have been illustrated in the Table below.

<i>S/no.</i>	<i>Requesting Country</i>	<i>Type of Offence</i>	<i>No. of Extradition Requests granted between 2014–2016</i>
1	Rwanda	Genocide related offences	10
2	Rwanda	Drug Related Offences	1
3	Tanzania	Theft/Stealing	5
4	Tanzania	Drug Related Offences	1
5	Uganda	Theft/Stealing	4

Source: Office of the Director of Public Prosecutions, 2017.

Article 10

Response to Paragraph 17 of the List of Issues

63. The Constitution of Kenya 2010 and various regional and international legal instruments require that human rights be respected, protected, fulfilled, and promoted by the state as well individuals. Law enforcement officers are primary duty bearers tasked with ensuring that human rights are not violated and are equally bound to observe the rule of law

and respect for human rights. The current Police and Prisons training curriculum has content on human rights while a Human Rights Based Approach guide and Manual for public officers has been developed.

64. The Kenya National Commission on Human Rights is an independent National Human Rights Institution that is established pursuant to Article 59 of the Constitution and operationalized by the Kenya National Commission on Human Rights Act 2011.

65. In the financial year 2014/2015, KNCHR trained Anti-Terrorism Police Unit (ATPU) officers on human rights aimed at infusing human rights principles in counterterrorism measures. The capacity building initiative involved 18 ATPU officers drawn from Mandera, Wajir, Garissa and Nairobi Counties. The ATPU officers were taken through the Human Rights Based Approach to democratic policing with discussions focused on the Human Rights Based Approach to policing and was used to shed light on local, regional and international frameworks which guide democratic policing practices.

66. KNCHR also undertook training workshops on human rights for senior police officers in the Western and Nyanza Regions. The training enhanced the capacity of 39 Officers in Charge of Police Departments (OCPDs) and 44 Officers in Charge of Stations (OCSs) drawn from Western Kenya (former Western and Nyanza provinces) on fundamental human rights principles and standards as envisaged in the Constitution, regional and international instruments; policing in a democracy and the application of the rights-based approach in security operations. The basic human rights standards in policing were also discussed and a relationship between human rights and policing demystified.

67. The Government is committed to ensure that all police are equipped with the knowledge and skills of proper and acceptable policing. Serving police officers are obliged to continually attend relevant courses to maintain, develop or increase knowledge and skills, and to keep abreast of new and emerging issues related to their professional lives. All candidates recruited to join the Kenya Police and Administration Police must undergo an intensive training for 15 months, including, three months of internship, in line with the training curriculum. The curriculum has been designed to include lessons on the proper use of force and firearms, in compliance with the United Nations' Basic Principles on the use of force and firearms by law enforcement officials.

68. All law enforcement officers are trained on the respect of human rights that enable fair, just and humane treatment of the public, which is critical in policing, especially in regard to duties involving arrest, detention, search, seizure of property, surveillance, use of force and firearms. Serving police officers are required to undertake periodic review courses on the use of firearms. The training curriculum for police officers adequately addresses provisions of the Istanbul Protocol.

69. All police officers are required to study and gain a deep understanding of the Police Standing Orders and ensure that they are effectively implemented. The standing orders were developed to provide all sworn National Police Service officers with guidelines for the proper use of force and firearms and non-lethal force and to provide the Officers with guidelines for the safe use and deployment of Service authorized firearms

70. The Government is also seeking technical support to further train police officers on human rights and importance of compliance.

Article 11

Response to Paragraph 18 of the List of Issues

71. KNCHR undertakes post training monitoring and evaluation exercises to audit the change realized from implemented activities. In the period under review, the commission undertook outcome monitoring exercise for human rights training in collaboration with the Kenya Prison Service (KPS) and the National Police Service (NPS). Monitoring visits were conducted in Kodiaga and Kibos prison facilities and Shikusa Bostal facility. The monitoring exercise identified limited budgetary allocation, congestion as the main

challenges hindering the NPS from adequately complying with human rights standards. These challenges are progressively being addressed.

