



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

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Committee against Torture Seventy-third session

Summary record of the 1897th meeting*

Held at the Palais des Nations, Geneva, on Wednesday, 4 May 2022, at 10 a.m.

Chair: Mr. Heller

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* No summary record was issued for the 1896th meeting.

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The meeting was called to order at 10.10 a.m.

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

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

1. *At the invitation of the Chair, the delegation of Kenya joined the meeting.*
2. **Mr. Mailu** (Kenya), introducing his country's third periodic report (CAT/C/KEN/3), said that the Government of Kenya was fully committed to realizing the aspirations of the Convention. To that end, a committee had been tasked with establishing a national coroners service for independently investigating suspicious deaths, and, in 2021, the legislature had drafted regulations on victim protection with a view to fully operationalizing a fund from which reparations and compensation could be paid to victims of torture and other ill-treatment.
3. A multi-agency victim-centred service had been launched to strengthen the capacity of the police to prevent and respond to cases of sexual and gender-based violence. Training manuals on data collection, data analysis and reporting on such cases had been published for use by national government administration officers, and specialized courts for handling cases of sexual and gender-based violence had been created.
4. The full elimination of female genital mutilation was a matter of priority. County-level steering committees had been established in the regions where the practice was most prevalent to monitor the situation and report regularly on developments. Awareness-raising activities were continually carried out within communities, and cross-border coordination and cooperation had been intensified with a view to eliminating the practice in the wider region.
5. As part of a efforts to prevent extrajudicial executions, the Office of the Director of Public Prosecutions had introduced standard operating procedures on the investigation and prosecution of serious human rights offences committed by police officers, which provided a structured framework for enhancing accountability and protecting victims. In addition, the Civil Rights Division established within the Office worked closely with civil society to promote respect for human rights and the rule of law among law enforcement officers. Police officers received training on human rights, police ethics and accountability, and oversight institutions had been established to investigate and penalize the excessive use of force.
6. Constitutional and legal safeguards had been put in place to ensure that measures taken to fight terrorism did not lead to the infringement of suspects' rights. For example, any extension of the maximum 24-hour period for the detention of suspects must be sanctioned by the courts. All arrested persons could be released on bond or bail, under reasonable conditions, unless there were compelling reasons not to do so. The ability to apply for a writ of habeas corpus was a non-derogable constitutional right. In April 2022, inter-agency guidelines on cooperation and collaboration in the investigation and prosecution of terrorism and terrorism financing had been published to ensure that the rule of law was upheld during all such procedures.
7. The intersex population of Kenya had been recognized in the 2019 national census. The Government was taking tangible policy, legislative, institutional and administrative steps to protect the specific rights of intersex persons.
8. Despite the limitations on movement imposed in response to the coronavirus disease (COVID-19) pandemic, Kenya had continued to provide refuge to persons fleeing persecution. The number of refugees and asylum seekers stood at more than 547,000, representing an increase of 8.5 per cent since 2020.
9. Other developments included the drafting of standard operating procedures in order to holistically address the crimes of human trafficking and exploitative recruitment practices, while ensuring preventative and responsive protection for victims and potential victims. In addition, the National Multi-Agency Consultative Forum on Election Preparedness was working to ensure that the general elections scheduled for August 2022 would be credible and free from violence, including by appointing a judicial committee on elections to ensure

the speedy resolution of electoral disputes, providing training on international criminal law for investigators and establishing rapid response teams. To facilitate the implementation of the Prevention of Torture Act, a rapid reference guide and a draft charge sheet for offences listed in the Act had been developed for use by prosecutors and investigators.

10. To combat the challenge of overcrowding in prisons, policy guidelines had been developed to support the fair administration of bail and bond measures and to guide prosecutors on the diversion of cases from court processes in order to allow matters to be settled out of court. The Government had also approved the use of community service orders for petty offences and for offenders with a sentence or an outstanding imprisonment term of 3 years or less. The judiciary regularly reviewed the cases of individuals sentenced to a prison term of 6 months or less. Thanks to those measures, the prison population had declined by more than 60 per cent.

