



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

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Summary record of the first part (public)* of the 1146th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 15 May 2013, at 10 a.m.

Chairperson: Mr. Grossman

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* No summary record was prepared for the second part (closed) of the meeting.

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The meeting was called to order at 10 a.m.

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

Second periodic report of Kenya (CAT/C/KEN/2; CAT/C/KEN/Q/2)

1. *At the invitation of the Chairperson, the delegation of Kenya took places at the Committee table.*
2. **Mr. Muigai** (Kenya) said that the new Constitution adopted in 2010 included a Bill of Rights that applied to all individuals and State organs. Article 2 (6) provided that all international instruments ratified by Kenya formed part of national law, which meant that the provisions of the Convention against Torture were directly applicable by the national courts, thus facilitating redress for victims. The Constitution provided safeguards for the right to freedom from torture, freedom from slavery, the right to a fair trial and the right to a writ of habeas corpus, which could not be the subject of derogation.
3. The Government had undertaken major reforms of the criminal justice system and the police. The recent establishment of the National Police Service, the National Police Service Commission and the Independent Police Oversight Authority would enhance the efficiency and transparency of police activities. The National Police Service Act made it unlawful for any police officer to commit torture or any other cruel, inhuman or degrading treatment or punishment. More than 25,000 police officers had undergone training in human rights and the prohibition of torture and ill-treatment.
4. The Government had taken various legislative and practical measures to improve detention conditions and reduce prison overcrowding. The Kenya National Commission on Human Rights was mandated, among other things, to inspect places of detention and make recommendations concerning conditions of detention. Recognizing the importance of the judiciary in the protection of human rights, the Government had also taken several legislative and administrative measures to strengthen the judiciary and make it more independent and transparent. The Office of the Director of Public Prosecutions had been established as an independent constitutional office and was responsible for monitoring compliance with prosecution policy. For instance, police prosecutors were accountable to the Office in cases where accused persons were not produced in court within the stipulated time frames.
5. Kenya maintained a non-refoulement policy for asylum seekers and currently hosted more than 600,000 refugees. Given the improved situation in Somalia, a voluntary repatriation strategy had been developed for Somali refugees. The Government had also developed a draft National Refugee Policy which sought to better safeguard the rights of refugees in Kenya. The Prevention of Terrorism Act adopted in 2012 was fully consistent with constitutional safeguards, one of which was close supervision by the courts in cases involving persons suspected of terrorist acts.
6. **Mr. Domah** (Country Rapporteur) noted that an impressive number of legislative measures had been taken or were in the process of being adopted in various human rights areas. The reform of the judiciary, the adoption of the new Constitution and the 2011 Prevention of Torture Bill were also significant achievements. Unfortunately, however, such exemplary progress in standard-setting had not yielded the expected results in practice. He would be interested to know why the 2011 Prevention of Torture Bill and the 2007 Family Protection Bill had still not been adopted. Another question was when the 2012 Persons Deprived of Liberty Bill would be adopted. With regard to the National Coroner's Bill, the delegation could perhaps furnish details of the consultations with stakeholders.

7. The delegation might also comment on the allegations that dozens of Somali nationals had been arrested without charge and robbed by the police in November and December 2012 and that 10 people had been burned alive while the police looked on in the village of Kipau in December 2012. With regard to the violent incidents that had resulted in dozens of deaths and thousands of displaced persons in the Tana River Delta before and during the elections of March 2013, he wished to know which institutions had been responsible for the security and smooth running of the elections. He would be interested to know whether the effectiveness of the training provided to police officers and other officials on witness and victim protection and the prohibition of torture had been evaluated.

8. He asked whether the Government had assessed the effects of the reform of the judiciary on respect for the right to a fair trial and the fundamental rights of persons deprived of their liberty. He wished to know in which cases detainees could be released on bail and whether the practice might not be exploited to obtain confessions. The statement in paragraph 43 of the State party report that any allegations of torture or ill-treatment were comprehensively investigated and prosecuted was contradicted by the figures provided in paragraph 50, according to which only 35 cases of torture had been reported between 2006 and 2011, 28 of which were pending before the courts. He would welcome clarification on that matter. The delegation might comment on whether the Independent Police Oversight Authority had the necessary human and financial resources to carry out its many tasks, and confirm whether it was true that the Government planned to amend the Independent Police Oversight Authority Act with a view to limiting the Authority's powers.

