

SHADOW REPORT IN RESPONSE TO THE THIRD PERIODIC REPORT BY KENYA TO THE
COMMITTEE AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT (2013-2020)

*Prepared by **Kenya Human Rights Commission (KHRC)** for submission to the Committee against Torture
and Other Cruel, Inhuman and Degrading Treatment or Punishment*

In collaboration with:

***Kwale Youth Governance Centre; Ndula Resource Centre (NRC) and the National Victims and
Survivors Network (NVSN).***

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CAT’ or ‘Convention’: Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

‘Committee against Torture’ or ‘Committee’: Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

‘Network’ or ‘we’: Human rights organisations working on the eradication of all forms of torture and ill-treatment in Kenya which prepared this report

DPP: Director of Public Prosecutions

FGM: Female Genital Mutilation

Government: Government of Kenya

ICC: International Criminal Court

IEBC: Independent Electoral and Boundaries Commission

Ill-treatment: Cruel, inhuman or degrading treatment or punishment

IMLU: Independent Medico-Legal Unit

IPOA: Independent Policing Oversight Authority

KMA: Kenya Medical Association

KHRC: Kenya Human Rights Commission

KNCHR: Kenya National Commission on Human Rights

LGBTIQ: Lesbian, Gay, Bisexual, Trans, Intersex and Queer

NGEC: National Gender and Equality Commission

NVSN: National Victims and Survivors Network

NGOs: Non-Governmental Organisations

NPM: National Preventive Mechanism

NPS: National Police Service

PEV: Post-Election Violence

Report: Alternative Report

SGBV – Sexual and Gender Based Violence

State: Kenya

UNHCR: United Nations High Commission for Refugees

WHRD: Women Human Rights Defenders

Introduction:

The Kenya Human Rights Commission and partners welcome the opportunity to submit its Shadow Report on the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention) to the United Nations Committee on Torture.

The Report provides replies to the list of issues (CAT/C/KEN/QPR/3) transmitted by the UN Committee on Torture prior to the submission of Kenya's Periodic report and following a submission of a response to these issues by the Kenyan Government. This Report comprehensively discusses the status of implementation of the recommendations from the last review process and looks at the progress Kenya has made in terms of policy, legislation and Judicial decisions in trying to implement these recommendations.

However, despite some progressive decisions from Courts of law, and the enactment of progressive pieces of legislation like the Prevention of Torture Act that criminalizes all forms of Torture, Cruel, Inhuman and Degrading Treatment, torture is still prevalent in Kenya.

Concerns and Recommendation: Articles 1 and 4

Response to list of issues in Paragraph 1-4:

1. The Prevention of Torture Act was enacted on the 17th of April 2017 following the President's ascension to the bill that had been drafted with support of Civil Society Organizations. This law criminalizes all acts of Torture, Cruel, Inhuman and Degrading Treatment in Kenya. However, this law is yet to be operationalized despite its gazettelement and the state is yet to develop regulations to this Act. As such, Security Agencies continue to commit numerous acts of torture while discharging their duties and also in detention facilities.
2. The National legislation in Kenya comprehensively provides for appropriate penalties for all forms of torture or ill-treatment of all persons including children. The Prevention of Torture Act under section 5 provides for the offence of Torture and is to the effect that any person who tortures another person commits an offence and shall be liable, on conviction to imprisonment for a term not exceeding twenty five years. Section 5(2) of the same Act is to the effect that if as a result of torture referred under subsection (1) the victim dies, the person is liable on conviction to imprisonment for life.
3. No state official accused of violations under the Convention has been charged with the offence of torture in Kenya. Similarly, no law enforcement, intelligence, prison or military personnel has been prosecuted for the crime of torture. Since the last review, security agencies have been implicated in numerous acts of torture while discharging their duties in different parts of the country. For instance, in 2016, a report released by Human Rights Watch -[Deaths and Disappearances](#) disclosed that Kenyan security agencies committed numerous acts of torture during counter-terrorism operations within Nairobi and North Eastern Kenya. On the 4th of September 2018, eight headers were left nursing serious injuries in Ijara Sub-County, Garissa County, after they were allegedly tortured by Kenya Defence Forces soldiers conducting an operation to flush out al-Shabaab militants from

Boni Forest¹. The headers alleged that the soldiers rounded them up, ordered them to undress, and forced them to lie down before raining blows and kicks on them

On the 16th of March 2012, the Kenyan Government appealed and won a case that had been filed by victims of torture at the East African Court of Justice following allegations that the Army had between 2006 to 2008 committed numerous human rights violations in Mt Elgon District. The EACJ upheld an Appeal by Kenya Government Against a decision by a lower Court that action should be taken against the soldiers who tortured and executed residents in 2008. These atrocities were allegedly committed in a security operation called Okoa Maisha that targeted the Sabaot Land Defence Forces, a local militia group².

4. Over the past couple of years, there have been numerous progressive decisions from Courts of law in Kenya that have resulted in the successful prosecution of police officers implicated in acts of extrajudicial executions or unlawful use of force. On the 10th of February 2016, the High Court in Mombasa found two police officers, Veronica Gitahi (former DCIO Kinongo) and Constable Issa Mzee guilty of manslaughter of 14 year old girl Kwekwe Mwandaza who was fatally shot in Kinango. The officers appealed against this decision and they were sentenced to prison for seven years.³ In yet another case, two police officers Constables Benjamin Kahindi Changawa and Stanley Okoti were convicted of murder and sentenced to death for unlawfully killing Mr Geoffrey Nyabuto Mogoi, Mr Amos Okenyi Makori and Administration Police Constable Joseph Obonho Onchuru. The victims were shot dead on the 7th of October 2014 at a bar in Kangemi-Nairobi⁴. On the 14th of February 2019, the High Court in Nairobi sentenced the former Officer in Charge of Ruaraka Police Station Nahashon Mutua to death for torturing a suspect to death inside a cell⁵. In April 2018, Titus Ngamau Musila alias Katitu, a police officer in Kenya's National Police Service was convicted of murder for unlawfully shooting dead Kenneth Kimani Mwangi at the Githurai 45 bus stage, accusing him of being a thug. The above are

