



REPUBLIC OF KENYA

OPENING STATEMENT BY H.E. DR. CLEOPA MAILU EGH, PERMANENT REPRESENTATIVE OF THE PERMANENT MISSION OF KENYA TO THE UNITED NATIONS OFFICE IN GENEVA

DURING THE

CONSIDERATION OF KENYA'S 3RD PERIODIC REPORT ON THE UN CONVENTION AGAINST TORTURE & OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (UNCAT)

AT THE

THE 73RD SESSION OF THE COMMITTEE AGAINST TORTURE, FROM 19TH APRIL TO 13TH MAY 2022 IN GENEVA, SWITZERLAND

4TH MAY 2022

Mr. Claude Heller, Chairperson of the Committee against Torture,
Distinguished Members of the Committee,
Distinguished Delegates,
Ladies and Gentlemen,

1. On behalf of the Government and the people of Kenya, the Kenya delegation is honoured to be here today to engage in an interactive dialogue with the Committee on the measures that Kenya continues to take to fulfil its obligations under the Convention.
2. The Kenyan delegation comprises senior officers drawn from the Office of the Attorney General and Department of Justice, Ministry of Foreign Affairs, the Judiciary, National Police Service, Kenya Prison Service, the Office of the Director of Public Prosecution, the Independent Policing Oversight Authority and the Permanent Mission.

Chairperson

3. In 1948, The United Nations General Assembly immortalized in the Universal Declarations of Human Rights, the legendary text “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” ultimately, paving the way for states to work towards the eradication of torture in all its forms. Since then the text has been incorporated in various national laws, constitutions, regional and international human rights instruments.
4. The ratification of the Convention by a large number of countries is strong testimony that such an atrocious crime does not have any place in the world and must be condemned in the strongest terms possible.
5. Kenya respects and supports the work of the Committee, which provides a strong mechanism for combating and preventing torture and other heinous crimes in the world. As a signatory to the Convention Against Torture and other cruel, inhuman or degrading treatment or punishment, I wish to commend the Committee for relentlessly encouraging state parties not only to take effective measures to prohibit and prevent acts of torture in their jurisdictions, but also to offer protection and redress to victims. Kenya shares the conviction that torture can never be justifiable and under the Kenya Constitution, the right not to be tortured cannot be limited under any circumstances.

Chairperson

6. Kenya is a human rights respecting state fully committed to the realization of the aspirations of the Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment. Today, I would like to highlight some of the achievements the government has made towards the realization of the rights and freedoms enshrined in the Convention:
 - a) An Implementation Committee has been appointed to set up the National Coroners Service to independently investigate the causes of suspicious reportable deaths. Consequently, bringing much needed accountability to investigations of suspicious deaths.
 - b) Kenya is dedicated to providing civil redress for all victims (or families) of Torture and other ill treatment. To this end, in 2021 the draft Victims Protection (General) Regulations, and the Victims Protection (Trust Fund) Regulations, were developed to fully operationalize the Fund to provide for reparations and compensations to victim.
 - c) To mitigate and address challenges relating to Sexual and Gender Based Violence (SGBV) various interventions are in place, including:
 - The POLICARE Policy that establishes a multi- agency victim -placed “ONE STOP CENTER” service provider to strengthen the capacity of the Police to prevent and respond to SGBV cases.
 - Training Manuals for National Government Administration Officers on data collection, data analysis and reporting on SGBV and
 - The launch of a Specialized SGBV Court in Kenya. The Court aligns the criminal justice system towards a coordinated structure that preserves the dignity of victims and enhances fair trial within the tenets of the constitution.
 - d) We are committed to the full elimination of FGM in Kenya as a matter of priority. County Anti-FGM steering committees are now operational in all the 22 counties where the practise is rampant. The committees monitor the FGM situation in their respective counties and report accordingly on a quarterly basis to the Multi-Agency Technical Committee.
 - e) Continuous awareness creation and sensitizations on the ills of FGM are ongoing by the FGM Board to change mindsets of the concerned communities. Further cross border

coordination and cooperation have been intensified to eliminate the practice in the region.