9. He would be interested to know whether the National Commission on Human Rights had made recommendations on the places of detention it had visited and, if so, whether they had been acted upon. With regard to female genital mutilation, he expressed surprise that children's officers were allowed to enter any premises without a warrant to ascertain whether such a crime had been or was about to be committed and asked whether such visits had to be based on reasonable suspicions. He also wished to know the status of the Family Health Reproductive Bill and whether the State party planned to introduce a mechanism to ensure respect for patients' rights.

10. With respect to the Mathare operation, during which a woman had been killed by a stray bullet, he wondered why the victim's family had been advised to pursue compensation through civil proceedings rather than the State's acknowledgment of the facts, apology and compensation of the family. He would welcome the delegation's comments. The delegation might also explain the challenges of data storage and retrieval between the courts, prosecutors and the police referred to in paragraph 106 of the report. It could perhaps also explain why the compensation procedures in the cases cited in paragraph 117 of the report had been so lengthy.

11. **Mr. Wang Xuexian** (Country Rapporteur) asked when the State party planned to take measures to combat violence between prisoners, which was largely due to prison overcrowding, and whether there had been any cases of pardon for State agents who had committed acts of torture. He also asked whether it was true, as had been claimed by several sources, that police custody sometimes exceeded 24 hours, and that pretrial detention sometimes lasted several years (4 years in some cases). In that connection, did the State party plan to expedite judicial proceedings so that the 18,000 persons currently in pretrial detention could be brought before the courts?

12. The Committee would be interested to learn the conclusions of the inter-institutional working group tasked with examining all cases of local post-election violence as soon as they were available. The delegation might indicate when the working group was due to submit its report. According to reliable information made available to the Committee, it would seem that, contrary to the State party's claims, the complaints received in relation to the Chunga Mpaka operation conducted in the district of Mandera had not always been

investigated. Could the delegation explain? There were also questions with regard to the impartiality of the team of senior police officers appointed to investigate the human rights abuses allegedly committed by members of the security forces during the Operation Okoa Maisha. Noting that the case was currently being reviewed by the Truth, Justice and Reconciliation Commission, he asked when its conclusions would be published.

13. He would be grateful for the delegation's comments on the alleged gang rape of ethnic Somalis and on whether an investigation had been launched into the death of three car robbers in Nairobi on 19 January 2011, who had been shot dead by police after surrendering, as well as three burglars also shot dead by the police on 3 November 2011. Were those cases included among the 34 cases mentioned in paragraph 105 of the report that had been investigated as suspected extrajudicial killings? The delegation might also mention whether proceedings had been initiated after a man who had stolen a mobile telephone had been killed by three gunshots to the head by police officers in April 2013. Did the State party plan to establish an impartial and independent mechanism to investigate such cases?

14. He wished to know whether it was true that persons whose rights had been violated by State agents were required to institute civil proceedings for compensation within one year and, if so, whether there were any plans to extend that time frame. He also asked whether there had been any cases in which confessions obtained through torture had been used as evidence in proceedings and whether any complaints had been referred to the courts from victims of torture or ill-treatment who claimed that they had been the targets of intimidation or reprisals after having brought a case for the first time. If so, had those complaints been investigated immediately?

15. Welcoming the State party's policy on granting refugee status, he asked what conclusions had been reached in the investigation into the death of two refugees who had been shot dead by the police at the Dagaheley camp on 13 June 2011, whether the allegations of sexual and sexist violence in the refugee camps had been investigated fully, and what measures had been taken to combat those phenomena. The delegation might also indicate whether there had been any progress in the situation of some 20,000 stateless Nubians from Sudan, and when the 2012 Ratification of Treaties Bill was expected to be adopted.