72. Following a successful capacity building achievement police officers from the Western Kenya region in July 2014, KNCHR undertook a monitoring exercise in the region to evaluate the impacts realized in policing and any other measures taken to improve policing as a result training of senior police officers on human rights standards in policing. The exercise established improved police public relations in Kisumu, Kakamega and Malava areas as confirmed with decrease of complaints against the police by the public from an average of 30 complaints before the training to an average of 4 after the training.

73. During the 2014/2015 financial year KNCHR carried out inspection and monitoring visit to Shikusa farm Prison following complaints citing instances of physical abuse and mistreatment of inmates. The issues were raised with the Commissioner of Prisoners. A follow-up visit on 19th June 2015 established that the inmates who had been assaulted had been taken to hospital, hours of work had been normalised and that the inmates were being served three meals a day.

74. During the 2016/2017 financial year the Commission held meetings with the Kenya Prison Services with the aim of presenting the findings of the Presidential Pleasure Sentencing Survey including inmates with mental disability, juveniles and the indefinite detention that they face despite their vulnerabilities. The KPS were open to a larger stakeholder engagement to address these issues since the mandate to protect these groups lies with several other government departments and agencies. The recommendations from KNCHR are under consideration and discussions are underway to reform the presidential pleasure sentencing. In addition, the Commission conducted 10 prison inspections focusing on the right to health of prisoners and voter registration. The key findings with regards to health include overcrowding, poor sanitary conditions, inadequate ventilation and lighting, lack of access to clean drinking water, and nutritionally adequate food. Most of these challenges are mainly linked to the limited budgetary allocations to the Kenya Prisons Service.

Response to Paragraph 19 of the List of Issues

75. The Independent Policing Oversight Authority (IPOA) is an independent statutory authority established to provide for civilian oversight over the work of the police. During the reporting period, the Authority has had 507 initial inspections of police premises across the country; 199 follow up inspections and 5 inspections of police training schools/ colleges. This gives a total of 711 inspections which have been spread out as follows in the financial years: 2012/2013 there were 25 inspections; 2013/2014 there were 40 inspections; 2014/2015 – 196; 2015/2016 there were 237 inspections and for 2016/2017 there were 209 inspections.

76. A table providing the recommendations made by IPOA to the Police Service after the monitoring visits is attached as an annexure.

Response to Paragraph 20 (a–g) of the List of Issues

77. The government agencies tasked with the role of playing oversight on matters interconnected with human rights in correctional facilities include the Kenya National Commission on Human Rights (KNCHR) and the Commission on the Administration of Justice (Office of the Ombudsman). KNCHR has the mandate to make unannounced visits to detention facilities and make recommendations.

78. Some of reforms that have taken place in the Kenya Prisons Service include the introduction of the human rights officers in the correctional facilities. A Departmental Human Rights Committee (DHRC) was also been established in the financial year 2014/2015, composed of senior directors and representatives of the prisons. A manual for the human rights officers has been developed. Officers undergo five weeks of training where they are introduced to international standards and human rights compliance, and they conduct two weeks-audit in a prison.

79. The government, through the Kenya Prisons Service, has taken various measures to address inter-prisoner violence in places of detention. These measures include conducting risk assessments on all prisoners on arrival at a prison facility and periodically during their stay at the prison, separation of various categories of prisoners taking into account their age, sex, criminal record and the legal reason for the detention.

80. Kenya Prisons Service has formal procedures to allow prisoners to register complaints about any aspect of their treatment or conditions in detention. These procedures help to foster trust in the system, ensure that rules and rights are respected, and prevent issues from escalating into crimes such as sexual violence.

81. Overcrowding is a major problem in prison management and the cause of deteriorating basic conditions in correctional facilities in Kenya. However, the Government has taken various measures to help reduce overcrowding in prisons. These measures include increasing legal aid and assistance by making use of paralegals to provide advice to accused persons, holding mobile courts inside prisons to reduce case workload, engaging court users committees so that cases are reviewed regularly and brought to a conclusion faster, engaging stakeholders especially the courts and the probation service to consider non-custodial sentences for petty offenders and facilitating Power of Mercy Committee in reviewing cases for executive consideration of possible release.

