



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND  
www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

REFERENC: CAT/follow-up/reminders

7 July 2014

Your Excellency,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the United Nations Committee against Torture, I refer to the examination of the second periodic report of Kenya (CAT/C/KEN/2) by this Committee, at its 50<sup>th</sup> session, held from 6 to 31 May 2013. At the end of that session, the Committee's concluding observations (CAT/C/KEN/CO/2) were transmitted to your Permanent Mission. In paragraph 40 of those concluding observations, the Committee requested, pursuant to its rules of procedure, that the State party provide, within one year, by 31 May 2014, further information regarding areas of particular concern identified by the Committee in paragraphs 9, 10, 17 and 18 (see extracts annexed).

The Committee has adopted a follow-up procedure to pursue issues that are serious, that can be accomplished by the State party in a one year period, and that are protective.

The information sought by the Committee has not been provided yet, although more than one year has elapsed from the transmittal of the Committee's concluding observations. Accordingly, I would be grateful for clarification as to the current status of your Government's responses on the matters, and as to when the information requested will be forthcoming. A Word electronic version of the reply should be sent to the Secretariat of the Committee against Torture ([cat@ohchr.org](mailto:cat@ohchr.org)). Upon receipt of this information, the Committee will be able to assess whether further action is needed.

The Committee looks forward to pursuing the constructive dialogue it has started with the authorities of Kenya on the implementation of the Convention. In this context, the Committee seeks to receive your response to this enquiry.

Accept, Your Excellency, the assurances of my highest consideration.

Jens Modvig

Rapporteur for Follow-up on Concluding Observations  
Committee against Torture

H.E. Mr. John O. Kakonge  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative of Kenya  
to the United Nations Office at Geneva  
Email: [mission.kenya@ties.itu.int](mailto:mission.kenya@ties.itu.int)

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Concluding observations of the Committee against Torture**  
*(Extracts for follow-up of CAT/C/KEN/CO/2)*

**KENYA**

(...)

**C. Principal subjects of concern and recommendations**

(...)

**Extrajudicial killings and disproportionate use of force**

9. The Committee remains concerned by the persistent allegations of on-going extrajudicial killings, enforced disappearances, and excessive use of force by police officers, especially during ‘special operations’, as well as by the low rate of investigations and prosecutions of such acts. The Committee is also particularly concerned by reports of a case of a young man who died after he was shot by police officers in Nairobi, in April 2013, following the theft of a mobile phone. (arts. 11 and 12)

**In light of its previous recommendation (CAT/C/KEN/CO/1, para. 20), the Committee urges the State party to ensure that all cases of use of lethal force and excessive force by security forces, including those occurred in Mandera and in the Tana River District, are promptly, effectively and independently investigated, and that the alleged perpetrators are brought to justice and, on conviction, be sentenced according to the grave nature of such acts. In addition, the State party should:**

**(a) Ensure that no changes to the Independent Police Oversight Authority’s (IPOA) mandate alter its obligation to report deaths caused by the police;**

**(b) Properly regulate the use of firearms by the police, with a view to ensure that these comply with the United Nations’ Basic Principles on the use of force and firearms by law enforcement officials (1990);**

**(c) Adequately train all law enforcement personnel, especially police officers, on the use of force; and**

- (d) Make public the results of all the investigations on extrajudicial killings, enforced disappearances, and excessive use of force by police officers, especially the above mentioned cases.**

#### **Fundamental legal safeguards**

10. While the Committee welcomes the information on the legal safeguards afforded to persons in police custody, it is concerned that these standards are not fully upheld in practice, especially the timely access to a lawyer and to a medical doctor, the right to contact a family members and the timely presentation before a judicial authority. (arts. 2 and 11)

**The State party should ensure that, in law and in practice, all detainees are afforded the fundamental legal safeguards from the moment of arrest, including the right to a lawyer, to notify a relative, to request an independent medical examination and to be presented to a judicial authority within 24 hours, as provided for in article 49 (para. 1(f)(i)) of the Constitution. To this effect, the Committee refers the State party to its General Comment No. 2 on the measures to effectively prevent torture and ill-treatment (CAT/C/GC/2). Further, the State party should ensure that the Persons Deprived of Liberty Bill (2012) contains all the necessary legal safeguards and is table before Parliament.**

(...)

#### **Lynchings**

17. The Committee is concerned by reports on cases of lynchings, in particular of elderly women accused of witchcraft, and by the allegations that these acts have not been effectively investigated, prosecuted and punished, even in cases where there is video evidence of the lynching. (arts. 2 and 12).

**The Committee urges the State party to amend the Witchcraft Act 1925 to conform it to the Constitution and international human rights standards in order to eliminate the practice of lynchings. It should investigate, prosecute and appropriately punish the perpetrators of such acts, in order to ensure the security and safety of all persons.**

#### **Investigation of post-election violence**

18. While the Committee welcomes the information provided by the delegation that the Truth, Justice and Reconciliation Commission's report has been submitted to the President and released, it remains concerned that the report has not yet been considered by the government and, as a result, its outcome is still unknown. The Committee regrets the lack of publication of the final report of the Multi Agency Taskforce. In addition, it is also concerned at the delay in effectively and impartially investigating the 2007 and 2008 post-election violence, with the result that perpetrators continue to be at large. (arts. 11, 12 and 14)

**Recalling its previous recommendations (paras. 19 and 20), the Committee urges the State party to:**

**(a) Strengthen its efforts to ensure prompt, impartial and effective investigation of all allegations of excessive use of force, torture and extra-judicial killings by the police and the military during the post-election violence, that perpetrators are prosecuted and, on conviction, appropriately punished. All victims should obtain adequate redress;**

**(b) Continue its cooperation with the Prosecutor of the International Criminal Court;**

**(c) Make public the report of the Multi Agency Taskforce; and**

**(d) Ensure that the report by the Truth, Justice and Reconciliation Commission is considered without delay, published, and its recommendations implemented.**

(...)

40. The Committee requests the State party to provide, by 31 May 2014 follow-up information in response to the Committee's recommendations related to (1) ensuring or strengthening legal safeguards for persons detained, (2) conducting, prompt, impartial and effective investigations, and (3) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 9, 10, 17 and 18 of the present document.

(...)

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