16. **Mr. Bruni** asked whether the Convention had been applied by the courts since 2010. He wished to know what financial resources had been allocated to the National Commission on Human Rights over the past three years, and whether the funding had enabled it to function efficiently, for example to frequently and regularly visit places of detention.

17. Referring to the table in paragraph 76 of the report, he asked what had become of the 7,300 refugee applications (of a total of more than 14,000) that had been neither rejected nor recognized. Referring then to paragraph 112 of the report, he asked why, given that the Convention was part of the domestic legal order and the Constitution provided for the right to freedom from torture, law enforcement officers were not charged with torture but rather with offences such as murder, assault and rape. He wondered what the situation would be once the Prevention of Torture Bill — which provided for prison sentences of 25 years for acts that constituted torture and life imprisonment if the victim died — had been adopted. He enquired about the status of the adoption of the Ratification of Treaties Bill, whether the State party intended to ratify the Optional Protocol to the Convention against Torture, and whether it intended to make the declarations provided for under articles 21 and 22 of the Convention.

18. **Ms. Sveaass** asked whether the Committee's previous concluding observations from 2008 had been disseminated in the State party and whether the investigations launched

following the post-election violence had resulted in judicial proceedings and, if so, whether they had led to convictions. Noting the precarious conditions faced by mothers who gave birth in hospital and were unable to pay the medical fees, she asked whether the State party intended to remedy the situation. She also wished to know whether there were plans to legalize abortion in cases where the pregnancy was the result of rape or incest.

19. The delegation could perhaps indicate whether the Prevention of Torture Bill provided for the creation of services for the reintegration of victims of torture and the provision of the health care they required. With regard to the P3 form for reporting acts of torture, a section of which had to be completed by a forensic doctor to substantiate the allegations of torture, she asked whether the fact that the form passed through the police station might not impede the process. She wished to know what was being done to prevent violence against children in schools and in the family and abuse by law enforcement personnel.

20. **Mr. Gaye**, noting that there might be some overlap between the provisions of the 2011 Prevention of Torture Bill and those of the 2011 National Police Service Act, asked which of the two laws would prevail in the event that the bill was adopted. It being his understanding that the Independent Police Oversight Authority was rather ineffective due to a lack of resources, and that law enforcement officers were responsible for abuses such as extrajudicial killings, acts of torture and extortion, he asked which judicial authority was responsible for controlling police activities. He wished to know whether the approximately 60 police officers accused of corruption between 2008 and 2011 had been prosecuted and convicted, whether the investigations the National Commission on Human Rights was authorized to conduct could lead to proceedings against the accused law enforcement officers, and whether the Commission's recommendations were binding.

21. He would also be interested to know whether persons whose application for refugee status had been rejected were expelled and, if so, what measures were taken to ensure respect for the provisions of the Convention prohibiting expulsion to a country where the person would be in danger of being subjected to torture. With regard to the human rights of persons in police custody, he asked how soon arrested persons were entitled to access a lawyer and a doctor and to inform their relatives of their situation.

22. **Ms. Belmir** asked whether it would be possible to coordinate the activities of the Law Reform Commission and the National Taskforce on Police Reforms. She wished to know whether there was a branch of the judiciary with control over the police. She noted with interest that a human rights unit had been set up in the Supreme Court, and asked why the 2012 Persons Deprived of Liberty Bill was based, in addition to the Constitution, on guarantees under international humanitarian law, given that Kenya was not at war.

23. **Mr. Tugushi** expressed concern over the activities of the police, the endemic corruption within the police force and the arbitrary nature of its actions. According to information in the Committee's possession, 63 per cent of respondents in a survey had considered that they were at risk of being subjected to torture by the police, a situation which called for further explanation. The Constitution set out the rights of arrested persons, including the right to be informed of the reason for their arrest and the right to be brought before a judge within 24 hours. However, according to information provided to the Committee, it seemed that those protection measures were not observed in practice. In view of the lack of public confidence in the judicial system, only 20 per cent of victims of repeated violations of their human rights lodged complaints. It would appear that human rights abuses were widespread in poorer neighbourhoods and slums, where the police had free rein. In that context, he wondered whether there was an independent system in place to monitor the police activities.

