



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

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**Committee against Torture**  
**Fiftieth session**

**Summary record of the 1149th meeting**

Held at the Palais Wilson, Geneva, on Thursday, 16 May 2013, at 3 p.m.

*Chairperson:* Ms. Belmir (Vice-Chairperson)

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(*continued*)

*Second periodic report of Kenya (continued)*

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*The meeting was called to order at 3 p.m.*

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

*Second periodic report of Kenya (continued) (CAT/C/KEN/2)*

1. *At the invitation of the Chairperson, the delegation of Kenya took places at the Committee table.*
2. **Mr. Muigai** (Kenya) said that death-row prisoners were not mistreated or made to wear a distinguishing uniform. No executions had been carried out since 1987 and the moratorium would be enforced until consensus could be reached regarding abolishment of capital punishment. Although there was no specific law on torture, it was prohibited under the Constitution and other legal texts, and perpetrators of acts of torture were routinely tried before the courts. The enactment of torture legislation had been delayed by the adoption of the 2010 Constitution, which had forced the prioritization of other legislative acts. Furthermore, the Constitution set out a complex legislative process that included mandatory public consultations. The period under review had also been characterized by the painstaking preparation of the country's first democratic elections under the new Constitution. However, the newly elected Government was once again in a position to go ahead with the adoption of the torture prevention bill.
3. Kenya was not a failed State. Its Constitution was one of the most forward-looking in the world and the country enjoyed a free press, a vibrant Parliament and an independent judiciary. A judge could not assume office without being vetted in public and all judges had had to reapply for their post since the adoption of the new Constitution.
4. Recalling that many of the institutions created pursuant to the Constitution were in their early stages, he said that the Government was funding them to the best of its ability and that it was premature to deem them ineffective. For example, the Police Oversight Authority, a civilian body of independent commissioners, was reviewing complaints and police officers were being held to account. The commissioners had been appointed following a rigorous competitive process; they had no less than 25 years of policing experience and many had served in peacekeeping operations overseas.
5. The Truth, Justice and Reconciliation Commission and the Judicial Commission of Inquiry into the Ethnic Clashes in Tana River were government initiatives that had been carried out publically and had been widely covered by the media. The reports were ready, although their formal presentation had been delayed owing to the transition between Governments.
6. Reminding the Committee that the severity of the security situation in Somalia had serious implications for all of East Africa, he said that the conduct of Kenyan troops deployed there to contain the threat of Al-Shabab, as well as highly risky efforts to apprehend and prosecute Somali pirates, must be understood within the context of combating terrorism and warranted a degree of indulgence. The Government supported the diplomatic initiatives undertaken to obtain reparation for the surviving Mau Mau and their families. Kenya was proud of its legislative and political achievements since the 2008 post-election violence and would welcome the visit of the Special Rapporteur on torture at an opportune time.
7. **Mr. Kibara** (Kenya) said that the previous concluding observations had been distributed among the public service. The delay in ratifying the Optional Protocol was due to the new constitutional requirement of parliamentary approval for the ratification of all international instruments and to the public consultations mandated under the Ratification of Treaties Act.

8. **Ms. Lichuma** (Kenya) said that efforts were being made to implement article 43 of the Constitution, which, for the first time, recognized the right to health, including reproductive health. In addition, a comprehensive bill on maternal, infant and child health was being prepared. Female genital mutilation was prohibited, but it was a deep-seated practice in certain communities. Police were authorized to enter premises suspected of being used for that purpose without a warrant in order to catch perpetrators in the act. Under the Constitution, trained health professionals could authorize abortion if the life or health of the mother was at risk. There were no special provisions for victims of rape, although they could undergo an abortion if they met the regular conditions. Maternity fees were either waived entirely or shared between the patient and the hospital, depending on the type of facility. Moreover, the National Commission on Gender and Equality monitored the situation of special interest groups, such as women, persons with disabilities, children and minorities. Amendments to bring the Children's Act into line with the Constitution and international standards regarding corporal punishment contained an expanded list of punishable offences. A juvenile justice bill, which was also awaiting public consultation and consideration by Parliament, would raise the age of criminal responsibility from 8 to 12 years.

