



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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REFERENCE: Follow-up/CAT – Kenya

17 November 2023

Excellency,

In my capacity as Rapporteur for Follow-up to Concluding Observations of the Committee against Torture, I have the honour to refer to the follow-up to the examination of the third periodic report of Kenya, in accordance with the Guidelines for follow-up to concluding observations (CAT/C/55/3).

At the end of its 73rd session held from 19 April to 13 May 2022, the Committee transmitted its concluding observations to your Permanent Mission. The Committee's concluding observations (CAT/C/KEN/CO/3, para. 49) requested the State party to provide within one year further information on the specific areas of concern identified in paragraphs 12 (a), 14 and 40 of the concluding observations.

On behalf of the Committee, allow me to express appreciation for your letter of 13 June 2023 providing your Government's response to the above-mentioned paragraphs (CAT/C/KEN/FCO/3) and to make the following comments:

Extrajudicial killings, enforced disappearances and excessive use of force (para. 12 (a) of the Committee's concluding observations)

The Committee welcomes the information provided by the State party regarding the disbandment, on 16 October 2022, of the Special Services Unit under the Directorate of Criminal Investigations, which allegedly has been behind several cases of extrajudicial killings and enforced disappearances, and the current prosecution for murder of four former police officers of the disbanded Special Services Unit. It also welcomes the information that the Independent Policing Oversight Authority (IPOA) has developed regulations aimed at enhancing police accountability and mechanisms for investigating complaints against the National Police Service. It further notes with appreciation the reports that the IPOA conducted several inspections of police premises and completed a number of investigations into police misconduct, some of which having resulted in the prosecution and conviction of perpetrators. Moreover, the Committee welcomes the information on development by the IPOA of an action plan to end extrajudicial killings and enforced disappearances and the establishment of the National Taskforce on Improvement of the Terms and Conditions of Service and other Reforms for Members of the National Police Service and Kenya Prisons Service, whose recommendations are aimed at addressing some of the deficiencies in the security sector, including the welfare of officers, their autonomy, accountability and responsiveness. Additionally, it appreciates the information regarding the first crimes against humanity case (the "Baby Pendo" case)

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having been brought before the national courts, alleging crimes committed in the context of the 2017 post-election violence and recognizing the principle of command or superior responsibility for acts committed by subordinates. Finally, it appreciates the information that regulations are currently being developed to fully operationalize the Victims Protection Board and pave the way for the establishment of the Victim Protection Fund that shall offer various remedies to victims of serious human rights violations. However, the Committee regrets that the information provided by the State party is insufficient to allow it to assess whether all allegations of extrajudicial killings, enforced disappearances and excessive use of force by law enforcement officers and military personnel, including during arrests or the policing of demonstrations in the period surrounding the 2017 elections, are promptly, impartially and effectively investigated and whether the alleged perpetrators are prosecuted and the victims adequately compensated (2/B1).

National Human Rights Commission (para. 14 of the Committee's concluding observations)

The Committee welcomes the reported 10.5 per cent increase in the budget allocated to the Kenya National Commission on Human Rights during the past two financial years. It also notes the information provided by the State party regarding the Commission's contribution to establishing and launching, in November 2022, a National Implementation Framework for Sustainable Development Goals, which reportedly aims, inter alia, at significantly improving the Commission's ability to monitor public agencies' compliance with its recommendations. The Committee regrets, however, that the information provided by the State party is insufficient to allow it to assess whether the resources allocated to the Commission are in fact adequate to ensure its functional independence and to recruit staff, set up regional offices and perform all its functions effectively, including its role in conducting visits to places of detention and in receiving and investigating complaints about alleged human rights violations. It also regrets the lack of information regarding the measures taken to clarify (or if necessary amend) the statutory mandate of the Kenya National Commission on Human Rights Act (No. 14 of 2011) so that it is clear that the Commission's remit includes the right to monitor and inspect detention facilities run by the military. Furthermore, it regrets the lack of information on the concrete steps taken to ensure effective implementation of the Commission's recommendations, including measures to monitor whether public agencies are in fact appropriately following up on those recommendations (1/D).

Female genital mutilation (para. 40 of the Committee's concluding observations)

The Committee welcomes the information regarding the enactment of the Children Act (No. 29 of 2022), which criminalizes female genital mutilation (FGM) carried out on children. It also notes the various awareness-raising activities conducted by the State party, in cooperation with civil society actors, on the prohibition of FGM, targeting in particular men and boys as well as traditional leaders, some of whom have made commitments to end this harmful traditional practice. It further appreciates the reported efforts of the State party to enhance policy development, knowledge management and information on FGM by developing strategic documents used by the Anti-FGM Board, partners and communities in implementing anti-FGM interventions. Moreover, it notes the information that the Anti-FGM Board has continuously striven to strengthen its initiatives to mitigate the cross-border FGM trend, including through community dialogues and the development of a costed Cross-Border Action Plan to end FGM. Furthermore, it welcomes the information on the establishment by the Anti-FGM Board of the PASHA mobile App, whose purpose is to facilitate the reporting, tracking and monitoring of FGM cases through the sharing of information with the relevant Government agencies and to follow-up on actions taken and progress of cases in courts. In addition, it notes with appreciation the information that anti-FGM steering committees are now operational in all the 22 counties identified as hotspots to monitor the FGM situation in their respective counties and report accordingly to the Multi-Agency Technical Committee. Lastly, it takes note of the statistical data provided by the State party for the period June 2020-May 2022 regarding the number of FGM cases reported, the number of girls rescued from FGM and/or undergoing alternative rites of passage, the number of FGM perpetrators arrested and prosecuted,

and the status of the FGM cases pending in courts. Nevertheless, the Committee is concerned that, according to information before the Committee, this harmful traditional practice continues to be common in some communities and regrets that the information provided by the State party is insufficient to assess the impact of the measures taken to eradicate FGM and its underlying cultural justifications. It also regrets the lack of information on the specific steps taken by the State party to ensure that the Prohibition of Female Genital Mutilation Act (No. 32 of 2011) and the Children Act (No. 29 of 2022) are widely known and implemented, and that all perpetrators of FGM, including medical practitioners, are prosecuted and adequately punished (2/B1).

Implementation plans (para. 49 of the Committee's concluding observations)

Lastly, the Committee regrets that the State party has not provided information about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations included in its concluding observations (C).

The Government of Kenya is encouraged to provide additional information, if there is any, which would further contribute to the Committee's analysis of the progress made regarding the specific issues of concern cited above. This additional information may be provided in any subsequent report by the State party pursuant to the

Committee's request in its concluding observations on the third periodic report of Kenya or other future periodic reports.

The Committee looks forward to a continued constructive dialogue with the authorities of Kenya on the implementation of the Convention.

Accept, Excellency, the assurances of my highest consideration.



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Rapporteur for follow-up to concluding observations
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