

REPUBLIC OF KENYA



**STATEMENT BY THE MINISTER FOR JUSTICE, NATIONAL
COHESION AND CONSTITUTIONAL AFFAIRS, HON. MARTHA
KARUA, EGH, AT THE PRESENTATION OF KENYA'S INITIAL
REPORT UNDER THE CONVENTION AGAINST TORTURE AND
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT**

GENEVA, 13TH-14TH NOVEMBER, 2008

Chairperson, Mr. Claudio Grossman,

Distinguished members of the Committee,

Ladies and Gentlemen

(Introduction of the delegation)

On behalf of the Government and the people of Kenya, allow me to extend our congratulations and appreciation to the Committee for the exemplary manner in which you carry out your mandate. I would like to assure you that the Kenya Government attaches a lot of importance to the promotion and protection of human rights and it is in that context that we approach our dialogue and discussions today.

I would like to provide some highlights on the state of human rights in Kenya generally, as an introduction to our report.

As a signatory to the Convention against Torture and Other Cruel and Inhuman treatment, I wish to affirm the importance that Kenya attaches to every individual's freedom from torture and other cruel and inhuman treatment.

Since 2003, Kenya has been particularly keen on human rights violations due to our history. We have emerged from an oppressive one party regime that had a culture of gross violations of human rights nurtured by oppressive laws and institutions inherited from the colonial era. During this time, many Kenyans were routinely killed, tortured, detained without trial, exiled, or economically destroyed as they struggled to assert their fundamental rights and freedoms.

Since the new political dispensation was ushered in after the democratic elections held in December 2002, measures have been taken, not only to protect our people against human rights violations, but also to promote peace, stability, freedom and justice in Kenya.

Mr. Chairman,

Various reform initiatives are currently on-going towards establishing Kenya as a human rights respecting state.

- We are currently in the process of developing a comprehensive human rights Policy and Action Plan to provide a roadmap of addressing the human rights challenges facing the country. The policy is aimed at informing the actions of government ministries, departments and other actors in the integration of human rights into the national planning process. It will also act as a reaffirmation of the government's commitment to the protection and promotion of human rights.
- We have launched the Governance, Justice, Law and Order sector (GJLOS) programme which aims at reforming the entire legal and justice sector with a view to establishing an effective, fair and efficient system of governance and administration of justice that will respect, promote and protect human rights.

Mr. Chairman,

Allow me now to touch on some of the concrete steps we have taken towards the elimination of torture and other cruel and inhuman treatment.

- On coming to power in 2003, the current government closed down the notorious Nyayo House torture chambers in which many political prisoners were routinely tortured by state agents.
- The Government has amended its criminal laws in order to protect accused persons from torture e.g. through the Statute Law (Miscellaneous Amendment) Act, 2007, which ensures that persons suspected of committing criminal offences are not subjected to torture. Prior to these amendments, confessions, from persons suspected of criminal offences, were taken in police stations by junior police officers, a situation which gave rise to allegations of torture. A suspect can now only make a confession either before a judge, magistrate or police officer (not being the investigating officer) who is not below the rank of chief inspector of police and also such confessions shall also be made in the presence of a third person of choice to the accused person.

- Furthermore, under the laws of Kenya, corporal punishment has now been abolished.
- Where there are allegations of torture, an individual is now able to obtain a P3 form on line or from any public hospitals. This is a departure from the past when the forms would only be available from the police and this posed a challenge especially if one was complaining of torture by the police themselves.
- In collaboration with national and international development partners, Kenya has initiated reforms in the training curricula for law enforcement and public officials with an emphasis on human rights and prohibition of torture. This is in conformity with the Government's need to live up to its obligations under the various international human rights instruments to which it is a party. Human rights is now an examinable subject in all training institutions for police and other law enforcement agencies.