9. **Mr. Katelo** (Kenya), recalling that Kenya was host to the world's largest refugee camp, said that the country had an open border policy and that all asylum seekers and refugees were treated in accordance with international human rights law. The Convention relating to the Status of Refugees and the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa had been incorporated into the 2006 Refugees Act, which provided for the establishment of a Refugee Department and the definition of standard operating procedures regarding the reception, registration, status, security and health of refugees. The incident where police officers had entered Dadaab camp, killing two refugees, had been brought about by the infiltration of the camp by Al-Shabab operatives. To end the violence and protect refugees, humanitarian personnel and the Government had taken several measures, including tripling the number of police officers, enhancing camp management, setting up the Security Partnership Project with the United Nations High Commissioner for Refugees, profiling camp residents and raising awareness about sexual and gender-based violence.

10. There were no refugees with undetermined status; apparent statistical discrepancies were simply due to the fact that a significant proportion of asylum seekers, for example all Somali refugees, were accepted *prima facie* and did not go through the regular determination process. Pursuant to the Refugees Act, asylum seekers could appeal the rejection of their claim. Once all appeals had been exhausted, they could manage their own departure or be referred to the refugee department for assistance. Under the new Constitution, Nubians were entitled to seek naturalization in accordance with the terms of the Citizenship and Immigration Act.

11. **Ms. Chweya** (Kenya) said that complaints of torture at the hands of the police were investigated and prosecuted. Between 2008 and 2013, there had been 143 reported cases, of which 18 had led to disciplinary action and 107 had been brought before the courts. Under the National Police Service Act, police officers convicted of torture or cruel, inhuman or degrading treatment were liable to a prison sentence of up to 25 years. In response to the Committee's concern about the delay in receiving compensation, she said that the complaints in those specific cases had been filed after 2002 and she cited the damages awarded in a number of other cases.

12. A bill on victims of offences had been drafted, providing for the establishment of a national victim assistance fund. The torture prevention bill also contained a comprehensive framework for the compensation of victims, including restitution and reimbursement of medical and psychological treatment, and defined the Government's obligation to provide

adequate services and assistance to victims in keeping with their age, gender and disabilities. The mechanism for torture complaints consisted of the Police Oversight Authority, the Commission on Administrative Justice, the Internal Complaints Unit of the National Police Service and the National Commission on Human Rights. The National Commission had the requisite funds to fulfil its mission of conducting prison inspections, training prison officials in human rights, notifying the competent authorities of any misconduct and reporting annually to the President and Parliament.

13. **Mr. Karani** (Kenya) said that, in order to address prison overcrowding, the budgetary allocation to the prison department had risen from \$1.4 million to \$1.97 million. The number of prisons had increased from 96 to 180, including one separate institution for girls. People who would have received a prison sentence of 3 years or less could now undertake community service. The number of prisoners had fallen from 55,000 to 44,000. In order to address the backlog of court hearings, the High Court planned to open branches in all the counties and many more judges had been appointed. Mothers who were sent to prison were obliged to take children aged 4 and under with them if the children did not have another guardian. Those children lived in separate quarters and were given a special diet. There had been no cases of sexual exploitation or transmission of HIV in Kenyan prisons. HIV-positive inmates received antiretroviral treatment. The new Government was in the process of establishing structures to hear petitions for release from prison on humanitarian or related grounds.

14. **Ms. Amulele** (Kenya) said that the Constitution guaranteed arrested persons the right to be released on bail if they were accused of petty offences. Moreover, all arrested persons had to be brought before a court within 24 hours of their arrest; the courts considered the possibility of bail and the terms thereof. The High Court had reaffirmed the expanded Constitutional right to bail, and it was currently common practice for all arrested persons to be released on bail.