82. The Judiciary has also taken various measures to address the issues of lengthy pre-trial detentions and high number of detainees awaiting trial. Article 159 of the Constitution mandates the Judiciary to promote alternative mechanisms of alternative dispute resolution (ADR) in the administration of justice. This is further given effect by the Civil Procedure Act (Chapter 21 of the Laws of Kenya). In line with its transformation framework, the Judiciary has embraced alternative dispute resolution as an avenue for addressing case backlog in the court system while making justice more accessible. The coming into force of the Mediation (Pilot Project) Rules 2015 (Legal Notice Number 197 of 2015) under the Civil Procedure Act on 4th April 2016, marked the beginning of the Pilot phase being implemented in the Commercial and Family Divisions of the High Court at Milimani Law Courts, Nairobi.

83. Court annexed mediation is a mediation process under the umbrella of the court. To steer the project, the Mediation Accreditation Committee, the Alternative Dispute Operationalization Committee and the Secretariat (Technical Working Group) were formed. The Mediation Accreditation Committee comprises of 13 members nominated from various institutions alongside the Judiciary. The Committee has developed accreditation standards to guide the process of accreditation and re-accreditation of mediators. As at March 2017, the Accreditation Committee had accredited 65 mediators and 82 cases in the Commercial and Family Division had been concluded successfully through mediation.

Articles 12 and 13

Response to Paragraph 21 of the List of Issues

84. The Government of Kenya does not permit, condone or sanction extra-judicial killings, arbitrary detentions, or the enforced disappearance of its people, carried out by police officers or any other person acting in public or personal capacity.

85. The Government of Kenya also recognizes its legal obligation under various treaties to respect, fulfil and protect the right to life, right to security and freedom from torture and other cruel, inhuman, and degrading treatment or punishment. This protection finds full expression in the Constitution of Kenya.

86. The Constitution particularly safeguards the freedom and security of a person, protects the right to life and prohibits torture as well as cruel, inhuman or degrading treatment. Article 49(1) (c) of the Constitution guarantees the right of an accused person. The Constitution also provides for the right to life in Article 26(1). This right is qualified in Article 26(3) which states that, "A person shall not be deprived of life intentionally, except to the extent authorized by the Constitution or other written law."

87. The Government is working on ensuring prompt, impartial and effective investigation of all allegations of human rights violations are comprehensively investigated and prosecuted. Those found guilty are convicted or face heavy penalties.

88. The Government appreciates the role played by human rights defenders and civil society organizations in the country. Any defender whose rights have been violated should promptly record a complaint at a police station to facilitate investigations. In addition, the Independent Police Oversight Authority provides another avenue where defenders can report any grievances that they may have against the police. With regard to the protection of witnesses, we now have an independent Witness Protection Agency.

89. The Internal Affairs Unit is responsible for investigating police when complaints on human rights violations have been made. However, IPOA also considers complaints of police misconduct from the public. Where investigations show that a police officer has a case to answer the matter is referred to the Office of the Director of Public Prosecution. The National Coroners Service Act further strengthens the investigations of deaths caused by violent criminal acts, extra-judicial killings, or deaths in prison or police custody. Victims of these crimes or their relatives are now provided with reparations under the established by the Victims Protection Act 2014.

90. The Prevention of Torture Act also provides the necessary legal framework for the prevention, prohibition and punishment of acts of torture and ill-treatment in line with the Constitution and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Response to Paragraph 22 a–e of the List of Issues

91. The Truth, Justice and Reconciliation Commission (TJRC) was established in 2009 and tasked with inquiring into gross violations of human rights and historical injustices that occurred in Kenya between independence on 12th December 1963 and the Coalition Agreement signed on 28th February 2008. The TJRC conducted its work and adopted a number of recommendations. It should be noted that most of the recommendations of the Commission have either been implemented or are in the process of implementation. For example the acknowledgement and public apology to all victims and survivors by his Excellency, President of Kenya – Uhuru Kenyatta in March 2015, during the state of the Nation address. This apology was a major milestone in acknowledging the victims and survivors of the past violations and which underscore the need to heal the nation and address past violations.