¹ <https://www.nation.co.ke/counties/garissa/herders-accuse-KDF-officers-torture/3444784-4743178-1v4cm5/index.html>

² <https://www.nation.co.ke/news/Kenya-wins-torture-case-against-army-/1056-1367964-lmxkgb/index.html>

³ <https://www.nation.co.ke/news/Kwekwe-Mwandaza-killers-lose-appeal/1056-3817004-8jsbh6z/index.html>

⁴ <https://www.ipoa.go.ke/two-police-officers-sentenced-to-death-ipoa-investigation/>

⁵ <https://www.nation.co.ke/news/Ex-Ruaraka-OCS-Nahashon-Mutua-sentenced-to-death-/1056-4981128-ctt0r2/index.html>

examples of progressive's decisions that have been issued by Kenyan courts of law⁶. However, despite these convictions, police officers, intelligence, prison and military have not been held to account for unlawful use of force. Municipal guards have on multiple occasions been accused of excessive use of force and this has resulted in unlawful death of innocent Kenyan citizens. For instance on the 24th of September 2019, the Police arrested a county Askari for allegedly killing a bodaboda rider for failing to pay the levy. On the 14th of February 2020, KHRC and other Civil Society Organizations working on the Missing Voices Project released a report that documented about 107 cases of unlawful killings by the Kenyan Police in 2019. The perpetrators of these heinous acts have not been held to account and the relevant state agencies are yet to initiate investigations into these unlawful killings:

Article 2:

Response to list of issues in Paragraph 5 a, b and c

5. The Persons Deprived of Liberty Act was assented on the 24th of December 2014 and was commenced on the 14th day of January 2015⁷. The provisions of this act elaborately provide for safeguards against torture and ill-treatment for persons deprived of liberty. Section 3 of the Persons Deprived of Liberty Act comprehensively provides for the rights of persons deprived of liberty and the duties of persons in charge. They include the right to humane treatment and human dignity, right to be promptly informed in a language the person understands of the reasons for deprivation of liberty, fair hearing, right to present their defence either personally or through a Defence counsel, right to be informed of the basis for limitation, right to access the services of an interpretation and right to communicate with their family amongst others⁸.
 - a) The provisions within the Persons Deprived of Liberties Act set out numerous measures to ensure that the police and security officials comply with legal safeguards that ensure they do not deny an accused person access to a lawyer, independent lawyer or notification to a

⁶ <https://www.the-star.co.ke/news/2019-02-25-courts-increasingly-taming-rogue-police-officers/>

⁷ http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PersonsDeprivedofLibertyAct_2014.pdf

⁸ http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PersonsDeprivedofLibertyAct_2014.pdf

relative. However, despite these provisions, there are numerous complaints against police officers who continue to unlawfully arrest, detain and wilfully refuse to notify relations of arrested persons about their detention. In 2016⁹, a human rights lawyer Willie Kimani, his client Josephat Mwenda and their cab driver Joseph Muiruri while returning from one of their routine Court hearings were unlawfully arrested, detained, tortured and murdered allegedly by Police officers. Josephat Mwenda had been accidentally shot by the police officer and had approached a civil society organization to assist him with legal representation. The three were never informed of why they were arrested and detained and their relations were never informed of the same. Their badly decomposing bodies were later found at Ol Donyo Sambuk in Central Kenya after a rigorous search effort by Directorate of Criminal Investigations with the support of Civil Society Organizations. A close examination of their bodies disclosed that the three had been severely beaten by the Police officers. It was evident that the three had tortured before being unlawfully killed.¹⁰

In yet another case, a Nairobi based lawyer Boniface Akusala was unlawfully arrested, locked up in a container (temporary holding area) before being booked at the station. The lawyer pleaded with the officers to be released on bond pending his arraignment in court but they would have none of it. He was later released without having any charges preferred against him. He successfully sued the officers and was awarded 2 million Kenya shillings. The trial judge noted that this was a classic example of how police officers continue to operate with impunity. Despite this judgement, Police Officers continue to unlawfully arrest and detain many Kenyans.

- b) In the last couple of years, Kenya has been subjected to numerous terror attacks that have all been attributed to the Al Shabaab terror group based in Somalia. As such, there have been multiple terror operations that have resulted in the arrest of many people on grounds of allegedly being suspected of being terrorists or collaborators with terrorists. Following two terror attacks in Nairobi¹¹ the previous year that had leftover 67 people dead¹², the

⁹ <https://www.nytimes.com/2016/06/30/world/africa/kenya-lawyer-missing-human-rights-police.html>

¹⁰ <https://www.bbc.com/news/world-africa-36722205>

¹¹ <https://www.theguardian.com/world/2013/oct/04/westgate-mall-attacks-kenya>

¹² <https://www.nytimes.com/2013/12/15/world/africa/at-least-four-are-killed-in-kenya-van-explosion.html>

Kenyan Government in April 2014 conducted an operation –Usalama Watch that aimed at dealing with terror suspects and sympathizers including foreign Nationals. This operation led to the arrest of over 4000 from across the country, the majority of whom were of Somali origin.

A report by the Kenya National Commission on human rights documented numerous violations and breaches of the law committed by security agencies against innocent civilians, particularly members of the Muslim Somali community. The violations included arbitrary arrests, extortion, theft and looting of businesses and homesteads, sexual harassment, arbitrary detentions, illegal deportations, torture, inhuman and degrading treatment¹³.

The National Assembly in December 2014 passed the controversial Security Laws (Amendment) Act 2014 (SLAA) that amended numerous sections of Kenyan security laws aimed at giving the Security Agencies more powers in combating terrorism¹⁴. Despite efforts by CSO's to challenge these amendments in Court that led to the declaration of some provisions as being unconstitutional, these amendments now allow security agencies to hold terror suspects for up to ninety days¹⁵. The Persons Deprived of Liberty Act was meant to provide for legal safeguards against torture even for terror suspects but despite the existence of these two pieces of legislation, there have been reports of torture and ill-treatment of terror suspects in places of detention¹⁶.