Mr. Chairman,

Kenya has also taken the following measures towards addressing other cruel, inhuman and degrading treatment:

- The Government has put in place a *de facto* moratorium on the death penalty. In February 2003, President Kibaki suspended the hanging of those condemned to death, and ordered the release of 281 long term prisoners on death row and commuted to life, the sentences of 195 others. We are aware that this is still not a satisfactory situation, but until a new constitutional dispensation is agreed upon, this is the most humane option so far available.

The Government and the Kenya National Commission on Human Rights, in collaboration with Civil Society Organizations have been educating Kenyans on the global trends on the issue of the death penalty. The Government expects these efforts will be fruitful and that eventually the citizens will be won over and Kenya can then become a signatory to the Second Optional Protocol to the International Covenant on Civil and Political Rights.

- The Government has also revamped the Kenya prison service by putting in place programmes that focus on strategic issues that are human rights based, promote governance and democratic practices in prison management. The main objectives of these programmes are to create an environment for prisoners and prison staff that is safe, secure and humane. In this connection, the Prisons Act (CAP 90) is under review.
- It is worth noting that prisons in Kenya are now open for public scrutiny. The Kenya National Commission for Human Rights also has unrestricted visits to places of detention. This is a duty not only recognized in the law but also underscored by a judicial pronouncement.

There is also a lot of emphasis on judicial officers to exercise their right to visit these institutions to ensure that the rights of persons in prisons are not violated.

Mr. Chairman,

Since the submission of the state report before you, a number of measures that we had reported as being in progress have now been completed.

- An independent civilian Police Oversight Board with members drawn from civil society organizations and the private sector has been established, to strengthen the public complaints mechanism against law enforcement officers. This is in acknowledgement by Government and in response to a widely shared public opinion that the law enforcement officers should not be judges in their own cause.
- A Public Complaints Standing Committee to act as an Ombudsman to handle complaints against public officials and institutions in a coordinated manner has been operationalized.
- We have also established and operationalized a National Legal Aid Scheme and Awareness Programme, to enhance access to justice, targeting the poor and vulnerable.

- Kenya is sensitive to the gender dimension of torture especially the increased vulnerability of women and children to certain practices which fall within the definition of torture. In this regard, the Kenya Laws prohibit and criminalize female genital mutilation (FGM) and early and forced marriages. These are enshrined in the Children's Act and under the Sexual Offences Act. In addition the Ministry of Gender, Sports, Culture and Social Services coordinate an inter-ministerial Committee on FGM that spearheads the implementation of the National Action Plan for the eradication of FGM.
- So far, gender desks in most police stations in Nairobi have been set up with appropriately trained police officers to ensure that the victims of gender-based violence are properly handled and given appropriate attention. Currently, the Police Commissioner has set up a task force to investigate sex crimes alleged to have been committed by security personnel during the post-elections violence that was witnessed in Kenya after the December, 2007 national elections.
- The Attorney General has formulated a reference manual that expounds the Sexual Offences Act and sets standards and recommendations on best practices for use by police investigators and prosecutors, medical practitioners, civil society, gender activists and general consumers of criminal justice services. In addition the AG has developed Sexual Offences Regulations which were gazetted in October 2008, as the operational rules for the implementation of the Act.
- Kenya has in place a prosecution policy, which among others, makes police prosecutors accountable to the Attorney General in cases where accused persons are not produced in court in accordance with the stipulated timeframes.

Mr. Chairman,

As I conclude my statement, I would like to underscore that like many other countries undergoing rapid reforms, we continue to face many challenges in the promotion and protection of human rights. These include: non-domestication of the Convention and lack of a

definition of Torture; unavailability of automated and disaggregated data; politicization of ethnic militias, criminal gangs and organized crime which undermine national security; and proliferation of small arms and threats of terrorism as a result of instability in the region.

Despite these challenges, there are a number of cases where public officials have been charged, prosecuted and sentenced in criminal courts for acts constituting torture according to Article 1 of the Convention and victims of torture who have filed claims for compensation in civil courts have been paid compensation by the Government.