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Summary record of the 3764th meeting

Held via videoconference, on Wednesday, 10 March 2021, at 4 p.m.

Chair: Ms. Pazartzis

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The meeting was called to order at 4.10 p.m.

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

Fourth periodic report of Kenya (continued) (CCPR/C/KEN/4; CCPR/C/KEN/Q/4; CCPR/C/KEN/RQ/4)

1. *At the invitation of the Chair, the delegation of Kenya joined the meeting.*
2. **Mr. Muhumuza** said that he would like to know what steps had been taken to rehabilitate victims of gender-based violence and how the State party planned to address the situation in rural areas specifically, where leadership tended to be male-dominated and resource allocation provided only limited avenues of redress for female victims. It would also be useful to learn what practical measures were being taken to protect women and children with albinism, who were sometimes the targets of sexual violence on the grounds that, according to the practice of witchcraft, they were “good sacrifices” for the purpose of community cleansing.
3. The Committee would appreciate information on the strategies, besides community service programmes, implemented by the State party to relieve overcrowding in prisons. It would also welcome an explanation of the low number of perpetrators identified and convictions obtained despite increasing rates of child trafficking, and a description of the steps taken to rehabilitate victims of trafficking in human beings. According to information received by the Committee, people – most often girls – were sent to the Middle East with promises of secure employment, only to find themselves forced to work in deplorable conditions and suffering beatings, sexual abuse and inadequate wages. He would like to know what measures, such as the screening of recruitment agencies, were being taken to prevent situations of that kind, whether there had been any arrests, prosecutions or convictions of perpetrators of such exploitation, and, if so, how many.
4. **Mr. Ben Achour**, noting that Kenyan law prohibited abortion but provided for a number of exceptions, said that obstacles to risk-free abortion persisted, including punitive legal provisions such as sections 158–160 and 228 of the Penal Code, which the police used to harass and extort money from medical providers willing to offer abortion services. He would therefore like to know whether the State party intended to amend those provisions. Since maternal mortality remained high and access to maternal health care was inadequate in public hospitals, it would be interesting to learn what steps the State party had taken to address maternal mortality and reinstate the “standards and guidelines for reducing morbidity and mortality from unsafe abortion in Kenya”, in accordance with the High Court’s ruling on petition No. 266 (2015). Information on the State party’s plans to withdraw its reservation to article 14 (2) (c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) would also be welcome.
5. Recalling that, in 2017, the Supreme Court had declared unconstitutional the mandatory imposition of the death penalty in murder convictions, as set forth in section 204 of the Penal Code, he said he would like to know what measures had been adopted to implement the Supreme Court’s ruling and to amend section 204 of the Penal Code. It would also be useful to learn what steps had been taken towards the wholesale abolition of the death penalty and ratification of the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, and when the Power of Mercy Advisory Committee was expected to publish the results of its survey on the views of Kenyans regarding the abolition of the death penalty.
6. He welcomed the recent measures taken by the State party to prevent illegal use of force, including the establishment of the Independent Police Oversight Authority and the adoption, in 2011, of the National Police Service Act, which set out conditions for the use of force by police. He would like to know whether any of the police officers charged with murder and listed in the annex to the State party’s replies to the list of issues had been convicted, and, if so, how many. An update on the case involving the murders of Willie Kimani, Josphat Mwenda and Joseph Muiruri would also be appreciated. Recalling that enforced disappearance was not established as a separate offence in the Penal Code, he said that the provisions on crimes against liberty did not cover all the elements of enforced

disappearance or reflect the serious nature of enforced disappearance, and therefore did not provide adequate protection against it. He would therefore like to know what steps the State party had taken towards ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. He would also like to know whether the State party allowed the Kenya National Commission on Human Rights access to military detention facilities while investigating torture, ill-treatment and enforced disappearances.

7. Turning to the issue of extrajudicial executions, he said that the Kenya National Commission on Human Rights had noted a low rate of prosecution for security officers in cases of extrajudicial killings and excessive use of force. The Commission had received 24 complaints of non-fatal police shootings, 39 complaints of fatal police shootings, 15 complaints of deaths in custody, 56 cases of extrajudicial killings and 42 cases of shootings by other armed forces, and extrajudicial killing and excessive use of force reportedly also targeted witnesses. The Committee would like to know how many cases brought against officers in charge of deployment units in relation to the use of live ammunition and excessive force by officers under their command had been settled. It would also appreciate further information on the measures taken to ensure that the violence committed by law enforcement officers during the 2017 election did not reoccur in future elections, and on the State party's plans to assess the effectiveness of the Witness Protection Agency in providing protection to victims and witnesses of extrajudicial killings.

