



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

Distr.: General  
12 May 2022

Original: English

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**Committee against Torture**  
**Seventy-third session**

**Summary record of the 1900th meeting**

Held at the Palais Wilson, Geneva, on Thursday, 5 May 2022, at 3 p.m.

*Chair:* Mr. Heller

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*The meeting was called to order at 3.10 p.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention** *(continued)*

*Third periodic report of Kenya (continued)* (CAT/C/KEN/3; CAT/C/KEN/QPR/3)

1. *At the invitation of the Chair, the delegation of Kenya joined the meeting.*
2. **Ms. Wanyama** (Kenya), in reply to the concerns raised that the definition of torture under the Prevention of Torture Act of 2017 was not consistent with that given in the Convention, said the discrepancy lay in the reference in the Act to the involvement of “a public officer or a person acting on behalf of a public officer” rather than “a person acting in an official capacity”. However, the words “person acting on behalf of a public officer” were synonymous with “person acting in an official capacity”.
3. With regard to the challenges faced in implementing the Prevention of Torture Act, the Office of the Director of Public Prosecutions had a specialized division to monitor the implementation of the Act and investigate all violations by the police and security services. The Office also worked closely with the Independent Policing Oversight Authority, which provided for civilian oversight of the work of the police, and the Internal Affairs Unit of the Police, in charge of supervision and disciplining of the police. It had developed tools that helped it with investigations and prosecutions, such as the standard operating procedures, a rapid reference guide to implementation of the Act and a case digest so that officers could familiarize themselves with the jurisprudence not only in Kenya but also in other jurisdictions concerning violations by the police. Lastly, it received considerable technical assistance from the Office of the United Nations High Commissioner for Human Rights.
4. With respect to the penalties that offences involving torture and ill-treatment carried under the Act, which ranged from a fine not exceeding 1 million Kenya shillings to a maximum 15 years’ imprisonment, or both, the judiciary had a sentencing policy that helped it to assess the severity of the offence and match it with a punishment that fitted the crime. Suspects could also be ordered by the court to provide compensation to victims for medical and rehabilitation costs.
5. The Committee had requested information on laws that had been repealed with the introduction of the Prevention of Torture Act. While some provisions of certain laws had been deleted for the sake of consistency, insertions had been made to take account of the offence of torture and cruel, inhuman or degrading treatment or punishment and align the wording of the laws with the Act. The amended laws included the Extradition (Contiguous and Foreign Countries) Act, the Extradition (Commonwealth Countries) Act and the Chiefs’ Act.
6. Military officers were considered to be public officials and were subject to the Prevention of Torture Act if they committed offences that were covered by it.
7. Turning to concerns expressed about the lack of complaints lodged under the Prevention of Domestic Violence Act of 2015, she pointed out that the Act was civil in nature and did not provide for criminal penalties. However, any act of domestic violence was addressed by the Sexual Offences Act and the Penal Code. The hotlines for sexual and gender-based violence had proved effective, as was shown by the increase in the reporting of incidents. Between July 2019 and June 2020, there had been 4,088 registered cases of sexual and gender-based violence, with 1,214 convictions, 336 acquittals, 422 withdrawals and 2,116 cases pending trial at the time that the relevant report had been drawn up. Between July 2020 and June 2021, the number of registered cases had risen to 9,374, which her Government attributed to the increase in the level of reporting and the setting up of the hotlines, with 2,245 convictions, 830 acquittals, 1,075 withdrawals and 5,192 cases pending trial as at June 2021. The Office of the Director of Public Prosecutions had not yet completed its report for the current period. The annual reports were available on the Office’s website. The other issue concerned female genital mutilation. In the 2019/20 reporting period, 85 cases had been registered, with 41 convictions, 5 acquittals, 12 withdrawals and 27 cases pending trial. She would provide the statistics for the 2020/21 period in writing in due course.

8. Regarding access by victims of violent attacks to the Kenya police medical examination report, known as the P3 form, the forms were available for free at all police stations and on the National Police Service website. The high percentage of people who owned mobile phones and the extensive network coverage in Kenya greatly facilitated access to the document. The form used for the documentation and presentation of medical evidence of sexual offences was available at all public and private health facilities and the Ministry of Health website free of charge. In addition to the P3 form and post-rape care, medical reports were admissible in Kenyan courts.