11. His country welcomed the active engagement of non-governmental organizations (NGOs), national human rights institutions and all other stakeholders working in the area of human rights, including in the review process with the Committee.

12. **Mr. Touzé** (Country Rapporteur) said that, while the Committee commended the adoption of the Prevention of Torture Act, it was concerned that the definition of torture was more limited than that set out in article 1 of the Convention and that the Act stated that that definition was to be applied “unless the context otherwise requires”, which violated article 2 of the Convention. He would like to know whether the State party intended to rectify those points. In view of the disparities in the gravity of the penalties set out in the Prevention of Torture Act and the Penal Code and the consequent difficulties faced in bringing prosecutions under the Act, he wished to receive information about the number of convictions handed down by national judges pursuant to the Act, the penalties imposed in each case and the reasons for the limited application of the Act by the courts. He asked what criteria were used by judges to determine whether to sentence offenders to a fine or imprisonment in cases of cruel, inhuman or degrading treatment and whether the Government intended to increase the maximum fine in such cases, as it was disproportionately low.

13. Noting that conflicting provisions on penalties within Kenyan legislation made their interpretation challenging, he asked which laws had been abrogated by the Prevention of Torture Act and which laws with the same material scope remained in effect. He would also welcome more detailed information about the bill amending the Children’s Act, in particular regarding the penalties for torture of children and for cruel, inhuman and degrading treatment of children.

14. The Committee was concerned that the National Police Service Act did not stipulate the need for proportionality in the use of firearms by law enforcement officers. He wondered whether the Nairobi City County inspectorate services bill was necessary, given that the Prevention of Torture Act already criminalized all acts of torture and of cruel, inhuman and degrading treatment. In particular, he wished to know whether police officers benefited from impunity regarding the excessive use of force and why the bill would apply only to municipal guards in Nairobi City County.

15. He would welcome updated figures on the number of individuals detained pursuant to the Prevention of Terrorism Act, in addition to details about the precise legal framework for the limitations that could be imposed on the rights of persons arrested in connection with terrorism offences.

16. Commending the progress made in the area of legal aid, he asked what criteria were used in practice to determine who was entitled to legal aid, given that, in many circumstances, individuals in receipt of legal aid could theoretically be asked to pay for services, according to the Legal Aid Act.

17. Given that the Constitution did not contain protections against discrimination on the grounds of sexual orientation or gender and that the Supreme Court of Kenya had ruled that anti-homosexuality laws were not unconstitutional, he wished to know about the current state of legislation and its application in that area and about the Government’s position on a 2015 decision of the court of appeal that prohibited homosexual practices and further stigmatized the homosexual community. While the Committee welcomed the Government’s efforts to

support the rights of intersex persons deprived of liberty, it would be interested to know what was being done to help homosexual and transgender persons deprived of liberty.

18. It would be useful to have information about the implementation of the Protection against Domestic Violence Act, including the number of complaints made, the number of investigations that had resulted in a conviction and the number of protection orders issued under the Act. He would be interested to learn how many new child protection units had been established in police stations, especially in rural areas. Since corporal punishment was widespread within family and school settings, and the number of complaints of violence from children were relatively low, he wondered how effective telephone helplines were and whether other complaints mechanisms had been considered. He wished to know what progress had been made in establishing shelters for victims of gender-based violence and in raising awareness of the complaints mechanisms available as part of the County Government Policy on Sexual and Gender-Based Violence 2017.

