C. Principal subjects concerns and recommendations

Definition of torture and appropriate penalties for acts of torture

8. The Committee takes note that the State party is a dualist state requiring
domestication or incorporation of international instruments at the national level
through an act of Parliament and it regrets that the State party has not yet incorporated
the Convention into its legal framework. While acknowledging that torture is
prohibited by section 74 (1) of the Kenyan Constitution, the Committee deeply regrets
that the Penal Code and Code of Criminal Procedure do not contain a definition of
torture and therefore lack appropriate penalties applicable to such acts, including
psychological torture. (arts. 1 and 4)

The State party should ensure the incorporation of the Convention into its
legal framework. Furthermore, the State party should, without delay,
include a definition of torture in its penal legislation in full conformity
with article 1 of the Convention and ensure that all acts of torture are
punishable by appropriate penalties which take into account their grave
nature as laid out in article 4, paragraph 2, of the Convention. The
Committee urges the State party to seize the Kenya Law Reform
Commission of this deficiency with a view to remedy it.

Age of criminal responsibility

11. The Committee is deeply concerned that the age of criminal responsibility in the
State party is still set at eight years of age despite the recommendations made by the
Human Rights Committee (CCPR/CO/83/KEN, 2005) and by the Committee on the
Rights of the Child (CRC/C/KEN/2, 2007). (art. 2)

The State party should, as a matter of urgency, raise the minimum age of
criminal responsibility in order to bring it in line with the generally
accepted international standards.
Arbitrary arrest and police corruption

12. The Committee is deeply concerned about the common practice of unlawful and arbitrary arrest by the police and the widespread corruption among police officers, which particularly affects the poor living in urban neighbourhoods. The Committee is also concerned about the bail system currently in place. (art. 2 and 11)

The Committee urges the State party to address the problem of arbitrary police actions, including unlawful and arbitrary arrest and widespread police corruption, particularly in slums and poor urban neighbourhoods, through clear messages of zero-tolerance to corruption from superiors, the imposition of appropriate penalties and adequate training. Arbitrary police actions must be promptly and impartially investigated and those found responsible punished. The State party should also reform the bail system currently in place with a view to ensuring that it is more reasonable and affordable.

(...)
in the Mount Elgon region during the “Operation Okoa Maisha” conducted in March 2008. (arts. 12 and 16)

The Committee urges the State party to take immediate action to ensure prompt, impartial and effective investigations into the allegations of use of excessive force and torture by the military during the “Operation Okoa Maisha” in March 2008. The State party should further ensure that perpetrators are prosecuted and punished according to the grave nature of their acts, that the victims who lost their lives are properly identified and that their families, as well as the other victims, are adequately compensated.

(…)

**Redress and compensation**

25. The Committee is concerned at the problems and delays, acknowledged by the State party, in providing compensation to victims of torture, including the victims of special police and military operations. The Committee is also concerned at the lack of data and statistical information on the number of cases of compensation to victims of torture or to members of their families. (art. 14)

The State party should take all appropriate measures to ensure that a victim of an act of torture obtains redress and has the right to an fair and adequate compensation, including the means for as full rehabilitation as possible. The State party should provide the Committee with statistical data on cases of compensation provided to victims or to members of their families.

(…)

36. The Committee requests the State party to provide, within one year, information on measures taken in response to the Committee’s recommendations, as contained in paragraphs 8, 11, 12, 19, 21 and 25 above.

(…)

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