9. **Mr. Otiende** (Kenya) said that, whenever allegations of the use of excessive force and extrajudicial killings were reported, the National Police Service launched an official investigation and the persons involved were subject to criminal proceedings before the court. Upon conclusion of the investigations, those found guilty were either fined or imprisoned. The Service had internal mechanisms for addressing such incidences, including disciplinary proceedings, which might result in penalties such as the interdiction, suspension, dismissal or reduction in rank of the offending police officer. The establishment of the Internal Affairs Unit was a measure aimed at promoting accountability. The Unit was responsible for receiving and investigating complaints against the police. It promoted uniform standards of discipline and kept records of the facts of any cases brought and of the investigations into the complaints lodged.

10. Under the National Police Service Act, the use of force by police officers must be necessary and reasonable to carry out an arrest. The sixth schedule of section 61 (2) of the Act laid down the conditions for the use of force and the use of firearms. It provided that a police officer must always attempt to use non-violent means first and force could only be employed when non-violent means were ineffective or without any promise of achieving the intended result. It also provided that the force used must be proportional to the objective to be achieved, the seriousness of the offence and the resistance of the person against whom it was used, and only to the extent necessary. Firearms could only be used when less extreme means were inadequate for the purpose of saving or protecting the life of the officer or other persons or in self-defence or in defence of other persons against an imminent threat to life or of serious injury.

11. The National Police Service also had a manual that guided officers on the use of force and firearms. They must stop using force as soon as they had achieved their objective. When the use of batons was necessary, they must not be used to strike any part of the body other than the shoulders, arms or legs for the purpose of disabling the person. The manual set out the instances in which a firearm could or could not justifiably be used.

12. His Government was making conscious and deliberate efforts to combat terrorism. The National Counter-Terrorism Centre, established for that purpose, was made up of members of the National Security Council, the National Intelligence Service, the Kenya Defence Forces, the Office of the Attorney General and others. The Prevention of Terrorism Act made provision for the prevention, detection and prosecution of terrorist activities. Several amendments had been introduced to the Act since its promulgation in 2012. The Proceeds of Crime and Anti-Money Laundering Act targeted the financing of criminal activities, which was critical in the Government's efforts to combat violent extremism. Between 2018 and 2022, there had been 69 reported cases of terrorism, 49 of which were under investigation, 5 of which were before the courts and 15 of which had been completed.

13. The Prevention of Terrorism Act criminalized a wide range of activities linked to terrorism, including radicalization, which was defined in very broad terms. The rights of persons suspected of committing terrorist activities could be limited. Kenya had launched its National Strategy to Counter Violent Extremism in 2016. In addition to building a robust legal framework for combating violent extremism, Kenya had increased its community policing, popularly referred to as the Nyumba Kumi Initiative, which had been launched with a view to enhancing protections against extremist activities and groups.

14. Section 33 of the Act provided for safeguards to prevent breaches of the law such as holding suspects for longer than required. It guided judges in determining whether to allow a suspect to be held for more than 24 hours and set forth an elaborate procedure to be followed by the police before they were allowed to file an application to hold a suspect beyond that

time limit. The application must be made in writing and sufficient reasons must be provided as to why the suspect could not be released on bail.

15. His Government had realized that the security situation had rapidly changed over the years, which had made it necessary for the police to acquire new competences. The National Police Service had therefore developed a comprehensive training programme that responded to the new security challenges and aspirations of the population. In May 2017, the Service had designed a basic training course syllabus and regulations, which contained 160 hours of legal studies, 22 hours of courses on countering terrorism and violent extremism, 18 hours on community policing, 18 hours on cross-cultural and diversity policing, 24 hours on communications skills and public relations, 18 hours on human rights, police ethics and accountability and 18 hours on the fundamentals of leadership and responsibility. The Service had thus devoted considerable attention to human rights. The second term of the basic training syllabus included 40 hours of legal studies, 30 hours of studies on countering violent extremism and 40 hours of the fundamentals of leadership. The expected outcome of such training was that police officers should be able to observe fundamental human rights and freedoms when performing police duties, explain national values and the principles of good governance and maintain a high level of professional ethics, transparency and accountability.