19. Further information on the four independent human rights commissions that received complaints from detainees, including how they worked, how their independence and impartiality were ensured and who their members were, would be useful. He would also like to know how many complaints they had received and how they had followed up on the complaints. Had there been any investigations, trials or convictions? He would appreciate further information about safeguards in place to protect victims of arbitrary detention and ill-treatment by police officers who wished to file a complaint and about the planned improvements under the draft regulations on complaints procedures prepared by the Independent Policing Oversight Authority. The delegation might also comment on allegations by an NGO that the police dissuaded such victims from making complaints by referring them to police stations in other regions, the police officers receiving complaints were often the perpetrators of the abuse, and officers who had committed abuse were sometimes reassigned elsewhere to prevent them from being identified.

20. According to a 2004 government report, police stations throughout the country lacked human and material resources. He wondered whether that was still the case and would appreciate an update on the situation. Noting that the Government had invested in repairing and refurbishing police stations in Nairobi, he wondered whether the same had been done for stations outside the capital. Police officers were required to keep electronic records of persons held on remand; however, a research project carried out in 2019 had found that only one fifth of police stations had a computer. He wished to know what other forms of record-keeping might be used given that the current system appeared to be unworkable in practice. He would be interested to learn whether persons could be placed in police custody without having first had access to a lawyer, and how detainees' rights to have a lawyer present and to be examined by a doctor were respected outside Nairobi when the vast majority of lawyers and doctors practised in the capital. Similarly, it would be helpful to have an explanation as to how the right to be brought before a judge within 24 hours of arrest was upheld in the most remote regions, since most courts were concentrated around Nairobi, and to have an indication as to how long defendants generally had to wait for the final judgment to be delivered after trial. Given the low proportion of female police officers, he wondered how the right of detainees to be searched by a police officer of the same gender, as established in the Bail and Bond Policy Guidelines, was respected in practice in cases where women were detained at police stations where no female officer was present.

21. He would welcome updated statistics on the number of persons held in pretrial detention, the number of detention centres and the rate of overcrowding in prisons. He wondered what measures might be taken to address the issue of overcrowding, improve detention conditions and ensure access to adequate health care. In particular, he would like to have information about the steps taken to protect detainees against HIV infection. He would be grateful if the delegation could comment on access to sanitation facilities, health care and food and water in police cells and pretrial detention, especially in view of reports that in some places of detention toilets were shared by male and female detainees, who had to be escorted outside their cells to use them; medical care was not provided to detainees; and drinking water had to be brought by a police officer as there were no taps in the cells.

22. He would appreciate further details concerning allegations that newly admitted juvenile detainees did not undergo initial medical screening upon placement in detention,

were not assigned doctors and, at four juvenile detention centres, did not receive regular medical examinations. A response to claims that meat and fish were not regularly served and that some juvenile detention centres failed to respect religious dietary restrictions would be helpful. He would also like to hear the delegation's perspective on reports that prisoners with contagious diseases were not isolated in certain prisons, toilets were shared between as many as 97 prisoners, there were no showers and family visits were limited.

23. He would like to know more about the follow-up given to recommendations made by the Kenya National Commission on Human Rights following prison inspections and the role of the Commission and the Departmental Human Rights Committee. He wondered whether any prisoners had been investigated and prosecuted for inter-prisoner violence, and what preventive measures, if any, had been adopted. He would be interested to learn whether the Government had allocated the necessary resources to ensure that men, women and juveniles deprived of their liberty were detained separately, in line with the recommendation of the Independent Policing Oversight Authority. He wished to know what practical measures were in place to ensure that persons with psychiatric illnesses were routinely identified and received follow-up medical care or were transferred to a psychiatric institution.

24. He would be grateful for further information about the forced and coerced sterilization of women with disabilities and HIV-positive women. In light of the two petitions concerning "unconstitutional sterilization" lodged with the High Court of Kenya in December 2014, he would welcome an explanation of the meaning of the term "unconstitutional sterilization", which might imply that some sterilizations were constitutional, despite the fact that the 2010 Constitution made no reference to the concept. He also wished to know the current stage of the petitions, why they had taken so long to process and why one of the five initial complainants had decided not to pursue her case further. He wondered what progress the State party had made towards the prohibition of forced sterilizations in accordance with the recommendation of the Committee on the Elimination of Discrimination against Women. Had any legislation been introduced in that regard? He would be interested to hear about any measures that had been introduced to combat the practice and to raise awareness of the fact that it contravened the State party's international obligations.