- c) There has been no progress on investigations undertaken into reports of denial by authorities of fundamental legal safeguards of persons deprived of liberty. However, despite the Kenya National Commission on Human Rights and the Kenya Prisons Service have come up with a collaborative mechanism that enables prisoners to report about any violations that they are subjected too while in detention¹⁷. Despite these mechanisms, many Kenyans, including bloggers and human rights defenders continue to be unlawfully

¹³ <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf>

¹⁴ <https://www.hrw.org/news/2014/12/13/kenya-security-bill-tramples-basic-rights>

¹⁵ <https://www.hrw.org/news/2014/12/13/kenya-security-bill-tramples-basic-rights>

¹⁶ <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf>

¹⁷ <https://www.refworld.org/docid/58ec8a1aa.html>

arrested and detained for a long period of time after being granted bail. A survey conducted by the Nation Newsplex disclosed that one in eight detainees is held in police cells beyond the two-day statutory limit before appearing in Court. Suspects continue to await trial for a long period of time even after being granted bail. John Wawire, a 35 year old man had been on remand for over nine months even after the Court granted him bail of 30,000/= Kenya shillings. In yet another case, Kevin Sanya has been in remand for over two years and four months at Nairobi Medium Security Remand Prison. His case has been mentioned in Court 27 times and each time it comes up, it's postponed because the complainant fails to show up for hearing.

Human Rights Defenders and bloggers have also been detained for a long period of time by Police in Kenya. For instance, on the 30th of April 2019, Betty Waithera, a female Human Rights Defender was unlawfully arrested for participating in a peaceful demonstration dubbed #Beyondzerocorruption. It took the intervention of civil society organizations and public outcry on social media platforms to have her released after close to ten hours in police custody.

Response to list of issues in Paragraph 6:

6. The Legal Aid Act was assented to by the President of the Republic of Kenya on the 22nd of April 2016 and commenced on the 10th of May 2016¹⁸. Kenya has since launched a National Action Plan on Legal Aid¹⁹ (2017-2022) that is aimed at coordinating and implementing the legal aid interventions between the Kenyan government and legal actors. This plan will facilitate the full implementation of the National Legal Aid and Awareness Policy, as well as the Legal Aid Act of 2016.²⁰ However, the Government of Kenya is yet to allocate sufficient funds for legal aid services and as such this has limited the provision of and access to legal aid services by the Kenyan public.

¹⁸ [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/LegalAidAct No. 6 of 2016.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/LegalAidAct_No._6_of_2016.pdf)

¹⁹ <https://www.statelaw.go.ke/ag-launches-national-action-plan-on-legal-aid/>

²⁰ [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/LegalAidAct No. 6 of 2016.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/LegalAidAct_No._6_of_2016.pdf)

Response to list of issues in Paragraph 7:

7. Kenya has not yet ratified the Optional Protocol to the Convention Against Torture and there have been no significant steps made by the Government of Kenya towards the same.²¹

Response to list of issues under Paragraph 8:

8. Kenya has since enacted the Counter-Trafficking in Persons Act that provides for a comprehensive legal framework that provides for stiff punishments for the offence of human trafficking. Section 2(6) of the same act is to the effect that any person who finances, controls, aids or abets the commission of an offence of trafficking in persons shall be liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life²². This act also provides for stiff punishment and penalties for the offence of trafficking in children. (Imprisonment of up to thirty years or a fine of twenty million Kenya shillings or to both an upon subsequent conviction, to imprisonment for life).²³ Section 15 of the same Act provides for mechanisms in which the Government will provide support and protection to victims of trafficking in persons.

It's to the effect that the Minister should formulate plans for the provision of appropriate services to victims of trafficking in persons. Such services include a return to and from Kenya, resettlement, reintegration, and appropriate shelter and other basic needs, psychological support, appropriate medical assistance, legal assistance or legal information including on the relevant judicial and administrative proceedings, any other necessary assistance that a victim may require. This Act also provides that victims of trafficking in persons may be eligible to stay or work for gain for the duration of their necessary presence in Kenya. More importantly, the Act also provides for a mechanism of ensuring that all communication to the victim is in a language that he or she understands²⁴. The National Police Service still faces a myriad of challenges in dealing with the issue of trafficking in

²¹ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=EN

²² http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Counter-TraffickinginPersonsAct_No8of2010.pdf

²³

²⁴ Section 15 of the Victims Protection Act Kenya http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Counter-TraffickinginPersonsAct_No8of2010.pdf

persons. Despite these challenges, they have been able to rescue some victims in the recent past. On the 1st of October 2012, the Kenyan Police was able to rescue twelve women and a child who were being trafficked from Ethiopia²⁵.

However, despite this robust legislative framework, Kenya has still remained a hub for human trafficking. The 2019 Global Report on Trafficking in Persons released by the United States Department of State profiles Kenya as a source, transit point and destination for people subjected to sex trafficking and forced labour. There have been allegations of corruption at the Ministry of labour that led to the Government failing to hold to account some employment agencies that have allegedly promised Kenyans lucrative employment in the Middle East, only to find themselves subjected to numerous human rights violations. As a result of mass reports of torture of Kenyans in the Middle East, the government banned all firms exporting labour into this region in 2014²⁶. The ban was lifted in 2017. The trafficking and violations continued during the ban period ²⁷and even thereafter as the government doesn't enforce the regulations given to employment firms.

Recommendations²⁸:

- a) The Government of Kenya should develop a robust regulatory and implementation strategy with a single comprehensive foreign employment policy to oversee labour exportation and stop networks responsible for trafficking.
- b) The Government of Kenya should fully implement a screening mechanism to prevent the penalization of potential trafficking victims.
- c) Ensure protective services are available to adult trafficking victims.
- d) Increase investigations and prosecutions of trafficking offences and convictions of traffickers.