16. Lastly, the Service had embraced automation to offer citizens more effective services. First, it had digitized its personnel records. It had also launched a “digital occurrence book” to ensure that all reported incidents were duly recorded. His delegation would provide other replies in written form in due course.

17. **Ms. Kamau** (Kenya) said that the Independent Policing Oversight Authority regulations had been drafted and were under discussion by the relevant stakeholders before being sent to the National Assembly for approval. The regulations would establish a mechanism that would allow anyone to lodge a complaint against the police verbally or in writing using any format or technology, including sign language and Braille. At present, members of the public could lodge complaints through the Authority’s 1559 toll-free number. Complainants could choose to remain anonymous and, in such cases, their anonymity was always guaranteed. Under the new regulations, police officers who suspected another of having committed an offence must notify the Authority as soon as possible, and in any case within 24 hours, by telephone or email. Failure to do so could result in criminal penalties, including a fine of up to 500,000 shillings or up to 3 years’ imprisonment. Not all complaints were referred to prosecutors; complaints could be resolved by working with police stations directly, dismissed for lack of evidence, withdrawn by the complainant of his or her own volition or referred to other competent institutions. Of the 7,500 complaints received by the Authority, 370 had been referred to the Office of the Director of Public Prosecutions and just over 300 were pending before the courts. To date, 11 convictions had been secured.

18. A broad range of civil society organizations were active in Kenya. They played a key role in monitoring human rights violations and developing national policy and legislation to enhance the human rights framework. Implementation of the Public Benefits Organizations Act had been delayed because the Associations (Registration and Incorporation) Bill, which covered matters including governance and accountability of civil society organizations, had not been enacted and was still in the public consultation phase. In the meantime, non-governmental organizations (NGOs) were regulated by the Non-Governmental Organizations Coordination Act.

19. A 2012 amendment had brought the Public Order Act into line with the Constitution. The Public Order (Amendment) Bill would introduce penalties for persons whose actions caused grievous bodily harm, damage to property or loss of earnings during public demonstrations and would establish compensation for victims of such offences. Following a court case brought by Ngunjiri Wambugu against the Inspector General of Police, the Government had been required to draft codes of conduct for organizers to ensure that their demonstrations were peaceful. If demonstrators were armed, the police could respond in a reasonable and proportionate manner. Officers who used disproportionate force would be investigated and, if appropriate, charged.

20. A series of measures had been implemented to ensure free and safe elections in 2022, including a security programme run by officials in the security and justice system; a joint

technical advisory committee established by the Office of the Registrar of Political Parties and the Independent Electoral and Boundaries Commission to address concerns raised by political parties that might have an impact on the election; a memorandum of understanding between the Office of the Director of Public Prosecutions and the Independent Electoral and Boundaries Commission on collaboration in the enforcement of the Election Offences Act; cooperation between the Commission for University Education and the Kenya National Qualifications Authority to ensure the authenticity of candidates' tickets; a training manual for police officers and security agencies to maintain order in line with human rights principles; and a standard operating procedure for the investigation and prosecution of serious human rights violations, including torture, sexual violence, enforced disappearance and extrajudicial killing, committed by police officers. Investigators of the Independent Policing Oversight Authority received training on international criminal law to empower them to investigate widespread and systematic human rights violations that might occur during the electoral period, and a rapid response team was on hand to deal with incidents as they arose. Additional forensic equipment was available to support investigations, and personnel accredited by the Independent Electoral and Boundaries Commission monitored police conduct during the election period.

21. **Mr. Ingonga** (Kenya) said that the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) were followed in all places of detention. Under the Guidelines, detainees had access to doctors, and body searches of female detainees were conducted by female officers in a private setting.