92. The establishment of a reparation Fund for victims and survivors of historical injustices is a positive step towards ensuring redress for victims of historical injustices. The President directed that KSh10 billion (\$96,571,800) Restorative Justice Fund spread over three years, be established for purposes of giving relief to victims, especially survivors of past violations. In the budget period of 2016/2017, Kshs 6 billion (\$60) was set aside to cater for the Fund. The Public Finance Management (Reparation for Historical Injustices) regulations 2017 have been developed to facilitate the operationalization of the Fund in a systematic and efficient manner. The regulations have been validated by stakeholders. Information on the 2007 post-election violence cases is contained in Kenya's 4th periodic report to the International Covenant on Civil and Political Rights.

93. Gender Based Violence Centres have been established in all major hospitals in Kenya to provide medical and psychosocial support to victims of gender based violence. The Office of the Director of Public Prosecution and the Task force on Implementation of the Sexual Offences Act conducted countrywide public forums to sensitize the general public on sexual offences and gender based violence.

94. Kenya fully cooperated with the investigations of the Prosecutor of the International Criminal Court into the post-election violence cases.

Response to Paragraph 23a–d of the List of Issues

95. As at 31st December 2016, the Authority was investigating 391 cases, had completed 465 investigations and forwarded 67 cases to the Office of the Director of Public

Prosecution with recommendations. The Authority currently has 46 cases before court and has secured the conviction of 2 officers for charges of manslaughter.

96. In the year July 2015 to June 2016, IPOA forwarded 60 cases to the office of the Director of Public Prosecution for criminal charges of Murder, assault and use of excessive force. The Authority received 2,592 complaints that year an increase from 1,792 cases received for financial year 2014/2015. The complaints received as at 31st December 2016 for financial year 2016/2017 was 1,254.

97. During the reporting period, members of the Police Service have come under increased oversight to ensure compliance with the law when executing their duties. The Independent Policing Oversight Authority in exercise of its mandate to provide civilian oversight the work of the Police, has investigated and recommended the prosecutions of members of the police service for extra-judicial executions, use of excessive force and torture. With regard to investigations the Authority had completed 566 as at June 2017. This finalized or closed cases were subject to either a preliminary investigation or full investigations and required no further investigative action unless otherwise were advised. 258 cases were under active investigation as at June 2017. The number of cases forwarded to the Office of the Director of Public Prosecution as at June 2017 were 89 and those before court as at June 2017 were 50. The recommendations varied but mainly included charges of murder, assault or use of excessive force and non-criminal proceedings such as public inquests and disciplinary actions.

98. The Authority had received a total of 8042 complaints cumulatively from inauguration in 2012 to 30th June 2017. There has been a steady growth in the number of complaints received with 3 years recording increased numbers and the 2016/2017 year recording a slight decrease. In 2012/2013 there were 594 complaints received; 2013/2014 there were 860; 2014/2015 – 1792; 2015/2016 – 2529 and 2016/2017 there were 2267 complaints received.

Response to Paragraph 24 of the List of Issues

99. The Independent Police Oversight Authority (IPOA) has developed draft Regulations whose key objective is to provide procedures and mechanisms to facilitate the expeditious, efficient, impartial and fair resolution of complaints. The draft regulations are currently under review by the Kenya Law Reform Commission. IPOA has further put in place a comprehensive system of reviewing complaints through the establishment of the case intake committee. The Authority has also set up timelines for the provision of feedback to the complainants and is currently developing an electronic content management system to improve the recording of data and tracking of cases.

Response to Paragraph 25 of the List of Issues

100. The Independent Police Oversight Authority is established by an act of parliament which means that it is an independent authority with perpetual succession. It is meant to provide civilian oversight of the work of the Police in Kenya.