- f) Additionally, the Government deployed the use of Community Service Orders for all petty offences. The efforts have seen the prison population, decline while enhancing conformity with the internationally agreed minimum standards for arrested persons and persons held in detention.
- g) Extrajudicial, summary or arbitrary executions are indeed a violation of the most fundamental of rights. The Government of Kenya does not sanction these crimes and continuously strives to prevent, investigate and prosecute them. For Example,
- In June 2021, the Office of the Director of Public Prosecutors launched the Standard Operating Procedures on Investigation and Prosecution of Serious Human Rights Offences committed by Police Officers. The Procedures provide a structured framework for enhancing accountability and protection of victims in investigation and prosecution of offences in relation to serious human rights violations committed by police officers.
 - In the review period, the Civil Rights Division was established to enhance the promotion of human rights among law enforcers. The Division works closely with the civil society to conduct outreach and sensitization programs on human rights and the rule of law.
 - The police are also trained on Human Rights, Police Ethics and Accountability to enhance their observation of fundamental human rights and freedoms when performing police duties.
 - In addition, the establishment of oversight institutions such as the Independent Policing Oversight Authority and the Internal Affairs Unit within the National Police Service has ensured that excessive use of force by our law enforcement officers is addressed and those found culpable prosecuted or dismissed from service.

Chairperson

- h) With regard to the fight against terrorism, Kenya has experienced a number of terrorist attacks over the years. Constitutional and legal frameworks safeguards are in place to ensure that measures taken to fight terrorism do not lead to an infringement of a suspect's rights. Indeed, the courts have ruled that a person is not exempted from the ordinary protection of the law just because he or she is a terror suspect. Some of the safeguards include: The 24-hour rule on the detainment of suspects which is strictly adhered to by Police. Any further detention must be sanctioned by the Courts; Most

importantly, all arrested persons can be released on bond or bail, on reasonable conditions, unless there are compelling reasons not to be released. Additionally, an application for a writ of habeas corpus is available as a non derogable right in the Constitution. The Inter-Agency Guidelines on Cooperation and Collaboration in the investigation and Prosecution of Terrorism and Terrorism Financing launched in April, 2022 serve to ensure that the rule of law is strictly adhered to while dealing with these crimes.

- i) Kenya recognized her intersex population during the 2019 census. Government has embarked on taking concrete policy, legislative, institutional and administrative steps specifically aimed at protecting their rights.
- j) On matters concerning the protection of refugees, we are pleased to report that despite the limitations on movement witnessed during the COVID-19 pandemic, Kenya maintained its responsibility to provide refuge to those fleeing persecution in all its forms. Kenya's refugee and asylum seeker population currently stands at 547,884 as at 31st March 2022. This represents an 8.5% increase from the year 2020.
- k) With regard to human trafficking, the draft Standard Operating Procedures (SOPs) holistically address the crimes of trafficking and exploitative recruitment practices, while ensuring both preventative and responsive protection for victims and potential victims, and bringing those involved in trafficking to justice.
- l) Kenya is expected to hold her general elections on 9th August 2022. The National Multi-Agency Consultative Forum on Election Preparedness, chaired by the Chief Justice of Kenya, brings together various agencies to guide the realization of credible elections and violence free elections.
- m) One of the strategies of the Multi-Agency forum is the appointment of the Judicial Committee on Elections to ensure the speedy resolution of electoral disputes. Other key measures include the training of investigators on International Criminal Law and the revamping the Rapid response teams to respond in real time during the election period.
- n) To facilitate the full implementation of the Prevention of Torture Act, a rapid reference guide and a draft charge sheet for offences listed in the Act were

developed by the Director of Public Prosecutions. These work as synthesized tools that offer guidance to prosecutors and investigators while applying the Prevention of Torture Act. This redresses the challenge that we have had in prosecuting torture charges.

- o) Kenya still faces the challenge of overcrowding in prisons. However, in a bid to decongest prisons and ensure better access to justice, the Bail and Bond Policy Guidelines were developed to streamline and address disparities in bail and bond decision-making and enable fair administration of bail and bond measures. In addition, the Diversion Policy developed in 2019, guides prosecutors on the diversion of cases from court processes and allow matters to be settled out of court, on merit and through agreed structures. The Government is also deploying the use of community service orders for those sentenced to three years and below and those with a balance of three years and below left to serve. These efforts have seen the prison population decline by 60.7% The judiciary also reviews cases for individuals sentenced to six months and below, for release.

Chairperson

7. As I draw to the end of my statement, I wish to thank the non-governmental organizations, national human rights institutions, and all other stakeholders working in the human rights arena for the important work they are doing in holding governments accountable. We welcome your participation in this process and thank you for your active engagement.
8. Honourable Chairperson, with these remarks, we have outlined a number of achievements made by Kenya government to implement the Convention. We look forward to an interactive dialogue session with all members in these two days .

I THANK YOU