24. With regard to the situation in prisons, he expressed serious concern that children under 5 were kept in such an environment with their mothers, given that there was a very high risk of the children being malnourished, mistreated, subjected to sexual violence and infected with HIV. He wished to know what measures had been taken to ensure that persons in detention facilities, particularly persons with mental illnesses and children, were not at risk of ill-treatment or torture. He asked whether the State party intended to take measures to strengthen the system for monitoring respect for human rights and the enforcement of laws and to ratify the Optional Protocol to the Convention.

25. **Ms. Gaer** expressed concern with regard to the lynching of widows and older women, the absence of provisions prohibiting the burning of witches in the 1925 Witchcraft Act, violations against human rights defenders and abuses of reproductive rights. She asked the delegation to describe the measures taken to investigate those acts and prosecute and punish the perpetrators. She also asked whether the State party had investigated the allegation that the police had beaten and threatened to kill the director of Kenyans for Justice and Development because the NGO had brought a case against the Kenyan State.

26. According to information from NGOs, public hospitals continued to detain women who had given birth and could not pay their medical bills, contrary to what was stated in paragraph 71 of the report. She requested further details on that practice. She asked whether any complaints on that issue had been submitted to the Commission on Administrative Justice, which served as a mediation bureau and dealt with complaints against public institutions, and whether that practice was also prohibited in private hospitals. In addition, she wished to know what had been done to implement the recommendations of the National Commission on Human Rights following its investigation into the reproductive health situation.

27. **Mr. Mariño Menéndez** noted that Kenya was a party to the African Refugee Convention, which contained a broader definition of refugees than that in the Convention relating to the Status of Refugees, and asked whether the State party applied that definition when examining applications from Somalis, for example, and whether it would incorporate it in its Refugee Bill. He would be interested to know whether the Kenyan courts continued to try foreigners, often of Somali origin, for acts of piracy. With regard to the human rights abuses committed during the colonial period and acknowledged by the United Kingdom, he asked whether the State party intended to associate itself with any reparation measures.

28. **The Chairperson**, underlining the importance of the fight against impunity, which also had a preventive effect, asked for further details of what was being done in practice to ensure that the perpetrators of violence were prosecuted and punished. In particular, he wished to know the status of proceedings in cases of post-election violence and how allegations of human rights violence committed during the joint operation conducted in Mandera had been acted upon.

29. **Mr. Domah** asked for the equivalent in United States dollars of the amount of compensation granted by the courts to victims of torture. Although there was a bill on the awarding of reparations to the victims of offences, some complaints could be dealt with through administrative channels and by the Office of the Public Prosecutor, unless Kenya intended to establish courts or a commission to consider the thousands of complaints in question. He would be interested to know what was being done in that regard.

30. Given that Kenya recognized that the prohibition of torture was a non-derogable principle of international law and had incorporated the provisions of the Convention in its national law, it was high time that it took corrective measures in practice, as called for by Kenyan society and the international community. Even with the relatively recent closure of the torture chambers, the culture of torture had not been abolished. Places of torture had been closed but the practice had not disappeared and continued in unidentified locations.

Kenya had had the courage to launch reforms, adopt legislation and establish the necessary institutions, but the human rights abuses were not linked to the system or the institutions: they were committed by individuals. How did Kenya plan to prevent them from committing such acts?

31. Noting the large number of persons held in pretrial detention, he asked what measures were being taken to remedy the problem. Noting also that police officers appeared to turn the 2010 Witness Protection (Amendment) Act to their advantage and used it to threaten witnesses, he asked whether the Witness Protection Agency had been allocated the necessary human and financial resources to function effectively. The death penalty had not been formally abolished, and more than 1,600 persons sentenced to death lived daily with the fear that executions would be resumed, which was a form of mental torture. Was it true that prisoners serving death sentences wore uniforms bearing the word “condemned”, and that the gallows were oiled daily?

32. **Ms. Sveaass** said that she had read that 40 people had recently escaped from a psychiatric hospital. She asked whether the circumstances of the incident had been clarified and whether an investigation had been conducted.

The first part (public) of the meeting rose at 11.55 a.m.