101. Independence of the authority is guaranteed in the Constitution of Kenya under article 249. Further section 4 of the Independent Policing Oversight Authority Act makes it mandatory for parliament to ensure that the Authority is adequately funded for it to effectively and efficiently perform all of its functions. The Act also provides that, no person or body may interfere with the decision making, functioning or operations of the Authority.

102. Over the years, the government has continuously increased the funding of the Authority. In the financial year 2014/2015 the authority was allocated Kshs. 291 Million (Approx 2.9 Million USD) which was increased to Kshs. 491 Million (Approx 4.9 Million USD) in the financial year 2015/2016.

Response to Paragraph 26 of the List of Issues

103. Obtaining a 'P3' form is a free service. The 'P3' form can be issued at the police station where one is filing the complaint or can be downloaded from the National Police Service website and filled at the police station.

Response to Paragraph 27 of the List of Issues

104. Kenya Prisons Service has formal procedures to allow prisoners to register complaints about any aspect of their treatment or conditions in detention. These procedures help to foster trust in the system, ensure that rules and rights are respected, and prevent issues becoming sources of major trouble like sexual violence. The said procedures act as a deterrent for abuse. Complaints procedures benefit detainees, staff and prison management. Upon arrival at the prison, prisoners are informed of the procedures for making complaints (along with their rights, and the rules and procedures governing life in prison).

105. Further, Independent Human Rights Commissions such as the Kenya National Commission on Human Rights receive complaints on any form of human rights violations. The integrated public complaints referral mechanism platform which has brought together four commissions namely; Ethics and Anti-corruption Commission (EACC), the Commission on Administrative Justice (CAJ), Kenya National Commission on Human Rights (KNCHR), National Cohesion & Integration Commission to receive complaints from the citizens on issues of corruption, mal-administration, human rights violations and to foster cohesion. This platform has enabled ease of receiving complaints and referring them to the relevant agency within the platform for resolution.

Response to Paragraph 28 of the List of Issues

106. The Persons deprived of Liberty Act provides that every person deprived of liberty is entitled to the protection of all fundamental rights and freedoms subject to such limitations as may be permitted under the Constitution. Further a person deprived of liberty shall at all times be treated in a humane manner and with respect for their inherent. Any person who subjects a person deprived of liberty to cruel, inhuman or degrading treatment commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings (Approx. USD 5,000) or imprisonment for a term not exceeding two years, or to both.

107. In *Anthony Njenga Mbuti & 5 others v Attorney General & 3 others [2015] eKLR*, the court ruled that the provisions of the peace bond process are indefensible. The provisions of the peace bond process under the Criminal Procedure Code cannot meet constitutional muster. The court thus declared sections 43–61A of the Criminal Procedure Code unconstitutional for violating the provisions of Articles 27, 28, 49 and 50(2) of the Constitution, and were therefore declared void. The court also observed that section 61A of the Criminal Procedure Code, which empowers a magistrate to confine a person within a particular district, contravenes the right of citizens to freedom of movement under Article 39 of the Constitution.

Response to Paragraph 29 of the List of Issues

108. The Witness Protection Act, of 2006 provides the legal framework for witness protection in Kenya. The Act provides for the protection of witnesses in criminal cases and other proceedings and establishes a Witness Protection Agency. The Witness Protection Act, Cap 79 came into operation on 1st September, 2008. The regulations to facilitate the efficient and effective implementation of the Act were promulgated vide legal Notice No. 99 of 2011 and the same came into force on 5th August, 2011. In order to enhance the administration of justice, the Witness Protection Agency, the International Commission of Jurists (Kenya) and the Judiciary came up with the Witness Protection Rules, 2015 which came into operation on 30th November, 2015. These rules provide a layout that guides the courts and interested parties in trial on judicial witness protection measures and procedure. Some of the measures taken to ensure that the provisions of the Witness Protection Act are upheld include those taken by Judiciary such as permitting the expedited testimony of protected witnesses, changing trial venues or hearing dates, allowing redaction of identifying information from court records and hearing protected witnesses in closed sessions. Other protection measures accorded to threatened witnesses include but not limited to relocation, physical and armed protection, change of identity and employing measures to obscure the identity of witnesses.