22. In 2019, the Office of the Director of Public Prosecutions had introduced a policy that allowed certain matters to be resolved out of court by approved bodies as part of efforts to reduce prison overcrowding. Persons who had been sentenced to 3 years' imprisonment or less could be released or offered alternatives such as community service or probation, subject to a review of their cases by a judge. Since the outbreak of the coronavirus disease (COVID-19) pandemic in 2020, court hearings held by videoconference had resulted in the release of 5,000 prisoners and pretrial detainees who had been charged with petty offences.

23. Adequate nutrition was considered a basic right of prisoners. The Government ensured that prison food was wholesome, nutritious, well-prepared and provided in sufficient quantity in accordance with the Prisons Act. To that end, it had sought the advice of nutritionists on the dietary requirements of inmates. Health officers were employed to ensure that detention facilities adhered to the Ministry of Health guidelines on hygiene. All inmates were provided with soap and other personal hygiene products, and key amenities, including washing and sanitation facilities, were maintained in compliance with the relevant health standards. Since prisons were connected to the municipal or county water pipelines, the water was fit for human consumption and available in all places of detention. As a supplementary source and to ensure a constant supply, boreholes had been drilled at all major prisons and the water thus obtained was treated to make it safe to drink. At prisons located in dry parts of the country, clean water could also be delivered by water bowsers.

24. Under article 43 (1) (a) of the Constitution, every person had the right to health-care services. All medical facilities attended to detainees in need of care, and the Government was in the process of constructing a hospital specifically for prisoners who would otherwise be referred to the general public health system. The hospital was currently at 40 per cent completion. The Government, with the support of the International Committee of the Red Cross (ICRC) and the Kenya Red Cross Society, had set up medical isolation facilities during the COVID-19 pandemic. ICRC had provided US\$ 10,000 for the construction of such facilities and the purchase of facemasks and hand sanitizer. Cases of mentally incapacitated persons were handled in accordance with the Mental Health Act.

25. Officers who committed acts of violence in prisons were subject to disciplinary proceedings and, in more serious cases, liable to prosecution. The Government worked closely with local and international NGOs to train officers on human rights with view to preventing violence. Such training had been given to approximately 5,000 officers, including senior managers.

26. Laws governing prisons in Kenya were currently under review in order to bring them fully into line with the United Nations Standard Minimum Rules for the Treatment of

Prisoners (the Nelson Mandela Rules) and other international human rights instruments applicable to prison institutions. The Government was working with the Kenya National Commission on Human Rights on amendments to prison legislation in order to address shortcomings in areas such as social reintegration, health care, treatment of prisoners with special needs and alternative measures and penalties, including restorative justice.

27. Duty officers recorded all complaints in a register that was checked daily by the officer in charge. Complaints that concerned management staff were escalated to high-ranking officials, such as the Administrative Secretary. Minor offences were dealt with internally and were punishable with disciplinary penalties, while more serious matters were reported to the police. As to the gender of prison staff, around 80 per cent were male and 20 per cent were female.

28. **Ms. Chweya** (Kenya) said that, in a case brought by the Federation of Women Lawyers, the court had found that the abortion of pregnancies resulting from rape was permissible under the Constitution only where the mother's life or health were in danger according to the opinion of a trained health professional. In order to protect women from unsafe abortions, the law required such procedures to be carried out only by licensed medical professionals using the proper equipment and techniques in a suitable health facility. Severe penalties were in place for illegal abortions. The National Guidelines on the Management of Sexual Violence 2014, copies of which were available at all health facilities, covered the services to be provided to rape victims in order to reduce their risk of contracting any sexually transmitted infections, especially HIV.

29. Same-sex relationships were prohibited under sections 162 and 165 of the Penal Code, and article 45 of the Constitution stated that only persons of the opposite sex could marry. In May 2019, a court ruling had rejected petitioners' claims that the Penal Code provisions were discriminatory because they prohibited private sexual activity between consenting adults, and declared sections 162 and 165 to be constitutional. She wished to emphasize, however, that the Government did not sanction violence and abuse against anyone, including lesbian, gay, bisexual and transgender persons. Everyone, regardless of sexual orientation, was entitled to all legal safeguards, complaint mechanisms and public services, and legislation had been enacted to uphold the principles of equality and non-discrimination. The Government worked with NGOs and development partners to raise awareness of issues related to lesbian, gay, bisexual and transgender persons among the police and prison officers and health-care workers. Police recruits were taught about the Nelson Mandela Rules as part of the training curriculum.