²⁵ <https://www.businessdailyafrica.com/datahub/The-challenges-Kenya-faces-in-prosecuting-human/3815418-5362940-hx09q/index.html>

²⁶ <https://www.nation.co.ke/lifestyle/dn2/Questions-linger-on-Kenyans-safety-in-Middle-East/957860-5213714-bkrs66/index.html>

²⁷ <https://www.reuters.com/article/us-kenya-labour-trafficking/fears-of-fresh-abuse-of-migrants-in-middle-east-as-kenya-set-to-lift-ban-idUSKBN1EZ0HS>

²⁸ <https://www.ecoi.net/en/document/2010840.html>

- e) Amend the anti-trafficking law to remove sentencing provisions that allow fines in lieu of imprisonment for sex trafficking offences.
- f) Fully implement the formal process for law enforcement officials to refer trafficking victims for assistance, including adult trafficking victims and Kenyans repatriated from abroad.
- g) Expand training to all levels of the government, specifically to law enforcement personnel and local authorities in the coastal region, on identifying, investigating, and managing trafficking cases.
- h) Regulate enforcement of oversight of overseas recruitment agencies.
- i) Conduct awareness campaigns throughout the country, focusing substantially on rural coastal areas.

Response to the list of issues under Paragraph 9 a-f:

- 9. The National Gender and Equality Commission in 2017 launched a County Policy on Sexual and Gender-Based Violence whose overall objective is to progressively eliminate sexual and gender-based violence through the development of a preventive, supportive and transformative environment. This policy also aims at creating a framework to accelerate the implementation of laws, policies and programs for the prevention and response to Sexual and Gender Based Violence²⁹.
 - a) Despite the existence of legal and policy provisions to prevent and punish sexual violence by members of the police and security forces in general, there exists no data on investigations, prosecutions and punishment of officers implicated such acts. In the last couple of years, more recently during Kenya's 2017 General Elections, Security officers were allegedly implicated for committing acts of sexual and gender-based violence. Reports by Civil Society Organizations in Kenya discloses that security agencies failed to prevent election-related sexual violence and as such there have been no investigations into these allegations. There have

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<https://www.ngeckkenya.org/Downloads/NGEC%20Model%20Policy%20on%20GBV%20for%20County%20Govts.pdf>

been no efforts by the Government of Kenya to hold security agencies, specifically police officers to account for these violations while ensuring that survivors of the same have access to comprehensive, quality and timely post-rape care³⁰.

- b) In the last couple of years, there has been an increase in the number of complaints relating to violence against women and girls specifically during the election cycle. In 2017, they were numerous complaints of sexual violence against women and girls following the 2017 Post Election Violence. Despite the increase in complaints of this nature, the perpetrators of the same are yet to be held to account by the Kenyan Government.
- c) Kenya's National Police Service has since launched standard operating procedures (SOPs) for prevention and response to Gender Based Violence³¹. Police stations should have gender desks. This measures, unfortunately, do not respond to elections period of unrest and times of conflict.
- d) Kenya has made some strides through policy developments and enactments of key legislation in the recent past that are all geared at ensuring protection for victims of domestic and sexual violence, including access to medical and legal services, psychosocial counselling and effective access to redress. These include among others the Protection against domestic Violence Act and the Standard Operating Procedures for Prevention and response to Gender Based Violence (National Police Service).
- e) The sexual offences act should be reviewed to provide for a prosecution of security officials who perpetuate sexual crimes against members of the public in times of conflict and general unrest.
- f) Kenya is currently not considering adopting any legislation that would establish marital rape as a distinct criminal offence.

³⁰ <https://www.hrw.org/report/2017/12/14/they-were-men-uniform/sexual-violence-against-women-and-girls-kenyas-2017>

³¹ <http://www.nationalpolice.go.ke/2015-09-08-17-56-33/news/271-nps-unveils-standard-operating-procedures-for-prevention-and-response-to-gender-based-violence.html>

Response to list of issues in Paragraph 10 a-b:

10. Committee's previous concluding observations (para 26)

- a) Since 2011, Kenya banned the practice of Female Genital Mutilation and to this end, the FGM Act of 2011 was enacted. A fully functional Anti Female Genital Mutilation Board has since been constituted by the Government of Kenya.³² However, despite this progress, some communities like the Maasai and Somali continue to practice FGM³³ A progress report released by the Anti-FGM Board discloses that they are a total of 27 cases of aiding and abetting FGM in Kenyan Courts, of the 27, there has so far been one conviction. They are 13 cases of failure to report the commission of an offence. (Of the 13, there has been one successful conviction after trial)³⁴.
- b) A progress report released by the Anti FGM Board³⁵ discloses that there have been several awareness campaigns conducted amongst members of the public that have all been aimed at awareness-raising against FGM. However, the report does not disclose any information on similar campaigns being conducted amongst members of the public or nor does it disclose any information about the medical and psychological assistance and redress.

Response to the list of issues in Paragraph 11 a-d:

11. Concluding observations (para 27 and 28) on concern about the practice of detaining women after they have given birth;

- a) As of the 1st of June 2013, the Government of Kenya abolished delivery fees in all public health facilities through a presidential directive that was all aimed at promoting health facility delivery service utilization and reducing pregnancy-related mortality. Since then, most public health facilities do not charge fees for women seeking maternity services.

³² <http://antifgmboard.go.ke/wp-content/uploads/2018/12/Anti-FGM-report-2014-2017-5-Copy.pdf>

³³ <http://antifgmboard.go.ke/wp-content/uploads/2018/12/Anti-FGM-report-2014-2017-5-Copy.pdf>

³⁴ <http://antifgmboard.go.ke/wp-content/uploads/2018/12/Anti-FGM-report-2014-2017-5-Copy.pdf>

³⁵ <http://antifgmboard.go.ke/wp-content/uploads/2018/12/Anti-FGM-report-2014-2017-5-Copy.pdf>

- b) The Kenya National Commission on Human Rights in 2012 published a study on the public inquiry into Violations of Sexual and Reproductive Rights in Kenya. The findings from this report do not disclose any investigations undertaken by the Kenyan Government into allegations of involuntary sterilizations or other harmful practices in connection with reproductive health or any resulting prosecutions or administrative action from the same.
- c) There is no information on the measures taken by the state party to effectively monitor health facilities or to establish effective complaints mechanisms accessible to women who allege ill-treatment.
- d) Article 26 of the Constitution of Kenya that provides for the right to life under paragraph (4) is to the effect that abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment or the life or health of the mother is in danger, or if permitted by any other written law³⁶. Section 240 of Kenya's Penal Code Act provides for Surgical operation and is to the effect that a person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation on any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case³⁷. These two legal provisions provide for abortion but do not permit the same for women who have been subjected to rape or incest unless the pregnancy is of imminent danger to the life of the mother.