109. The Witness Protection (Amendment) Act, 2016 made amendments to the Witness Protection Act in order to align it with the Constitution. For instance the definition of a witness was substituted to mean, ‘a person who has made a statement or has agreed to give evidence in relation to an offence or criminal proceedings in Kenya or outside Kenya and requires protection on the basis of an existing threat or risk’. The government allowed these amendments to ensure the smooth operations of the Agency. The same provided for reciprocal protection arrangements with other foreign states/organizations and international courts or Tribunals.

110. The Agency between 2016/2017 and 2017/2018 financial years, received 299 new applicants into the witness protection programme out of which 132 applicants were processed for admission and 131 applications were closed after appropriate intervention and advice. 112 witnesses successfully testified under the programme while 101 witnesses in the programme were discharged and resettled. Further the Agency has improved its effectiveness by lobbying and undertaking sensitization forums through courts and other stakeholders within the realm of the administration of justice. The same has triggered an increase in referrals and applications for witness protection.

111. In the year 2016/2017, the expenditure of the Agency was Kshs. 394,530,943 (Approx. USD 3.8 million) on accrual basis whereas an expenditure of Kshs. 370,617,567 (Approx. USD 3.7 million) was for the year 2014/2015. For the financial year 2016/2017, the agency was allocated Approx. USD 4.1 Million). The funds are however not sufficient to enable devolution and expansion of the Agency’s services.

Article 14

Response to Paragraph 30 a–h of the List of Issues

112. The Victim Protection Act was enacted in 2014 to implement constitutional provisions on the protection of victims of crime and abuse of power. The Act also provides for reparation and compensation to victims, including victims of torture and ill-treatment. Victims must be provided with better information, support services, reparations and compensation from the offender. A victim is entitled to approach the court as a complainant in section 13. The victim is also entitled to restorative justice under section 15 of the Act.

113. A Victim Protection Board established in 2017 in line with the Section 31(1) of the Act. The Board is charged with the coordination of inter-agency activities aimed at protecting victims of crime and the implementation of preventive, protective and rehabilitative programs for victims of crime. Draft regulations and rules have been drawn to operationalize the legal framework and also guide the court when dealing with cases involving victims of crime and abuse of power.

114. A Victims’ Rights Charter that comprehensively provides for the rights of victims has been developed by the Board. The Charter provides for the roles of the police, the probation officers, the prosecution and the role of the victim, from the reporting stage to the investigation up to the trial/prosecution stage. The charter has been validated by stakeholders and is awaiting publication for the official launch.

Article 15

Response to Paragraph 31 of the List of Issues

115. Any evidence obtained through illegally obtained confessions is not admissible in court. Further the mode of practice is that most prosecutors no longer rely on confessions as the only evidence in a case as the same is highly unreliable. The Judiciary has also not collected any data on cases dismissed on the grounds of illegally obtained confessions. This data gap can be addressed by conducting more trainings and sensitizing members of the Judiciary on the exact data to be captured especially with regards to Torture cases.

Article 16

Response to Paragraph 32 of the List of Issues

116. The Government of Kenya recognizes its legal obligation under various treaties to respect, fulfil and protect the right to life, right to security and freedom from torture and other cruel, inhuman, and degrading treatment of punishment. This protection finds full expression in the Constitution of Kenya. The Constitution particularly safeguards the freedom and security of a person, protects the right to life and prohibits torture as well as cruel, inhuman or degrading treatment. Article 49(1) (c) of the Constitution guarantees the right of an accused person.