25. The State party was to be commended on the creation of the gender-based violence hotline 1195. He would appreciate receiving statistics on the number of calls the hotline received and was curious to know how effective it was, since it was unlikely that all Kenyan women had access to a telephone, particularly in rural areas. He would also welcome statistics on the number of women – particularly those from rural areas and those who were more socially disadvantaged – making use of the psychological support and follow-up offered by the rehabilitation centres for victims of family violence or sexual violence set up in the major hospitals. He would be interested to hear of any additional measures put in place to supplement the post-exposure prophylaxis and emergency contraception offered to victims of sexual violence, given that there appeared to be problems providing those services free of charge and setting up such provision in more remote areas.

26. Noting the State party's reassurances that the Constitution provided protection from marital rape inasmuch as it recognized equality in marriage, which implied the need for consent from both parties, and also guaranteed freedom for all, including spouses, from inhuman and degrading treatment, he said that he would appreciate information on cases in which women victims of conjugal rape had seen their rights safeguarded under the relevant articles of the Constitution.

27. The progress made in combating female genital mutilation since the enactment of the Prohibition of Female Genital Mutilation Act was very welcome. He would appreciate details of the functioning of, and action taken by, the Anti-FGM Board, especially given that it was not an independent body. Similarly, he would welcome statistics on the numbers of investigations carried out, prosecutions launched and convictions obtained by the Anti-FGM and Child Marriage Prosecution Unit of the Office of the Director of Public Prosecutions. The figures given in the State party's report on cases of female genital mutilation gave cause for concern. Out of 607 cases dealt with between 2015 and 2018, 512 were still pending trial, for example. He would appreciate hearing how the State party approached the problem. In particular, he would appreciate an explanation of the gap between the large number of incidents and the very small number of complaints, the lack of figures concerning

prosecutions and the complete absence of any conviction. He also wished to know why the Office of the Director of Public Prosecutions had stopped publishing figures on the matter.

28. **Mr. Iscan** (Country Rapporteur) said that he welcomed the State party's assurance that all allegations of extrajudicial killings, enforced disappearance and excessive use of force involving law enforcement officers were investigated. He would be grateful if the delegation could supply disaggregated statistics on allegations made, investigations carried out, prosecutions, convictions and sentences. He would also appreciate the delegation's comments on credible information received by the Committee to the effect that the numbers of extrajudicial killings and enforced disappearances were on the rise. Increasing numbers of persons disappeared for periods during which their whereabouts were unknown and, while some reappeared after a time, others did not. The impression was that some kind of unlawful interrogation technique was being used.

29. He would appreciate additional information, including up-to-date statistics, concerning the measures taken to ensure effective and impartial investigation of alleged extrajudicial killings, enforced disappearances and excessive use of force by members of the security forces, including the Anti-Terrorism Police Unit. With regard to investigations into the torture, sexual violence, excessive use of force and judicial killings alleged to have taken place during the post-election violence in 2007 and 2008, he would appreciate an update on the information provided in the State party's report. The delegation might also clarify whether measures were in place to forestall the occurrence of similar incidents in connection with the forthcoming elections in the State party.

30. He would appreciate updated information regarding the action taken by the Independent Policing Oversight Authority in respect of allegations of torture and ill-treatment since 2018. With regard to victims' access to complaints mechanisms, he wished to receive the statistics that had been requested by the Committee in the list of issues ([CAT/C/KEN/QPR/3](#), para. 24). He would also like to hear about the current status of the draft regulations developed by the Policing Oversight Authority.