15. Details of the Evidence Act were provided in paragraphs 120 and 121 of the periodic report. The confessions of arrested persons who were prepared to confess could be taken only by police officers above the rank of chief inspector, or by judicial officers. Evidence obtained through torture was inadmissible.

16. The inter-agency task force that had been set up to examine all cases of post-election violence had issued its preliminary findings. Its final report would be submitted in the near future. A total of 6,443 files had been opened on those cases. Of the 1,201 cases that had gone to court, there had been 274 acquittals, 191 convictions, and upon review some 125 cases had been withdrawn and a further 69 were pending before the courts. About 370 of the cases that had gone to court had related to gender-based violence. Of those cases, 50 had been withdrawn and there had been 18 acquittals, 54 convictions, while 16 cases were still pending. The judiciary was in the process of establishing an international crimes division within the High Court, which would hear such cases and consider and act on the recommendations of the task force. The Office of the Director of Public Prosecution was also setting up a specialized prosecution unit to try such cases. The Government was considering revising the limitation period for claims in tort against government officials.

17. The programme for prosecuting piracy under the relevant United Nations Security Council resolution had ended in 2009. Only one case was pending. All the staff of the Witness Protection Agency had been fully trained in human rights. The Agency received funding from the Government and was at liberty to seek additional financial support from other sources.

18. **Mr. Gatwanjeru** (Kenya) said that any cases of abuse of police power were dealt with through either the internal police mechanism or the courts of law. All police officers were aware of the constitutional provisions, under which arrested persons must appear

before a court within 24 hours of their detention, and all detainees had the right to medical care and legal representation. Police took detainees to a police station and recorded their details, after which the detainees were interviewed by the officer in charge to ascertain whether there had been any improper conduct during their arrest. The police code of conduct was currently being amended to bring it into line with the Police Act and the new Constitution. To date, some 25,000 police officers had received human rights training.

19. The Inspector General had ordered a thorough investigation of the allegations of theft of Somali refugees during a police operation in November 2012; the investigation was still continuing. The impartiality of police investigations was monitored by the Independent Police Oversight Authority, which was staffed by civilians only. The gang rapes in the Eastleigh district of Nairobi in December 2012 had been reported in the media, but not to the police. To date, investigations into those reports had not revealed any evidence that could result in a prosecution. In the case of the three carjackers, the inquest had failed to reveal evidence that pinpointed responsibility on the part of any specific individuals. The killing on 14 April 2013 of a young man who had tried to steal a mobile telephone was currently under investigation. The Independent Police Oversight Authority was also looking into that matter. All cases of murder were subject to judicial hearing; that included the alleged lynching of elderly women suspected of witchcraft. P3 police medical examination report forms were available free of charge. They had to be filled in by both the police and the medical examiner.

20. **Mr. Domah** (Country Rapporteur) urged the State party to cross-check that no prisoners on death row were required to wear shirts bearing the word “condemned” and that gallows were not oiled daily in full view or hearing of those prisoners. Those allegations had come from individuals who had visited Kenyan prisons.

21. While the Committee understood that the State party authorities had focused attention on building democratic institutions and reorganizing the police force, it remained concerned that insufficient steps had been taken to prevent torture at the grass-roots level. He welcomed the news that the prevention of torture bill had become a priority and looked forward to hearing that it had entered into force. He requested information on the reported beating and theft of Mr. Muhyadin Ahmed Roble, a Somali journalist in December 2012, by the General Service Unit; the violence in the Tana Delta region in 2012 and 2013; an incident in which police officers had allegedly looked on while 10 people had been burnt alive; and the deaths of 42 police officers during a conflict between two communities. He asked whether there was any administrative mechanism available to alleged victims of police abuse to help them resolve the issue without having to bring it to court. It would be useful to know how the State party ensured that police officers implemented the lessons they had learnt on the human rights training courses they attended.