Response to list of issues under Paragraph 12:

- 12. There has been no significant effort by the Government of Kenya to establish Child Protection Units in police stations or call centers for the same at all police stations throughout the Country. The Kenyan Government has not publicized reports concerning the monitoring of children's institutions by the National Gender and Equality Commission.

³⁶ <http://extwprlegs1.fao.org/docs/pdf/ken127322.pdf>

³⁷ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/28595/115477/F-857725769/KEN28595.pdf>

Response to list of issues under Paragraph 13:

13. Elderly persons specifically in the coastal counties of Kilifi and Kwale continue to be victims of lynching on suspicion of engaging in witchcraft. As such, some have lost their lives and the perpetrators are yet to be held to account. Kalamba Jimbi was slashed to death by a young man who accused him of practicing witchcraft. Despite numerous allegations and complaints on the same, there is no information on the number of investigations and prosecutions related to such attacks.

Article 3:

Response to list of issues under Paragraph 14:

14. There have been no legislative reforms undertaken by Kenya to ensure that foreigners returned or extradited to their countries are not subjected to torture. In 2016, the Kenyan Government threatened to close Dadaab refugee camp and this, in turn, forced some refugees to return to Somalia where they risked being subjected to torture by Al-Shabaab militants. The Kenyan Government has not fully complied with its non-refoulement obligations under Article 3 of the Convention, particularly concerning populations in Nairobi and Dadaab to ensure all asylum seekers are accorded due process. This is premised on the fact that the Government of Kenya is yet to operationalize the Refugee Affairs Secretariat, the National body responsible for registering newly arrived refugees. Without being registered, refugees, do not have access to basic services in camps such as food and shelter³⁸.

Two South Sudanese Nationals Dong Samuel Luak, a well-respected South Sudanese Human Rights Lawyer and Aggrey Idri, a vocal government critic and member of the opposition disappeared from the streets of Nairobi on January 23rd and 24th 2017. On the 30th of April 2019, the United Nations Panel of Experts on South Sudan issued a report finding South Sudan's National Security Service responsible for kidnapping the two. They were flown on a commercial plane chartered with the help of the South Sudan's Embassy in Nairobi and were allegedly severely tortured and later executed on President Salva Kiir's farm in Luri near Juba. There have been allegations that South Sudan's National Security

³⁸ <https://www.amnesty.org/en/get-involved/take-action/refugees-forced-return-from-dadaab/>

Service could only have undertaken this operation with the help of their Kenyan counterparts.

Response to the list of issues under Paragraph 15 a-b:

15. Statistical data since the consideration of the state party's previous report, disaggregated by sex, age and country of origin;

- a) There is no information available on the registered number of asylum requests by adults and minors or the number of such requests that have been granted.
- b) There is no information on the exact number of people that have been returned, deported or extradited or the grounds for such actions or the countries to which such persons were returned.

Articles 5-8:

Response to list of issues under Paragraph 16:

16. The state party has not rejected requests for extradition by another state of an individual suspected of having committed torture, and had therefore started prosecution proceedings. However, the Kenyan Government has not arrested or extradited Rwandan fugitives believed to have committed various crimes including Genocide against the Tutsi despite numerous requests by the Government of Rwanda.³⁹

Articles 10:

Response to list of issues under Paragraph 17:

17. There is no information on whether the Police receives specific training on the provisions of the convention and on how the effectiveness of the training is evaluated. There is equally no information on whether all law enforcement and military personnel are trained on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This could explain why there is an

³⁹ <https://www.newtimes.co.rw/section/read/214859>

increase in the number of torture cases in Kenya. A National Torture prevalence survey by the Independent Medical Legal Unit disclosed that Police Officers are the main perpetrators of torture in Kenya with about 59 percent of the cases being attributed to them. 18.5 percent of torture cases in Kenya were attributed to local chiefs, 8.1 percent was attributed to Prison warders, 3.2 percent was attributed to the Army 7 percent was attributed to Kenya Wildlife Service Rangers⁴⁰. The statistics from this survey clearly demonstrate the Police, Military and other law enforcement agencies have not been trained on the manual.

Article 11:

Response to list of issues under Paragraph 18 a-c:

18. Information on committees concern on the need for Kenya to enable the Kenya National Commission on Human Rights to carry out its mandate in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights.
 - a) The KNCHR has been able to monitor various places of detention in Kenya, write reports and has equally been able to make these reports public. In 2017, KNCHR conducted monitoring visits in 75 prisons to evaluate the adequacy of the Kenya Prison Service (KPS) medical services and the effectiveness of its medical services. To this end, a publication on this monitoring exercise was developed (State of Health Care for Prisons) and has since been made public⁴¹.
 - b) There have been no measures put in place to increase the resources of the Commission to enable it to carry out all its mandated activities, including monitoring places of detention. This was confirmed on the 10th of November 2018 when the Vice Chairperson of the Kenya

⁴⁰ <https://www.standardmedia.co.ke/article/2000220942/report-police-torture-cases-on-the-rise-in-kenya>

⁴¹

https://www.knchr.org/Portals/0/EcosocReports/State%20Of%20Healthcare%20For%20Prisoners%20In%20Kenya_Print%20ready.pdf?ver=2019-09-23-102658-900

National Commission on Human Rights in a speech stated that the commission's budgets had been significantly reduced halfway through their financial year.⁴²

- c) There have been no measures put in place by state agencies to implement the recommendations of the commission and any other investigations or policy changes undertaken in response to recommendations of the Commission.