30. Intersex persons had been officially recognized in the 2019 census, and the Registration of Persons (Amendment) Bill contained provisions to enable persons to identify themselves as intersex when obtaining birth certificates, identification documents and passports. The Director of Medical Services, in consultation with the relevant regulatory bodies, was working to develop a protocol on surgical and hormonal interventions in cases of medical emergency.

31. In response to petitions Nos. 605 and 606 of 2014, the High Court of Kenya had ruled that coerced and forced sterilization constituted a violation of the petitioners' rights to dignity, life and freedom from discrimination and violence. The Court had further declared that the government of Nairobi County and the Ministry of Health had violated their statutory and constitutional obligation to act with due diligence to ensure that women living with HIV were able to access reproductive health services in a manner that respected their dignity and autonomy. The Ministry of Health, Doctors without Borders and Pumwani Maternity Hospital, among others, had been ordered to pay damages for the physical and psychological suffering occasioned by the unlawful and unconstitutional sterilization. The term "unconstitutional sterilization" referred to sterilization that had been forcibly carried out in violation of the person's right to dignity, life and freedom from discrimination and violence as enshrined in the Constitution. Sterilization was legal when performed at the request of a patient or on the advice of a qualified doctor in order to treat a specific medical condition.

32. **Mr. Were** (Kenya) said that the National Council on the Administration of Justice had established a special task force on children's issues, which had developed guidelines on proceedings in children's courts, a diversion toolkit for practitioners in juvenile cases,

improved policy and continuous professional development relating to juvenile justice, standard operating procedures for child protection units and a training curriculum and guidelines for child protection officers. The task force had also developed a bill on children's justice, which was currently awaiting its second reading in Parliament, and included provisions on the age of criminal responsibility and funding for legal representation of children in conflict with the law.

33. Child protection units and children's desks had been set up at police stations to address the needs of children while their cases were being processed. The units ensured that the rights of children held at police stations were safeguarded and that they were held separately from adults. The country's first police unit dedicated to combating child sexual exploitation and abuse had been officially launched in 2016 and had been instrumental in safeguarding at least 150 children. With support from the National Crime Agency of the United Kingdom, the Government was working to establish multi-agency child protection units across the country. As a first step, all police stations had set up gender desks, which were responsible for ensuring that the specific needs of children and women were met.

34. Judges and magistrates, children's officers, probation officers, prison officers and public administrators had all received training on how to handle cases involving children, and a capacity-building exercise was currently under way among the judiciary and relevant NGOs. A toll-free child helpline, which could be used to report cases of child abuse, responded to between 5,000 and 7,000 cases every year. The Law Society of Kenya, the United Nations Office on Drugs and Crime and several NGOs supplemented the Government's efforts to ensure that the right of children to free legal aid was upheld. Legal representation was ensured from the time the child was brought before a court. If no advocate was available, proceedings were stayed.

35. Improvements in Internet and smartphone coverage had helped increase reporting of offences against children, and the ability to use the International Criminal Police Organization (INTERPOL) database facilitated the work of the police. The police had worked in partnership with the Communications Authority of Kenya to develop a policy on children's online safety. Standard operating procedures had been developed to guide the police on how to handle child- and gender-related matters. The use of all relevant helpline services had increased, which had led to a corresponding increase in legal and administrative action in cases involving children.

36. Courts operated in all the counties of Kenya. Since transport links had improved, they were generally easily accessible. Mobile courts operated in the few remaining areas where access was challenging. In the coming weeks, following the admission of several hundred lawyers to the Roll of Advocates, the number of registered lawyers would increase to over 20,000. There were practising lawyers in every town in the country and the courts maintained databases of local advocates able to provide legal aid.

