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4 May 2010

Excellency,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the United Nations Committee against Torture (CAT), I refer to the examination of the initial periodic report of Kenya (CAT/C/KEN/1) on 13 and 14 November 2008. The Committee adopted its Concluding Observations (CAT/C/KEN/CO/1), in which it requested further comments by the Government of Kenya in relation to the specific concerns listed in paragraphs 8, 11, 12, 19, 21 and 25.

On behalf of the Committee, thank you for your response of 30 November 2009 (CAT/C/KEN/CO/1/Add.1) providing comments by Your Excellency's Government on those paragraphs. This information has been reviewed with care and I am writing to seek further clarification on the following matters, where sufficient information is not yet provided to complete an analysis of the progress made regarding implementation of aspects of the Convention cited in the paragraphs above. We would be grateful if your clarification could reach us as soon as possible and in any event, no later than 4 August 2010 so that we may assess whether the response to the Committee's recommendations has been commensurate with the aims of this follow-up procedure which focuses on serious, protective, and achievable measures.

The Committee is pleased to learn that, as a result of the work of the Kenya Law Reform Commission, a draft torture bill has been disseminated to relevant stakeholders for feedback. We would appreciate updated information on the status of this bill, the timetable for its consideration and/or adoption, as well as further details on its substance. Please provide information on the reviews you state have been conducted by the Law Reform Commission to ensure conformity with the Convention in other relevant provisions of the Penal Code, Evidence Act and Criminal Proceedings Act, as mentioned in paragraph 4 of your response. Can you update the Committee on their outcomes?

H.E. M. Philip Richard O. Owade
Ambassador
Permanent Mission of Kenya
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The Committee has noted with concern the information provided in paragraphs 15-18 of your response regarding the efforts made to respond to the recommendation in paragraph 19 of the Committee's Concluding Observations urging immediate action to investigate "all allegations of excessive use of force and torture by the police [...] including sexual violence and gang rape" during the 2007 post-election violence. While we note with interest the establishment of the Commission of Inquiry into Post-Election Violence (CIPEV) and its October 2008 report, we are concerned that investigations into allegations against law enforcement officers were halted awaiting the creation of independent investigative mechanisms. As a matter of urgency, please clarify for the Committee whether any investigations into such violations have resumed? If so, please provide details on who is conducting the investigations, how many people have been charged and tried and for what crimes, how many have been found guilty, and what sentences have been meted out. Please disaggregate this information by age, gender, and location. In paragraph 18 of your response, there is also mention of cooperation with the International Criminal Court, in an effort to establish a local mechanism to try alleged perpetrators of post-election violence. Please update the Committee on these efforts, and what outcomes, if any, there have been to date.

With regard to the Committee's recommendation on the age of criminal responsibility in paragraph 11 of its Concluding Observations, the Committee is pleased to learn there has been a review of the Act under the Children's Law (Amendment) Bill. Please provide updated information on the status of the proposed bill to raise the age of criminal responsibility from 8 to 12 years old. The Committee would like to reiterate that, in light of the Committee's recommendation, the Government of Kenya should further raise the minimum age of criminal responsibility in order to bring it in line with generally accepted international standards.

The Committee has noted with appreciation the information provided on the various measures taken by the Government of Kenya to address violations by members of the Kenyan law enforcement authorities, as well as to address the serious problems of unaffordable bail, corruption and lack of prompt and impartial investigations into alleged abuse by police. We welcome the establishment of the National Task Force on Police Reform by the President in May 2009 and the recommendation to set up the National Policing Council to ensure efficiency and accountability in the Kenyan police services. Please provide updated information on whether this Council has been established, who heads it, and to which government agency does it report? The Committee would be grateful to receive details on its mandate and what national priorities have been (or will be) established for police performance, as set out in paragraph 9 of your response.

The Committee commends the plans of the Government of Kenya to establish an Independent Policing Oversight Authority for the monitoring and investigation of police conduct, as noted in paragraph 10 of your response, and would appreciate further information on this process. Please explain what measures are foreseen or in place to ensure independence and impartiality in investigations conducted by this body? In addition, please clarify for the Committee whether this body will be mandated to receive and address complaints from victims of alleged police abuse. If so, please provide information on the complaints mechanism, and what measures have been taken to ensure that complaints are addressed thoroughly.