Response to list of issues under Paragraph 19:

19. The Independent Policing Oversight Authority carried out a total of 885 inspections on police premises (places of detention) according to a report that was published by the outgoing members of the inaugural board. The inspection on police premises were as follows; 25 in 2012/13;40 in 2013/24; 196 in 2014/15; 237 in 2015/16; 208 in 2016/17; and 179 for the period of July 2017 to April 2018⁴³. However, despite these inspections and reports produced by the Authority, the Kenyan Government is yet to implement any recommendations.

Furthermore, IPOA has faced a series of internal challenges that may prevent the authority from effectively discharging its mandate. On the 5th of September 2019, the Chief Executive Officer of the Authority was sacked by the Board, barely 15 months into the job following a power struggle between him and the board members. The Board Chair would later on rescind the decision to sack the CEO but the board members differed with this decision.

Response to list of issues under Paragraph 20 a-g:

20. Information on Committees previous concluding observations on conditions of detention, including pretrial detention (paras 12,13 and 15);

⁴² <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1062/KNCHR-Vice-Chairperson-Remarks-During-The-International-Human-Rights-Day-Commemorations-2018>

⁴³ <http://www.ipoa.go.ke/wp-content/uploads/2018/05/IPOA-BOARD-END-TERM-REPORT-2012-2018-for-website.pdf>

- a) In 2019, a former Officer in charge of Ruaraka Police station Nahashon Mutua was sentenced to death for torturing a suspect in a police cell⁴⁴. However, there have been no investigations or prosecution of officers for acts of sexual violence and sexual exploitation of detainees.
- b) Kenya Prison Services has formal mechanisms through which prisoners can lodge complaints, including sexual violence. When this occurs, the prison authorities would be required to investigate the same. However, there is no information on the outcome of some of these investigations.
- c) The Government of Kenya through the Judiciary has embraced Court annexed mediation. The Judiciary has also come up with a Bail and Bond policy guidelines that have directly contributed to reducing the length of pretrial detention.⁴⁵ Despite this progressive policy developments, suspects are still subjected to lengthy periods of pretrial detention. Police officers have been accused on numerous occasions of effecting arrests at the end of the week (Fridays and public holidays)⁴⁶. As such, many suspects have to wait for over 48 hours before they are produced in a Court of law.
- d) Kenya has reduced overcrowding in prisons through the provision of legal aid services in prisons for petty offenders. More lately, there has been a discussion on the consideration of non-custodial measures and community service as a way to reduce overcrowding in places of detention.
- e) There have been no measures put in place to improve conditions in all places of detention to ensure that adequate health services are made available.
- f) There is no information on the number of cases that Kenya has imprisoned children under 4 years of age with their mothers and whether they may have considered an alternative to incarceration.

⁴⁴ <https://www.nation.co.ke/news/Ex-Ruaraka-OCS-Nahashon-Mutua-sentenced-to-death-/1056-4981128-ctt0r2/index.html>

⁴⁵ <http://www.klrc.go.ke/index.php/mandate/bail-and-bond-policy-guidelines/620-2-objectives-of-the-bail-and-bond-policy-guidelines>

⁴⁶ <https://www.standardmedia.co.ke/article/2001285744/stop-arrests-on-fridays-and-long-weekends-mps-tell-police>

- g) There is no information on any measure taken to protect detainees from contracting HIV.

Articles 12 and 13:

Response to list of issues in Paragraph 21:

21. There have been no significant measures taken to investigate allegations of extrajudicial killings, enforced disappearances and excessive use of force by security agencies in Kenya. This may explain why there has been an increase in the number of unlawful killings by the Kenyan Police. For instance, in 2019 alone, 107 Kenyans, mostly from informal settlements were killed by Police⁴⁷.

Response to list of issues under Paragraph 22 a-e:

22. Information on the Committee's previous concluding observations (para 18)
- a) There have been no measures that Kenya has undertaken to ensure that there is a prompt, impartial and effective investigation of all allegations of Torture particularly sexual violence, excessive use of force and extrajudicial killings in 2007 and 2008 post-election violence. The perpetrators of these violations have never been held to account for such acts. The cases that were filed by victims of sexual and gender-based violence during the 2007/2008 Post Election Violence has since 2013, never been decided. As such, victims have lost hope in the judicial process.
- b) No redress has been provided to victims of torture and sexual violence perpetrated during the post-election violence. The restorative justice fund is yet to be operationalized despite the directive of the President on the same in 2015. The Public Finance Management (Reparation for Historical Injustices) Regulations 2017 have been developed to ensure the fund is operationalized but this is not the case as of March 2020.

⁴⁷ <https://www.the-star.co.ke/news/2020-02-20-stop-killing-unarmed-kenyans-rights-group-tells-state/>

- c) The report on the multi-agency task force on the post-election violence was published but no action has been undertaken by the Government of Kenya.
- d) The National Assembly considered the report the Truth, Justice and Reconciliation Commission but no measures have been put in place to implement its recommendations.
- e) The Kenyan Government has on multiple occasions refused to cooperate with the investigations by the Prosecutor of the International Criminal Court into the post-election violence. The findings for “non-cooperation” were specific to the Kenyatta case, and related only to Kenya’s failure to comply fully with the prosecution’s request for tax, bank, company, land transfer, and telephone records.

Response to Paragraph 22 a-d of the list of issues:

23. Response to Paragraph 22 a-d of the list of issues:

- a) The Independent Policing Oversight Authority prepared draft regulations to provide for disciplinary and criminal punishments for police officers who fail to report deaths or serious injuries resulting from police action or occurring in police custody or who fail to properly secure evidence in such cases, the number of cases in which these regulations been applied and the disciplinary and criminal punishments that have resulted. However, these regulations have not yet been operationalized or made readily available to members of the public
- b) There is no information available to show whether any recommendations concerning the necessary changes to police processes or procedures have been made by the authority.
- c) IPOA has received several cases on the use of force leading to death, and of these complaints, the authority has achieved three convictions. They include; Case No 41

of 2014 (Republic v IP Veronicah Gitahi and PC Issa Mzee and Criminal Appeal No 23 of 2016 and High Court Case No 78 of 2014 (Tius Ngamau Msila)⁴⁸.