31. He would like to know more about the "P3" form to be completed by a doctor in order to trigger a criminal investigation into a violent attack and about the availability of the post-rape care form for medical documentation of sexual offences and whether the State party had established an independent medical examiner service to deal with such cases.

32. Information received by the Committee indicated that the military was impervious to investigation in respect of alleged violations of the Convention. He invited the delegation to comment on the military's openness to such investigations.

33. With regard to article 10 of the Convention, he would appreciate clarification as to whether military and medical personnel were covered by training programmes on the provisions of the Convention. He would like up-to-date information on the implementation of article 10, including whether training programmes were adequately funded in order to achieve their goals. Did the State party receive assistance from competent international or regional organizations?

34. The brief information in respect of article 14 provided in the State party report did not fully answer the Committee's questions on redress and compensation. Drawing attention to the Committee's general comment No. 3 (2012), on implementation of article 14, he invited the delegation to supplement the information provided, giving details of any rehabilitation measures ordered by the courts or other State bodies and actually provided to victims of torture or ill-treatment. He would also appreciate information on the procedural and substantive issues relating to article 14 mentioned in the list of issues, together with the statistics requested.

35. As to compliance with article 3 of the Convention, according to information received, the Refugee Act was not compatible with the Kenyan Citizenship and Immigration Act. He would appreciate information on measures taken or envisaged to ensure the compatibility of the two Acts. With regard to the right to non-refoulement, he would like to know whether the State party guaranteed each person's right to have their case examined individually; whether the person had access to a lawyer; whether a person alleging previous torture had access to an independent medical examination free of charge; and whether officials dealing with

persons under deportation procedures received adequate training. He would appreciate receiving disaggregated statistics regarding those issues, where appropriate. Was there a right of appeal against a deportation order? If so, he would appreciate a description of the procedure and statistics on the number and outcome of appeals, disaggregated by sex, age and country of origin.

36. He would welcome information on the State party's practices with regard to detention of asylum seekers and refugees, particularly when children were involved. Given the risks associated with so-called "diplomatic assurances" when considering deportation, he would appreciate information on the State party's policy and practice in respect of diplomatic assurances in its application of the principle of non-refoulement.

37. **Mr. Buchwald**, referring to the Kenyan Supreme Court's ruling in 2017 that the mandatory use of the death penalty was unconstitutional in cases of murder, said that he would like to know how many persons convicted of murder were affected by that decision, how many of them still needed to have their sentences reviewed and what progress was being made towards setting up a review procedure. He would also be interested to learn what kind of review each of those concerned would receive and what was being done in the interim to alleviate the psychological impact of the uncertainty of their situation. The rationale for the ruling was that a mandatory sentence prevented the particular circumstances of any given case being evaluated before sentence was pronounced. What was the rationale for its application only in cases of murder and not in cases of any other capital crime?

38. Despite the long-standing moratorium on the application of the death penalty, a large and growing group of people still had death sentences hanging over them. He would be interested to know whether further consideration had been given to abolition of the death penalty or to formalizing the moratorium in order to reduce that psychological pressure. Had progress been made towards reducing the number of offences carrying the death penalty?

39. He wished to know whether the Kenya National Commission on Human Rights was allocated sufficient resources to perform its functions, as required under the Constitution. He would be interested to know how the Commission's annual budget request compared to the actual amount provided to it, and whether, in the view of the delegation, the law should be amended to ensure provision of the resources needed to perform the additional responsibilities assigned to it under the Prevention of Torture Act. Given reports that the Commission's recommendations were widely ignored by government officials, he wished to know how responsive recipients were to the recommendations; whether there was a follow-up procedure to ensure compliance; whether data were available on the number recommendations issued and the number implemented, and by which agencies; and whether steps were being taken to promote compliance with recommendations. The delegation could perhaps indicate whether, under the existing law, the Commission's authority to inspect detention facilities extended to military and other security facilities. If so, how could that access be ensured in practice, given reports that it was often denied, and if not, had consideration been given to amending the wording of the law to be more explicit in that regard?