8. Despite the fact that torture was prohibited by law and that three government agencies had conducted human rights awareness-raising campaigns for the police and security forces, information received by the Committee indicated that torture and excessive use of force remained widespread in Kenya. The Kenya National Commission on Human Rights had reported receiving 87 complaints of violations of the right to liberty and security of person, all of them related to the application of measures introduced in response to the coronavirus disease (COVID-19) pandemic between 15 March and 6 June 2020. The delegation's comments on those figures would be appreciated. It would also be helpful to learn whether the State party intended to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. **Ms. Sancin** said that reports received by the Committee indicated that it was difficult to assess the effectiveness of climate-change-related policy measures, owing in part to insufficient coordination among ministries and between national and local levels of government, which in turn resulted in inconsistent coverage of climate changes issues in the relevant sectoral plans and inadequate fulfilment of national climate change mitigation targets. She would like to know what measures were being planned to ensure better coordination among all sectors at all levels and to improve public participation and access to information, including for minorities and indigenous peoples. In the light of the State party's recent launch of a five-year project in cooperation with the Green Climate Fund, aimed, inter alia, at cushioning the effects of drought caused by climate change, she wondered whether any additional financial resources had been budgeted for the effective implementation of the State party's environmental framework. Lastly, she would welcome an update on the State party's long-term low greenhouse gas emission development strategy under the Paris Agreement; information on when the State party planned to publish its updated nationally determined contribution to the global response to climate change; and an account of whether climate change was to be meaningfully considered in the State party's economic stimulus programme, which was intended to support vulnerable groups, including indigenous peoples, and companies affected by the COVID-19 pandemic.

10. **Mr. Zyberi**, commending the State party for its efforts to conduct wide-ranging reforms of the police services and to give law enforcement officers training on liberty and security of person, said that the Committee had nevertheless received worrying reports of arbitrary arrest and detention of human rights defenders, journalists and civil society representatives. Most of the cases of abuse reported by human rights defenders were not investigated or prosecuted and, when human rights defenders had won in court, the State had allegedly not honoured court orders for rewards or reparations. He would therefore like to know the number of investigations, prosecutions and convictions for arbitrary arrest and detention, and the number of cases that had been investigated by the Independent Police Oversight Authority, recommended for prosecution to the Office of the Director of Public

Prosecutions, and tried in court during the reporting period. He would also appreciate information on any plans to adopt a specific law to ensure adequate protection of human rights defenders and whistle-blowers. Lastly, it would be useful to know how the State party intended to implement the Public Benefits Organizations Act of 2013 in order to provide a safe and enabling environment for human rights defenders working within civil society. Would the State party consider adopting the model human rights defenders protection policy developed by the Kenya National Commission on Human Rights?

The meeting was suspended at 4.40 p.m. and resumed at 5 p.m.

11. **Mr. Kilonzo** (Kenya) said that, in addition to the rehabilitation centres for victims of gender-based violence operating in urban areas, there were 36 safe spaces run by civil society organizations in 13 counties. The Government conducted an awareness-raising campaign against gender-based violence annually and had set up a toll-free helpline for victims. In addition, it had organized a national conference on gender-based violence, had launched an inter-agency programme to tackle the issue and had drafted guidelines on the establishment of rehabilitation centres for victims. It had also recently launched a platform whereby cases of gender-based violence could be reported and victims could gain access to support services, had issued regulations giving effect to the Protection Against Domestic Violence Act, and was in the process of implementing the national action plan for the advancement of Security Council resolution 1325 (2000). Efforts to tackle gender-based violence in rural areas relied on the involvement of both men and women, and there had been no reports of men blocking access to justice for women victims in rural areas; victims could report acts of violence to the relevant authority and the case would be dealt with under national law, which took precedence over customary law. There were no data on cases of gender-based violence against girls with albinism, and there had been no cases of persons with albinism being subjected to witchcraft practices that violated their rights.

12. **Mr. Abdi** (Kenya) said that a number of measures had been taken to reduce prison overcrowding. For example, magistrates carried out weekly visits to prisons to review bail and bond terms, and mobile court sessions had been held in prisons in several areas of the country and would be organized more frequently once the COVID-19 pandemic was over. In recent years, the Office of the Director of Public Prosecutions had issued various documents, including guidelines on the decision to charge and diversion policy. Under the guidelines, prosecutors could request the police to release individuals from custody on bond. The diversion policy, meanwhile, allowed for some matters to be settled out of court, without the use of custody. The draft policy on correctional services, which was at the public consultation stage, also contained measures that would help to alleviate prison overcrowding. The Power of Mercy Advisory Committee had set up a task force to consider the issue of overcrowding in 2020, and the problem would also be addressed through the reforms undertaken by the National Committee on Criminal Justice Reforms.