117. During the reporting period, three NGOs had been banned in the ongoing clampdown on civil society organizations accused of operating outside the law and financing terrorism. Muslim for Human Rights (Muhuri), Haki Africa and the Agency for Peace and Development had been deregistered and barred from operating in the country after the NGO Coordination Board, cancelled their licences. The three were among organisations gazetted by the Inspector General of Police on suspicion of supporting Al-Shabaab activities. The decision to publish their names was taken after the April 2016 terrorist attack on the Garissa University College in which 148 people were killed.

Response to Paragraph 33 of the List of Issues

118. *The Security Laws (Amendment) Act* was enacted in 2014 in the wake of successive terrorist attacks on civilian targets and mounting public pressure to curb those attacks. In 2016, certain sections of the Act were declared unconstitutional on the basis that they violated the freedom of expression and the media, the right of an accused person, the principle of non-refoulement as recognized under the 1951 United Nations Convention on the Status of Refugees. The Act is under review to balance between the imperatives of security and those of civil liberties in the age of terrorism.

119. The Constitution of Kenya in article 27 protects citizens from any form of discrimination. The Penal Code is also currently undergoing a reform process to align it to the provisions of the Constitution of Kenya 2010

120. The Persons Deprived of Liberty Act, 2014 recognizes the special needs of Intersex persons. In its Article 10, it clearly states that an Intersex person whose liberty has been deprived has the right to right to decide the sex of the person by whom they should be searched. To ensure that Intersex persons remain protected, the act also provides for the holding of intersex person in separate cells.

121. In May 2017, the Attorney General has set up a taskforce on policy, legal, institutional and administrative reforms regarding intersex person in Kenya. One of the key duties of this taskforce is to issue recommendations on comprehensive reforms to safeguard the interests of intersex persons.

Response to Paragraph 34 of the List of Issues

122. Stigma is a key problem for individuals with mental illness, as it prevents them from seeking treatment and contributes to negative interactions with friends, peers, employers, landlords and law enforcement. The Government is thus keen on reducing the stigma associated with mental illness as this is a critical step in the prevention and early intervention for mental disorders and may improve the quality of life of individuals with mental illness. Mental health is a key determinant of overall health and socioeconomic development and since mental health interventions cut across other sectors, a multidisciplinary and inter-sectoral approach is vital.

123. The Kenya Mental Health Policy was launched in May 2016 to ensure significant reduction in the overall ill health in Kenya in line with the country's Vision 2030 and the Constitution of Kenya. The policy provides for a framework on interventions for securing mental health reforms in Kenya and seeks to address the systematic challenges, emerging trends and mitigate the burden of mental health problems and disorders. Further, the two documents "Kenya Mental Health Strategy 2017–2021," and the "Kenya Mental Health

Policy 2015–2030,” are in line with the Kenya Vision 2030, Constitution of Kenya and Global Comprehensive Mental Health Action Plan 2013–2020 and will help steer the country towards achievement of Sustainable Development Goal (3).

Other issues

Response to Paragraph 35 of the List of Issues

124. One of the most serious global challenges today is the problem of terrorism. Kenya has experienced successive terrorist attacks on civilian targets and there has been mounting public pressure to curb those attacks. There has been a concern on whether or not to grant terrorist suspect bail, with prosecutors arguing that they risk escape. However, the constitutional imperatives are such that all arrested persons have a right to be released on bail on reasonable conditions pending trial. However this rights is not absolute and the constitution further provides” “...unless there are compelling reasons” to denote that where there exists compelling reasons, the right to bail will not be granted. Bail jurisprudence involves the balancing of human rights of the individual and the rights of the victims and security of the state. What amounts to compelling reasons is a matter of judicial discretion. Each case must stand on its own merit and the Judge must study the prevailing situation in the country and also the public interest. In *Hassan Mahat Omar & Another Vs Republic*, Nairobi High Court Criminal Revision No. 31 of 2013, where the applicants, a husband and wife were accused of being in possession of grenades allegedly recovered from their house, the trial magistrate rejected all the grounds raised by the prosecution on why the accused person were undeserving of bail. The judge found the reasons not compelling enough to warrant denial of bail.