37. Following a 2017 decision of the Supreme Court that it was unconstitutional to impose a mandatory death sentence in murder cases and the establishment of a task force on implementation of the decision, data had been collected from all prisons to ascertain the number of persons sentenced to death who had not yet been executed, which had been approximately 8,500 in 2018. The higher courts were currently reviewing the sentences of all persons who had been sentenced to death prior to the Supreme Court decision and had completed the review of over 1,000 cases. Some persons who had been in prison for over 30 years had been released. Some persons whose death sentence had already been commuted to life imprisonment had opted not to have their sentence reviewed. The decision on whether to abolish the death penalty entirely would likely be determined through a plebiscite of the people of Kenya. Although the Supreme Court decision related to murder offences, the principle that the death sentence must not be mandatory was being applied to other capital offences.

38. The national courts invoked and upheld the provisions of the Convention. He would provide in writing a summary of nine such cases, relating to the prohibition of female genital mutilation, even when the victim was a consenting adult, the provision of damages for violations of the Convention, the investigation and prosecution of sexual and gender-based violence, the individual responsibility of public officials who committed human rights

violations, the State's duty to ensure access to affordable maternal health care, violations of the principle of non-refoulement, and the non-applicability of any statute of limitations to violations of constitutional and human rights.

39. The National Council on the Administration of Justice had established a task force, which was currently reviewing all statutory laws with a view to the decriminalization of petty offences. With public and stakeholder involvement, the judiciary had developed a bail and bond policy and sentencing guidelines, setting out the circumstances in which pretrial detention was not necessary. Under the diversion policy instituted in 2019 by the Office of the Director of Public Prosecutions, many cases had been settled out of court, allowing offenders to avoid a criminal record while still ensuring accountability. Courts made wide use of non-custodial sentences for petty offences.

40. **Mr. Iscan** (Country Rapporteur) said that he would like to have more information on public awareness of the P3 form for victims of violence and the post-rape case care form and how widely they were used in practice. It would be useful to have information about the measures taken to ensure that detained persons could make confidential complaints to an independent and impartial institution and to ensure effective follow-up. He would appreciate a response to allegations of arbitrary detention by the police for the purpose of extortion and any prosecutions and convictions for such offences. He would also welcome additional information on the functioning of the Witness Protection Agency.

41. He would like to reiterate his request for a response to allegations that access was not provided to military institutions for investigations of alleged violations of the Convention. He would also appreciate replies to his request for information about how the State party ensured redress under article 14 of the Convention and fulfilled its obligations regarding non-refoulement under article 3 of the Convention.

42. **Mr. Buchwald** said that he was not convinced that the phrase "acting in an official capacity" was synonymous with the phrase "acting on behalf of a public official", because "acting in an official capacity" would cover persons not acting directly on behalf of the Government but fulfilling public functions. He wondered whether the delegation could provide statistics on the exact proportion of the rise in reported cases of sexual and gender-based violence that could be attributed to the availability of the hotlines.

43. He would appreciate confirmation of his understanding that police officers were not permitted under national law to use firearms or lethal force to protect property. He would be interested to hear the delegation's response to his view that the criteria allowing judges to order remand in custody of up to 90 days under the Prevention of Terrorism Act were vague and likely to be interpreted differently by different judges.

44. He had understood that there was consensus on the need to amend the procedure for registration of NGOs, given the vagueness of the existing rules and the risk of politicized decisions. He would be interested to know the nature of the ongoing debate that was preventing the operationalization of the Public Benefit Organizations Act. He would appreciate more information about implementation of the recommendations of the Kenya National Commission on Human Rights, including any mechanism to monitor the number of recommendations which had been implemented or received a formal response, which agencies were more or less responsive and what measures the Government was taking to improve implementation.

45. He wondered whether the exemption to the ban on abortion in cases of danger to the mother's health would cover cases of danger to her mental health. He would appreciate an explanation of the logic behind requiring an individualized consideration of circumstances before imposing the death penalty in murder cases but not for other offences that carried the death penalty.

46. **Mr. Touzé** (Country Rapporteur) said that he would appreciate information about whether the legal framework on detention conditions was applied in practice by authorities at all levels. He would be interested to hear more about the diversion policy, including the persons and offences to which it was applicable and how it worked in practice. He would also like to have more information about the practical application of non-custodial sentences.