22. **Mr. Wang Xuexian** (Country Rapporteur) commended the State party for improving its legal system and looked forward to the results of those changes. He welcomed the fact that the President had commuted some 4,000 death sentences. The Committee would appreciate information on the results of court cases concerning the pre-election violence, as it became available. He drew attention to the fact that, under the Convention, victims of torture and other cruel, inhuman or degrading treatment had an enforceable right to fair and adequate compensation. The onus should not be on the victim to seek compensation.

23. The Committee had never condoned terrorism, but it must be tackled in accordance with international rules, including the relevant United Nations Security Council resolutions and the provisions of the Convention. In the case of the carjackers, it would be useful to learn whether they had used or threatened to use their arms during the incident. That case, plus the one in which the police had thrice shot a young man who was stealing a mobile telephone, gave the impression that the police made excessive use of their firearms. He

therefore suggested that the State party should review the international rules and regulations for the use of firearms and amend its practice accordingly.

24. He asked whether members of the armed forces and medical personnel who came into contact with persons who were deprived of their liberty were adequately trained. He would welcome the delegation's comments on reports that pretrial detention could last for up to 4 years and complaints that the 24-hour rule was not always respected. He asked whether confessions obtained through torture had ever been evoked in any legal proceedings. It would be useful to know when the State party expected to pass the Ratification of Treaties bill. He welcomed the State party's commitment to issue an invitation to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

25. **Mr. Bruni** asked whether the Convention had ever been invoked in Kenyan courts and whether it had constituted the basis for any legal decisions since 2010. He failed to understand why law enforcement officers who committed torture were charged with offences such as murder, assault and rape. It would be useful to learn whether the National Commission on Human Rights had conducted visits to places of detention and if so, whether it had published its findings and recommendations.

26. **Mr. Gaye** said that the fact that law enforcement officers who committed torture were charged with offences such as murder, assault and rape was particularly baffling given that the National Police Service Act 2011 criminalized torture and other cruel, inhuman and degrading treatment or punishment committed by the police. It would be useful to learn what the prevention of torture bill would add to the existing legislation. He asked whether the 60 police officers who had been charged with corruption between 2008 and 2011 had been prosecuted and punished. The Committee would welcome additional details of the fundamental guarantees for detainees, particularly the right to a lawyer and access to a doctor.

27. **Mr. Tugushi** said that mechanisms should be put in place not only to prevent torture but to deal with such cases properly when they occurred. He asked what was being done to contain rampant corruption in the police force and to increase its resources. Low wages and lack of motivation among police officers fuelled distrust of them by the general public. Moves to launch community policing had thus met with diffidence. A thorough process of police reform was needed and police officers who had committed crimes must be prosecuted. He asked for more detailed information about prison conditions.

28. **Ms. Sveaass** said she regretted that the decision on whether to allow abortion in cases of rape or incest was left to senior medical personnel. She asked whether persons entitled to redress and rehabilitation could obtain them by any means other than through the civil and criminal courts. Referring to the Committee's general comment No. 3, she asked whether the task force inquiring into post-electoral violence was also mandated to provide victims with redress and, if so, in what form. She also wished to know whether persons with injuries allegedly arising from torture could have their situation assessed by a doctor before filing the P3 form with the police. She asked whether proposed amendments to the 2001 Children's Act would provide for penalties for violations of the act, what monitoring mechanisms were in place to detect abuse in childcare institutions and whether there were plans to further increase the number of child protection units in police stations.

29. **The Chairperson** said that the Prevention of Torture bill and proposed police code of conduct were so important that they should be prepared by a special commission or department for submission to Parliament. She wished to know whether the independence of the police force meant that it could ignore requests by the Office of the Director of Public Prosecution to launch investigations.

30. **Mr. Domah** asked how it was possible that attacks on Somalis had taken place in the centre of the country's capital city, Nairobi.

31. **Mr. Muigai** (Kenya) said that the only method used for carrying out the death penalty had been hanging. Since a majority of the electorate had opposed abolition of the death penalty, the Government had opted for a moratorium. The Committee had put forward wild and unverified allegations. The Prevention of Torture bill of 2011 would be brought before Parliament as soon as possible, but other bills currently had priority. Under laws enacted in the previous year, language outlawing torture had been incorporated into the National Police Service Act. The State party fully intended to comply with all its international obligations.