13. **Ms. Kariuki** (Kenya) said that the abortion-related provisions of the Penal Code were in line with the Constitution, which stated that abortion was not permitted unless, in the opinion of a trained health professional, there was a need for emergency treatment or the life or health of the mother was in danger. Legal abortions must be undertaken in such a manner as to give the unborn child the highest chance of survival. Reproductive health service providers were urged to prioritize the provision of high-quality post-abortion, reproductive health and family planning services and to refer any cases that were beyond their technical capacities to the nearest public health facility in order to ensure that patients had access to multidisciplinary assistance, including counselling. The Government was developing additional guidelines relating to the constitutional provisions on abortion, in consultation with the relevant stakeholders. Kenya had entered a reservation to article 14 (2) (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa because that article was incompatible with its national law.

14. The Government had launched several programmes in order to reduce maternal mortality. The "Linda Mama" programme, for example, was designed to ensure universal access to maternal and child health services; it covered all 47 counties and 2,400 public health facilities and served approximately 400,000 pregnant women annually. The "Beyond Zero" campaign had been launched in 2014 with the aim of ending preventable deaths of mothers and children and unequal access to essential health services. As part of that initiative, mobile

clinics had been set up in all counties and local authorities had been encouraged to build maternal and child health facilities.

15. **Ms. Njau-Kimani** (Kenya) said that the findings of the survey on the abolition of the death penalty conducted by the Power of Mercy Advisory Committee had been published and had informed the work of the task force responsible for reviewing legislation on the death penalty in the light of the Supreme Court ruling of December 2017. The Government was currently gathering stakeholders' views on the recommendations made by the task force and was assessing which laws would need to be amended in order to give effect to the Supreme Court ruling.

16. **Mr. Nderitu** (Kenya) said that torture of any kind was prohibited, including in the context of security and counter-terrorism operations. The Evidence Act clearly stated that any evidence obtained illegally, including through torture, was inadmissible in court. Cases of police misconduct were investigated by an independent oversight authority and were referred to the Office of the Director of Public Prosecutions where appropriate. The purpose of the Prevention of Torture Act of 2007 was to give effect to article 29 (d) of the Constitution and to incorporate provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into domestic law. However, implementation of the Act had been undermined by the fact that many of the behaviours it criminalized were already covered by other offences established in the Penal Code. For example, in cases of torture that resulted in the death of the victim, the most appropriate charge was either murder or manslaughter, depending on the circumstances, not least because the penalty for manslaughter was life imprisonment, and thus more severe than the 25 years' imprisonment that torture offences carried. Likewise, where an act of torture resulted in bodily harm, the offences of assault or grievous bodily harm could be applied. In many cases involving reports of torture, there was insufficient evidence to substantiate the allegations. A committee had been set up to review the Act and study the barriers to its implementation, and a rapid reference guide for prosecutors on the offences established in the Act was being developed.

17. Another tool at the Government's disposal in the fight against torture was the National Coroners Service Act. The National Coroners Service to be established under that Act would conduct independent forensic investigations to determine the causes of any unnatural deaths reported to the authorities. An implementation committee led by the Office of the Attorney General had been set up to oversee the Service's introduction. The Authority had established a toll-free hotline for complaints regarding police activity. During the reporting period, the Authority had received 1,882 complaints about torture involving police officers, including 1,044 complaints of assault, 751 complaints of assault resulting in serious injuries and 87 complaints of sexual assault. Most of the allegations were currently under investigation and some cases had been referred to the Office of the Director of Public Prosecutions for review. In most cases, officers accused of torture were ultimately charged with other offences.

18. **Mr. Kitua** (Kenya) said that the Government had developed draft standard operating procedures to help law enforcement officers and prosecutors to identify and prosecute traffickers and that various measures had been taken under the National Plan of Action to Combat Human Trafficking to improve detection, prosecution and conviction rates. The Counter-Trafficking Advisory Committee provided training on trafficking offences for law enforcement officers, children's officers and prosecutors; informational materials on trafficking had been disseminated among the public; a special helpline had been set up to encourage reporting of suspected child trafficking; and the National Assistance Trust Fund for victims of human trafficking established pursuant to the Counter-Trafficking in Persons Act of 2010, was now operational, thanks to funding from the National Treasury. The Government did not compile statistics on the trafficking of body parts of persons with albinism or the trafficking of women through refugee camps. According to the 2019 census, there were approximately 9,700 persons with albinism in Kenya; around 3,600 of them were receiving free sunscreen lotions from the Government. There was no reason to believe that any persons with albinism had been killed for the purposes of trafficking in body parts.