47. He would appreciate a response to allegations that the legal requirements to maintain a register of detention were not met in practice. He would be interested to learn more about the supplementary legal representation services provided in areas of the country where access to a lawyer was difficult, and whether the persons providing the service were public officials or private actors. He wondered what was done to ensure that persons held in police custody had access to a doctor. He would appreciate more information on how the right to be brought promptly before a judge after being taken into police custody was upheld in practice, especially given the geographical distribution of courts.

48. He would appreciate further details on the legal aid system and on the State party's potential ratification of the Optional Protocol to the Convention. Lastly, noting that the Committee was not the only treaty body to have raised concerns about the issue of marital rape, he wished to know how the offence was covered in the State party's criminal law.

49. **Ms. Pūce** asked whether there was a maximum duration for pretrial detention and, if so, how it was enforced, whether records of pretrial detention were kept and whether there were plans to digitize prison records.

50. **Mr. Tuzmukhamedov** said that he would welcome the delegation's comments on reports that persons had been deported from Kenya to countries where they ran the risk of being subjected to the death penalty and on any torture cases before the African Court on Human and Peoples' Rights involving Kenya in which the relevant provisions of the African Charter on Human and Peoples' Rights or the Convention had been invoked. Lastly, it would be interesting to know whether the prospective East African Federation would include a human rights component.

*The meeting was suspended at 5.15 p.m. and resumed at 5.25 p.m.*

51. **Ms. Njau-Kimani** (Kenya) said that replies to the question about the inspection of military facilities would be provided in writing after the delegation had consulted with the military authorities to obtain the most accurate information.

52. **Ms. Kariuki** (Kenya) said that the Victim Protection Board had finalized the Victim Protection General Regulations 2021 and the Victim Protection Trust Fund Regulations 2021, which had undergone public consultations and a validation workshop and were before the National Treasury for final approval. While the victim compensation framework was being put in place, the courts continued to issue compensation orders, which were transmitted to the Office of the Attorney General for disbursement of the payments.

53. The Witness Protection Agency had been established in 2008 to ensure the safety and welfare of witnesses during court proceedings through measures such as the holding of in camera sessions and the use of pseudonyms. The Agency also ran a witness protection programme, whose services included the provision of physical and armed protection, relocation and changes of identity. The Agency had received 118 new applications for the witness protection programme in 2020/21, down from the previous year due to scaled back operations in the justice system stemming from the COVID-19 pandemic. The budgetary allocation to the Agency in 2020/21 had been USD 4.6 million, supplemented by support from development partners. The Programme for Legal Empowerment and Aid Delivery in Kenya, a partnership with the European Union, the United Nations and civil society organizations, was designed to enhance justice services, improve dispute settlement and promote alternatives to imprisonment.

54. **Ms. Nyangoro** (Kenya) said that the treaty ratification process was lengthy because it required extensive stakeholder consultations and the approval of the legislature. Once ratified, international instruments were immediately enforceable. A committee had been established under the Office of the Attorney General to examine the implications of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance. Although Kenya had not yet ratified the Optional Protocol to the Convention against Torture, it had taken measures to implement some of its requirements. For instance, it had established the Independent Policing Oversight Authority and the Kenya National Commission on Human Rights, which was mandated to investigate violations of the Prevention of Torture Act, request information from the public, issue summonses, recommend prevention measures and advise government entities.

55. Kenya had adopted the more progressive Refugee Act in 2021 and maintained an open-door policy towards refugees, who had a right to education, freedom of movement, identification documents and gainful employment. Between 2016 and 2022, more than 174,440 asylum seekers had been registered. Asylum seekers, regardless of sexual orientation, had the right to enjoy the space they occupied without interference. A determination had to be made on all asylum applications within 90 days. A panel had been established to consider asylum issues and ensure that the determination process was credible, fair, open and transparent.