125. In *Abdikadir Aden Alias Tullu & Others Vs Republic*, Meru High Court Criminal Application *No. 16 of 2014*, the Applicants were charged with an offence of possessing Articles connected with a terrorism offence. The judge in finding that there is no compelling reason to deny bail stated that “Article 19 (3) (a) of the Constitution makes it abundantly clear that the rights and fundamental freedoms in the Bill of Rights belong to each individual and they are for each individual to enjoy. The limitations upon which these rights and freedoms are subject to are spelt out under Article 49(1) (h) of the Constitution, which in short if “unless there are compelling reasons to decline bail”. The burden lies with the prosecution to establish what the compelling reasons are. All the prosecution has said is that the applicants face terrorism connected charges. The word “terrorism” doubtless invokes fear or even terror. However, the prosecution should be able to demonstrate what exactly it is that constitutes the compelling reason. There must be some cogent or tangible basis for alleging so. In this case, nothing cogent or tangible has been demonstrated or placed before the court.... for that reason alone, I find there is no compelling reason demonstrated to deny the Applicants bail.

126. In 2014 the bail and bond policy guidelines were launched set to remove the inconsistencies in issuing of bond and bail to suspects of crime in the country and to guide police and judicial officers on the application of laws that provide for bail and bond.

Response to Paragraph 36 of the List of Issues

127. The Office of the Attorney General and Department of Justice has communicated the request of the special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the relevant Agencies.

General information

Response to Paragraph 37 of the List of Issues

128. The Government of Kenya has over the years taken various steps to prevent police violations. In this regard the holistic reforms recommended by the National Taskforce on Police Reforms, established by the President in 2009, and supported by the Constitution, have been operationalized as follows:

(a) **Independent Police Oversight Authority**

129. Civilian oversight over the police is mandatory for democratic control and governance of the security sector. The Independent Police Oversight Authority, created by the Independent Police Oversight Authority Act 2011 is as such crucial as it provides much needed accountability and monitoring functions over the Police Service. The Authority is authorized to inspect police premises, including detention facilities under the control of the National Police Service. It is also mandated to investigate any death or serious injury occurring or suspected of having occurred as a result of police action. Where appropriate, the Authority provides relevant information to enable a victim of unlawful police conduct, to institute and conduct civil proceedings for compensation in respect of injuries, damages and loss of income. The body plays a major role in restoring public confidence in the police;

(b) **The National Police Service**

130. The National Police Service was established by the National Police Service Act of 2011. The Service holds a constitutional duty to train its staff to respect human rights, fundamental freedoms and dignity of the human person. The Police must comply with constitutional standards of human rights and fundamental freedoms. The Act defines and criminalizes acts of torture or any cruel, inhuman and degrading treatment of punishment committed by police officers. It also provides sanctions for the offence.

131. Towards this end, a training curriculum which includes torture and ill-treatment as one of the examinable subjects has been prepared and more than 18,000 police officers have been subjected to this training module.

(c) **The Kenya Police Service Code of Conduct**

132. The Code of Conduct establishes the standard for professional and ethical behaviour for the Police.

(d) **The Prevention of Torture Act 2017**

133. The Act provides a comprehensive and coherent framework for the prevention, prohibition and punishment of acts of torture and other cruel, inhumane or degrading treatment or punishment; provide reparations to victims of torture, in line the UN Convention against Torture and other Cruel, Inhuman and degrading Treatment or Punishment.

(e) **The National Coroner's Service Act 2017**

134. The National Coroners Act 2017 has been enacted. The Act provides for a National Coroner's Service, which shall have jurisdiction to investigate the cause of death where the deceased person is reported to have died: a violent or an unnatural death; a sudden death of which the cause is unknown; in police custody; in prison, or in such a place and in such circumstances as to require an inquest under any other law, and shall as soon as practicable hold an inquest into such death. It also provides that whenever a person dies while in custody, the person in charge shall forthwith notify the coroner with jurisdiction in the area where the prison is situated and shall not dispose of the body except with a warrant issued by such coroner.