40. More specific information would be appreciated on efforts to protect human rights defenders and to investigate and prosecute acts of intimidation and ill-treatment committed against them by the police. He would welcome details of when the Public Benefits Organizations Act, which had been enacted in 2013 to regulate the registration of non-governmental organizations, was expected to enter into force and why the related rulings of the High Court had not been implemented.

41. The outlawing of same-sex conduct in the Penal Code and the apparent lack of a ban on discrimination on the grounds of sexual orientation were causes of concern. He would be interested to know what had prevented the implementation of comprehensive equality and anti-discrimination legislation to protect all persons regardless of sexual orientation or gender identity, in line with the commitment made during the universal periodic review, and what was being done to expedite that process. The delegation might also comment on the prospects of the legislative provisions criminalizing same-sex conduct being repealed. Details of the status of the work of the committee established by the Attorney General to make legislative and policy changes in respect of intersex persons would be appreciated, including whether

legislative provisions permitting changes to names and gender markers in government-issued documentation were likely to be adopted.

42. It would be useful to hear the delegation's comments regarding the referral of Kenya to the Assembly of States Parties to the Rome Statute of the International Criminal Court for non-cooperation with the investigation into the 2007 post-election violence cases. It appeared that the definition of torture in Kenyan legislation did not explicitly cover acts by a person acting in an official capacity who was not a public official; he wished to know whether that was a deliberate omission.

43. **Mr. Tuzmukhamedov** said that he would be interested to learn of any cases in which the Kenyan courts had referred to the Convention or decisions or opinions issued by the Committee. It would also be useful to know whether any cases involving torture in Kenya had been decided by the African Court on Human and Peoples' Rights and whether a human rights component was foreseen in the structure of the prospective East African Federation. He would appreciate data on the number of persons currently on death row, since the Committee had received reports that the courts continued to hand down death penalties, despite the long-standing de facto moratorium. The delegation might also comment on reports that a number of persons had been deported to countries where they faced the death penalty.

44. **Ms. Pūce** said that she would appreciate information on the impact of measures taken to address prison overcrowding by reducing the number of pretrial detainees. It would also be helpful to know whether the State party planned to amend the Prisons Act to bring it into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

45. **Ms. Racu**, noting that the restraint, seclusion and involuntary admission to hospital of persons with mental health conditions were permitted by law, said that she wished to know which institution carried out monitoring of psychiatric establishments, in the absence of a national preventive mechanism. She asked whether a complaint mechanism was available in psychiatric institutions and whether medical staff working in those institutions received training on involuntary treatment and informed consent. It would be useful to receive an update on the shortage of staff, including medical personnel, in the prison system.

46. **Mr. Touzé** said that it would be helpful to know whether access to abortion was provided in the event of pregnancy following rape or incest, since those circumstances were not explicitly included in the exceptions to the ban on abortion in article 26 (4) of the Constitution. Information on the prevalence of unsafe abortions would also be helpful. He would be interested to hear the view of the delegation on the continued illegality of abortion, given high rates of mortality due to unsafe abortions.

47. **Mr. Iscan** said that he would welcome up-to-date statistics on the number of confidential complaints of torture and ill-treatment made to an independent and impartial institution, and their outcomes. With regard to the arbitrary detention of persons by the police for the purposes of extortion, he would appreciate statistical data on allegations, investigations and convictions. Updated information would also be appreciated on action taken to enforce the Witness Protection Act and ensure sufficient resources were allocated to the Witness Protection Agency.

48. **Mr. Rouwane**, noting that the State party had already signed the International Convention for the Protection of All Persons from Enforced Disappearance, said that he would be interested to learn whether it planned to take the next step and ratify that instrument.

The meeting rose at 12.45 p.m.