56. Between 2016 and 2022, more than 84,000 people had been voluntarily repatriated to their countries of origin; there was no record of any involuntary returns. Under the Refugee Act, refugees or members of their families could be expelled if they engaged in conduct that breached public order or was contrary to public morality or if they contravened other laws. The power to order a deportation rested with the Cabinet Secretary, but safeguards were in place, including the right to appeal, to have legal representation and to seek redress in case of procedural violations. The Government ensured that any extradition treaty and mutual legal assistance agreements it signed were in line with international standards.

57. **Mr. Muktar** (Kenya) said that, under the Constitution and the organization's establishing legislation, the Kenya National Commission on Human Rights enjoyed a broad mandate, which included the promotion and protection of human rights and fundamental freedoms in all spheres of life, in addition to the powers conferred on independent offices by article 252 of the Constitution. Under the Prevention of Torture Act, the Commission was required to submit an annual report to the National Assembly on the Government's performance in terms of torture prevention. The Commission could also at any time submit reports to the Cabinet Secretary concerning justice matters or issues specific to its mandate. In recognition of its important role, the Government had allocated USD 4 million to the Commission in 2020/21, up slightly from previous years, despite the significant economic downturn in the early months of the COVID-19 pandemic. Most of the Commission's recommendations had been implemented, including with regard to intersex persons. Indeed, in a first for Africa, the 2019 census had included questions on intersex persons.

58. In addition to mediation, the Commission could offer individuals and communities affected by human rights abuses a range of remedial measures. It had also engaged in public-interest litigation and, where the complaints it received fell outside its remit, for instance when they related to labour disputes, corruption or environmental damage, a referral mechanism was in place to convey them to the competent agency. In 2020/21, over 73 per cent of human rights petitions had been resolved through the provision of legal advice and nearly 6.5 per cent had led to court proceedings. Some 53 per cent of the petitions related to economic, social and cultural rights, 40 per cent to civil and political rights and 6.5 per cent to collective rights.

59. **Mr. Were** (Kenya) said that, under the Prevention of Terrorism Act, a person could be remanded in custody for up to 90 days; however, the conditions for extending the initial period of 24 hours were so strict that the maximum extension was rarely authorized in practice. Free legal representation was always provided by qualified lawyers. All courts had a list of lawyers willing to provide their services pro bono, whether to juveniles, persons charged with capital offences or persons who faced severe sentences such that the court required them to be represented. In cases where the suspect had entered a plea without a lawyer present and was later assigned a lawyer, a new plea could be entered.

60. In addition to murder, only three offences carried the death penalty, namely, robbery with violence, attempted robbery with violence and treason. The last treason case had been in 1982 following an attempted coup d'état. The Supreme Court had issued guidance that, in capital cases, judges were free to choose another appropriate penalty on the basis of the circumstances of a case. Thus, the death penalty was rarely imposed.

61. There were currently no cases involving Kenya before the African Court on Human and Peoples' Rights. The East African Community dealt mainly with economic integration but if talks regarding a political federation began in earnest, the issue of human rights would undoubtedly be included in the relevant instruments.

62. **Mr. Otiende** (Kenya) said that three new prisons had been constructed in recent years and, in keeping with the President's Big Four Agenda, one of the four pillars of which was food security, most prisons were self-sufficient in terms of vegetables and maize. As for health, the cost of medication and other health-care services for prisoners was covered by the State. Government digitization efforts were led by the Ministry of Information, Communications and Technology. Most of the Prison Service's equipment was provided and maintained by the Ministry, with additional support from the United Nations Office on Drugs and Crime. During the pandemic, the International Committee of the Red Cross had provided equipment to enable detainees to participate in their trials from prison, thereby limiting the risk of exposure to the virus. Most records had been digitized and were accessible to justice and prison officials. Magistrates and judges occasionally visited prisons and reviewed sentences, especially sentences of 3 years or less. Following such visits, some prisoners were immediately released, given community service orders or placed on probation; others were handed affordable fines or bail bonds to help decongest prisons.

63. **Ms. Njau-Kimani** (Kenya) said that the delegation was grateful for the substantive dialogue with the Committee and looked forward to receiving its concluding observations, which would support the Government's efforts to meaningfully implement the Convention.

*The meeting rose at 6 p.m.*