- d) The National Police Service Commission and the Internal Affairs Unit are avenues through which members of the public in Kenya can make complaints of torture and ill-treatment as a result of torture or ill-treatment from duty pending investigation. However, there is no information on measures taken to ensure that the National Police Service Commission suspends alleged perpetrators of torture or ill-treatment from duty pending an investigation.

Response to list of issues under Paragraph 24:

24. The Independent Policing Oversight Authority now has an effective online complaint mechanism that victims of numerous police excesses including torture and ill-treatment can lodge complaints. There is no information on whether the draft Independent Police Oversight Authority regulations create a more simplified process for recording complaints against the Police. 5,085 complaints were received by IPOA's directorate of investigations as at 2018 of which 752 cases were investigated and completed; 458 were closed after preliminary investigations; 72 are still under active investigations; 76 under legal review; 103 were forwarded to the Office of the Director of Public Prosecutions for further action; 11 to the Ethics and Anti- Corruption Commission and 6 to the National Police Service Commission. As at 30th April 2018, 2978 cases were under initial investigations assessment while 1355 cases were under active investigations. At the same time, 64 cases were before Courts.

Response to list of issues under Paragraph 25:

25. The Kenyan Government has since IPOA's inception increased the financial allocation to the authority. In the last six years, the Authority has seen its annual budget estimates grow exponentially from Two Hundred and Forty Six Million Kenya Shillings in 2012/13 to Six Hundred and Ninety-Six Million Kenya Shillings in the 2017/18 financial year.

⁴⁸ <http://www.ipoa.go.ke/wp-content/uploads/2018/05/IPOA-BOARD-END-TERM-REPORT-2012-2018-for-website.pdf>

Responses to list of issues under Paragraph 26:

26. Victims of violent attacks can now obtain P.3 forms that can be obtained at any Police Station. The Nairobi County Government has given powers to medical and clinical officers to treat assault cases and fill P.3 forms. Private organizations dealing with SGBV cases have also been authorized to fill forms on behalf of survivors at county health facilities. This simply means that residents can now get these forms from the County health facilities⁴⁹.

Response to list of issues under Paragraph 27:

27. Kenya Prison Services has got a formal complaints mechanism through which victims alleging abuse in places of detention can make confidential complaints of torture or ill-treatment to independent and impartial institutions. However, there is no information on whether there are effective measures taken in order to provide effective follow up on these complaints.

Response to list of issues under Paragraph 28:

28. The practice of arbitrary detention by Police officers for the purpose of extortion is still prevalent in Kenya. On the 3rd of April 2014, the Somali community living in Nairobi accused the Kenyan police of extortion and human rights abuses following the arrest of over 650 people. On the 14th of June 2016, five police officers and a civilian (Peter Ng'ang'a Job Mitau Muasya, Richard Hungi Kahungu, Laban Waweru and Duncan Mukenye) were charged with extortion before a Magistrate Court in Thika. The prosecution informed Court that on June 10th in Makongeni Area of Thika West, the officers together with others, with intent to extort money, demanded One Million shillings from John Kinyanjui of Xin Tong Engineering Ltd. They asked for the money before they could release Wei Xian Shun, whom they had arrested and was in their custody⁵⁰.

⁴⁹ <https://www.the-star.co.ke/counties/nairobi/2019-09-21-nairobi-medical-officers-to-fill-p3-forms/>

⁵⁰ <https://www.standardmedia.co.ke/article/2000205103/five-kenya-police-officers-and-civilian-charged-with-extortion>

Response to list of issues under Paragraph 29:

29. The Kenyan Government has not made significant strides in ensuring that the provisions of the Witness Protection Act are upheld in practice. As such there have been some instances where witnesses in specific cases have been subjected to intimidation by the perpetrators of these violations. For instance, in 2018, the Office of the Director of Public Prosecution accused Patel farm owners and some government officers of threatening key witnesses in a case where nine suspects were charged with 48 counts of manslaughter⁵¹. The Government of Kenya has not allocated sufficient resources to the witness protection agency and as such, this has equally made it difficult for them to discharge their mandate of protecting witnesses. There is no information on how many individuals have benefited from the protection that is provided by the state. There is equally no information on the number of complaints referred to IPOA or the Internal Affairs Unit by the Witness Protection Agency.

Article 14:

Response to list of issues under Paragraph 30 a-h:

30. Response to list of issues under Paragraph 30 a-h:

- a) The Judiciary has issued progressive decisions in numerous cases of torture against the Kenyan Government. Despite these progressive decisions, the state is yet to effect payment for some of these awards⁵².
- b) As of September 2015, the then-Attorney General of the Republic of Kenya stated that the Government owed Torture victims a sum of One Hundred Million Kenya Shillings⁵³. However, as of December 2018, this amount due to victims of torture and business litigants stood at an amount of One Hundred and One Billion Kenya Shillings⁵⁴.

⁵¹ <https://www.business-humanrights.org/en/kenya-state-counsel-alleges-intimidation-of-witnesses-in-solai-dam-burst-case-dam-collapse-killed-48-people>

⁵² <https://www.nation.co.ke/news/Delays-in-payouts/1056-4877230-vrbe5wz/index.html>

⁵³ <https://www.nation.co.ke/news/politics/Torture-victims-owed-Sh100m/1064-2877642-kc0u8hz/index.html>

⁵⁴ <https://www.nation.co.ke/news/Delays-in-payouts/1056-4877230-vrbe5wz/index.html>

- c) The Victims Protection Act was enacted by the Kenyan Government in 2014 and this legislation provides for a robust legal framework through which Victims can seek redress and medical rehabilitation. However, implementation of these provisions still remains a huge challenge.
- d) Despite numerous progressive decisions by Kenyan Courts, there are still no measures in place to ensure that there are reduced delays in civil compensation cases.
- e) There is no information on whether there have been consultations with relevant stakeholders to regulate the National Fund for Victims of Torture.
- f) The Prevention of Torture Act under section 19 provides for Medical Treatment and Counselling for victims of torture⁵⁵.
- g) The health care and rehabilitation services for victims of torture are covered by the Victims Protection Trust Fund established under section 27 of the Victims Protection Act 2014. There is no credible information on the existence of a rehabilitation program for victims, amount of funds provided by the State, number of psychologists/psychiatrists in the country.