32. A judicial commission of inquiry had been set up to investigate the tragic events in the Tana River Delta area. The commission's report was ready and would be released shortly. An incident in which 42 police officers had been killed in no way reflected public disaffection with the police force. They had been attacked by a gang of cattle-rustlers. The incident did demonstrate the need to allow more resources for the police.

33. The State party was working to establish a compensation fund for victims of human rights violations. Regulations on the carrying and use of firearms needed to be reviewed. Training courses had thus far had less impact on how the police acted than might have been desirable. However, the use of torture to extract confessions had ceased by the mid-1990s. Confessions were made only in court. Suggestions that Somali nationals were the object of discrimination and ill-treatment were unfounded. The infiltration of Somalis, some of them terrorists, into border areas of Kenya populated by ethnic Somalis did, however, pose a security problem for the State party.

34. **Mr. Kibara** (Kenya) said that the new National Police Commission was responsible for the recruitment of police and disciplinary measures. A vetting process of the police and judiciary was under way. The police answered to the Office of the Director of Public Prosecution but was independent of political figures and parties.

35. A national legal aid scheme was being developed and the appropriate legislation was expected to be passed in 2014. It had been recommended that a compensation fund should be established for the victims of post-electoral violence, which would enable them to obtain redress without going to court. Criminal prosecution for acts of torture could not take place in the absence of a clear definition of the offence. The Prevention of Torture bill, once enacted, would remove that anomaly. In civil cases, the constitutional provisions on torture were invoked in the courts. The relevant provisions of the National Police Service Act were also being implemented. A series of international instruments requiring ratification was currently being processed under the recently passed Treaty Making and Ratification Act.

36. **Ms. Lichuma** (Kenya) said that abortion could be allowed in rape cases by expanding the definition of the threat to the mother's health posed by the resulting pregnancy. The proposed amendments to the Children's Act constituted a comprehensive review of the act. The National Gender and Equality Commission had ordered a study of the monitoring mechanisms in place for childcare institutions. More child protection units would be set up in police stations to deal with children in conflict with the law.

37. **Ms. Njau-Kimani** (Kenya) said that the Kenya National Commission on Human Rights was free to visit any prison in the country and that it had already visited most. It made annual reports on its findings to the President and Parliament. Such reports had already led to improvements in prison conditions.

38. **Mr. Gatwanjeru** (Kenya) said that torture victims requiring hospitalization usually received treatment before they completed the P3 form. The form could subsequently be downloaded or obtained and completed at a police station.

39. **Mr. Karani** (Kenya) said that resources were being allocated to renovate prison buildings and improve conditions of detention, and to provide prison wardens with human rights training. The authorities monitored the implementation of the Standard Minimum Rules for the Treatment of Prisoners. With a view to reducing prison overcrowding, capacity had been increased; the number of inmates had been reduced and court procedures were being accelerated.

40. **Ms. Chweya** (Kenya) said that the courts bore in mind the international treaties to which Kenya was a party when issuing their rulings. Indeed, some had ruled that the existence of the death penalty was incompatible with international law.

41. **Mr. Muigai** (Kenya) said that much had been done to assist the victims of post-electoral violence. Many had been resettled and received cash payments. Efforts in that regard were continuing.

42. **Mr. Bruni** asked whether the provisions of international treaties were enforceable in the State party or not. The delegation had stated that they had been incorporated into domestic law and that they could be invoked before the courts, but that criminal prosecution of torture was not possible in the absence of an adequate legal definition of the offence. Surely article 1 of the Convention provided that definition.

43. **Mr. Muigai** (Kenya) said that the Prevention of Torture bill, once enacted, would provide a single, authoritative and comprehensive definition of torture. Kenya was committed to full cooperation with United Nations treaty bodies and would give due consideration to the Committee's recommendations.

*The meeting rose at 5.55 p.m.*