19. **Mr. Owino** (Kenya) said that there were currently 76 cases in which police officers had been charged with offences related to extrajudicial executions pending before the courts. A further eight cases had been tried, and had resulted in convictions. Four police officers had been charged with the murder of Willie Kimani, Josephat Mwenda and Joseph Muiruri. The

testimony of a number of witnesses and some forensic evidence had still to be presented in court but a verdict was expected within six months.

20. There were no military detention facilities in Kenya; in fact, the Kenyan military was not authorized to operate detention facilities in the national territory. While the Kenya Defence Forces were authorized to participate in humanitarian activities in Kenya, they did not take part in security operations.

21. With regard to post-election violence, in 2018 the current President of Kenya had reached out to the leader of the opposition for a much publicized handshake, and together they had launched the Building Bridges Initiative. After extensive consultations as part of that Initiative, constitutional amendments had been proposed that were designed to ensure all communities had a say in governance. A referendum was due to be held on the related recommendations.

22. The Ministry of Foreign Affairs and the Attorney General were currently reviewing the compatibility of the International Convention for the Protection of All Persons from Enforced Disappearance with the Constitution and the domestic legal framework. The question of whether adequate financial resources were available for the Convention's implementation was also being considered.

23. With respect to the allegations that police officers had abused their powers in the enforcement of COVID-19 restrictions, while it was true that civilians and police had come into conflict in the days immediately after the introduction of the curfew, all police officers found to have used undue force had been indicted, disciplinary action had been taken and no reports of violence related to the enforcement of restrictions had been received since.

24. Various measures had been taken to prevent arbitrary arrests. Under the Constitution, police officers were required to bring arrestees before a judge within 24 hours, unless otherwise instructed by the courts, and when that was not possible, they were required to release the arrestee on police bond or bail, in accordance with the Bail and Bond Policy Guidelines. The authorities had received 994 complaints of arbitrary arrest, all of which had been investigated, and disciplinary and criminal sanctions had been imposed on those found responsible.

25. **Ms. Chirchir** (Kenya) said that measures had been taken to enhance coordination between the Kenya Forestry Service and the National Environment Management Authority, which held regular joint meetings. The State did not have adequate resources to implement the 34 million trees programme, but was currently seeking assistance from its development partners. The Kenya Forestry Service was working with county governments, schools and private landowners to reduce gas emissions from deforestation, mitigate forest degradation and provide alternative livelihoods for persons living in and around forest areas, and a forest reference level had been established to provide an objective benchmark for assessing those efforts. The State had invested heavily in geothermal energy and private companies were generating electricity using renewable energy sources. The Kenya Association of Manufacturers was working with the Ministry of Energy to conduct energy audits and improve energy efficiency to reduce greenhouse gas emissions.

26. **Ms. Sancin** said that she would appreciate information on measures taken to ensure effective public participation in climate-change-related decision-making and access to information on environmental matters for vulnerable groups.

27. **Mr. Muhumuza** asked whether the State party had established reporting mechanisms that would help to ensure the safety of Kenyan nationals working abroad.

28. **Mr. Ben Achour** said that he would be grateful for further information regarding enforced disappearances and extrajudicial executions.

29. **Mr. Zyberi** said that it would be useful to know whether the State party had developed programmes to facilitate deradicalization and the return of nationals who had joined foreign terrorist groups.

30. **Mr. Bulkan** said that he would like to know how many prisoners had been resentenced in the light of the Supreme Court's ruling on the unconstitutionality of mandatory death sentencing, and how many petitions for resentencing had been considered. He would

also appreciate further information on the status of the framework for resentencing hearings developed by the task force responsible for reviewing legislation on the death penalty.

31. **Mr. Were** (Kenya) said that the framework developed by the task force had been circulated to stakeholders for feedback and was not yet being applied. Approximately 8,000 offenders had become eligible for resentencing hearings immediately after the issuance of the Supreme Court's ruling, and many of them had since been resentedenced or released. Currently, just under 6,000 offenders were eligible for resentencing hearings.

The meeting rose at 6.10 p.m.