Article 15

Response to list of issues in Paragraph 31

31. The provisions of the Evidence Act are to the effect that if a confession is illegally obtained, it's inadmissible in Court. The Judiciary has not documented the exact number of complaints and the number of criminal proceedings initiated against the offenders as a result.

Article 16:

Response to list of issues in Paragraph 32:

32. Despite Constitutional and legal provisions, the Kenyan Government has not put in place measure to prevent and punish harassment, intimidation and violence directed against human rights defenders and journalists. In the period between 2017 and 2018, they were 94 documented incidents of violations against individual journalists and media workers

⁵⁵ <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PreventionofTortureAct2017.pdf>

including bloggers as well as media houses⁵⁶. The Non-Government Organizations Coordination unlawfully froze their accounts of Muhuri and Haki Africa for eight months on allegations that they were funders of the terrorist group Al Shabaab⁵⁷. These two CSO's successfully appealed this decision in the High Court in Mombasa issued orders for the reopening of their accounts⁵⁸. The NGO Coordination Board was ordered to reinstate their licenses because they had failed to demonstrate that these two CSO's supported terrorists.

Responses to list of issues in Paragraph 33:

33. Despite Constitutional and legal provisions that should be enjoyed by all Kenyans, the Government of Kenya has not put in place any measures to address discrimination and ill-treatment, including acts of sexual violence of lesbian, gay, bisexual and transgender persons. In March 2018, the Court of Appeal ruled that it was illegal to force people suspected of being homosexual to undergo anal examinations. This was after a case was brought by the National Gay and Lesbian Human Rights Commission (NGLHRC) after two men were arrested in 2015 on suspicion of having gay sex, which is illegal in Kenya and attracts a punishment of imprisonment of up to 14 years in jail⁵⁹.

On the 24th of May 2019, the High Court in Nairobi upheld laws criminalizing homosexual acts between consenting adults. This was after three Civil Society Organizations that work to protect the rights of lesbian, gay, bisexual and transgender and the KHRC people filed a petition challenging the criminalization of same sex conduct under sections 162 and 165 of the Penal Code Act. They argued that these provisions violate the rights to equality, non-discrimination, human dignity, security, privacy, and health rights, that are all protected under the Kenyan Constitution⁶⁰. LGBT persons continue to face acts of mental torture due to their real or perceived sexual orientations and gender identity. We recommend that the

⁵⁶ <https://www.article19.org/wp-content/uploads/2018/05/Kenya-Report-1.pdf>

⁵⁷ <https://www.kenyans.co.ke/news/3-ngos-banned-operating-kenya-over-terrorism-claims>

⁵⁸ <https://www.the-star.co.ke/counties/coast/2019-11-27-muhuri-loses-compensation-case-over-terror-links/>

⁵⁹ <https://www.reuters.com/article/us-kenya-lgbt-anal-tests/rare-win-for-gay-rights-as-kenya-court-rules-forced-anal-tests-illegal-idUSKBN1GY2SI>

⁶⁰ <https://www.hrw.org/news/2019/05/24/kenya-court-upholds-archaic-anti-homosexuality-laws-0>

government of Kenya decriminalizes consensual same-sex acts to reduce the risk of mental and physical torture on the basis of sexual orientation. Additionally put in place health and access to justice support for transgender persons

Response to the list of issues in Paragraph 34:

34. There have been no measures put in place by the Government of Kenya to establish effective safeguards in psychiatric hospitals to prevent ill-treatment of persons and to improve conditions in psychiatric hospitals. However, the Ministry of Health on the 18th of November 2019 adopted a quality rights mental health initiative that is aimed at transforming mental health and promoting mental health of people with human rights disorders.⁶¹

Other issues:

Response to list of issues in Paragraph 35:

35. Kenya's Security Law Amendment Act of 2014 was accented to by President Uhuru Kenyatta in December 2014. This Act amended numerous provisions in Kenya's security laws and where a claw back to numerous constitutional gains as they added new criminal offenses with harsh penalties, limited the rights of arrested and accused people, and restricted freedom of expression and assembly. Eight Sections of the Act were declared unconstitutional following a petition filed by the Coalition for Reforms and Democracy and Civil Society Organizations⁶². However, certain sections in the Act permit security agencies to hold terror suspects for up to ninety days, thus violating the rights of an accused person enshrined in Kenya's Constitution that requires them to appear in a Court of law within forty-eight hours. As such, in the absence of appropriate measures to safeguard human rights, security agencies continue to commit human rights violations during counter-terrorism operations⁶³.

⁶¹ <http://www.health.go.ke/kenya-adopts-qualityrights-mental-health-initiative/>

⁶² <https://www.standardmedia.co.ke/article/2000152677/judges-declare-eight-sections-of-new-security-law-illegal>

⁶³ <https://www.hrw.org/report/2016/07/20/deaths-and-disappearances/abuses-counterterrorism-operations-nairobi-and>

Response to list of issues in Paragraph 36:

36. The Government of Kenya through the office of the Attorney General may have extended an invitation to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Response to list of issues in paragraph 37:

37. The Government of Kenya has undertaken the relevant legislative, administrative and judicial measures since the previous report. To this end, numerous pieces of legislation like the Prevention of Torture Act 2017, The National Coroners Service Act, The Independent Policing Oversight Authority Act and other pieces of legislation have been enacted. The Judiciary has several progressive decisions that have seen victims of torture and ill-treatment receive significant awards. The Judiciary has also developed the bail and bond policy and has also encouraged Court annexed mediation.

However, despite this progressive steps, the Government of Kenya is yet to fully implement the provisions of some of these pieces of legislation like the Prevention of Torture Act 2017 and the National Coroners Service Act 2017.