With regard to the Committee's concerns mentioned in paragraph 11 addressing alleged corruption in Kenya's police forces, we are pleased to note that the recommendations of the National Task Force on Police Reform address this issue extensively, as noted in paragraphs 12-14 of your response. Please provide the Committee with detailed information on how these recommendations are being implemented by the Kenyan Government. Specifically, has a Code of Ethics, as mentioned in paragraph 12 of your response, been adopted? If so, please also include information on how the Code of Ethics and these prohibitions are enforced in practice. The Committee also welcomes the recommendation of the establishment of the Police Service Commission to address the unethical practices associated with the recruitment process for the Kenyan police forces; please provide the Committee with updated information on the status of this recommendation. If the Police Service Commission has been established, please provide further information on the impact this body has had in adding professionalism and transparency to the recruitment process, as stated in paragraph 14 of your response.

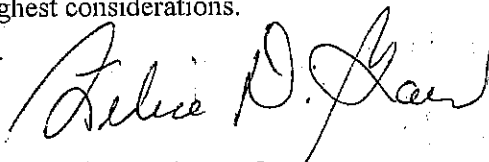
We welcome the establishment of the Interim Independent Electoral Commission and the Interim Independent Boundary Review Commission. Please elaborate as to the outcomes of the review and drawing up of new administrative and constituency boundaries and delimiting local electoral units mentioned in paragraph 19 of your response. Similarly, the Committee requests further information on the Truth, Justice and Reconciliation Commission noted in paragraph 20 of your response; is this Commission mandated to seek and receive complaints of alleged human rights violations? If so, please provide information on the complaints mechanism in place, and the investigation mechanisms, if any. How many people have received compensation as a result of a decision of this Commission, and please include information on what the compensation consists of, and whether it includes rehabilitation measures. The Committee welcomes the establishment of the National Cohesion and Integration Commission noted in paragraph 21 of your response, and commends the Government of Kenya for this measure. Please forward further information on the work of this body, including what recommendations have been put forward and what efforts have been made to implement them.

With regard to the Committee's concerns in paragraph 21 of the Concluding Observations on the lack of investigations into alleged torture and ill-treatment by the military during "Operation Okoa Maisha" in March 2008, we thank you for the extensive information provided. From your response, it remains unclear whether the Government of Kenya carried out investigations of its own or whether the team appointed by the Commissioner of Police on 22 May 2008 examined only those cases detailed in the reports of the Kenya National Human Rights Commission on Human Rights and the International Committee for the Red Cross. Please clarify this. We would also be grateful to receive detailed information on the safeguards in place to ensure that the team appointed by the Commissioner of Police exercised the requisite independence and impartiality for an effective investigation. Your response, in paragraph 27, notes confirmed cases of torture of SLDF members and sympathizers by the public; please clarify for the Committee whether any further investigations into these allegations took place, and if so, by whom, and with what result. Further information on the measures taken to bring the perpetrators of such violations to justice would also be important.

The Committee thanks the Government of Kenya for the information provided with regard to its concerns raised in paragraph 25 of the Concluding Observations on redress and compensation for victims of torture. Paragraph 31 of your response mentions that there were 24 ongoing cases at the time the response was drafted, and 58 other cases filed by detention and torture victims seeking justice. Could you provide the Committee with detailed and updated information on whether any of these cases have been resolved? If so, please provide information on the outcomes, including what compensation was provided and for what infractions. Please also provide information on any new cases that may have been filed. The Committee welcomes the information provided on the compensation provided to the seven victims mentioned in paragraph 32 of your response. We would be grateful to receive detailed statistical information on the total number of victims that brought cases seeking redress and/or compensation in 2008 and 2009, disaggregated by age, gender, location, and complaint. Finally, the Committee would appreciate receiving clarification as to the criteria and process in place for determining the amount of compensation to be awarded to any victims of violations of human rights.

The Committee looks forward to pursuing the constructive dialogue it has started with the authorities of Kenya on the implementation of the Convention, and in this context, to receiving clarification to our follow-up questions.

Accept, Excellency, the assurances of my highest considerations.



Felice D. Gaer

Rapporteur for Follow-up on Concluding Observations
Committee against Torture