

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

Concluding observations of the Committee against Torture
(Extracts for follow-up)

KENYA

(...)

C. Principal subjects concerns and recommendations

(...)

Definition of torture and appropriate penalties for acts of torture

8. The Committee takes note that the State party is a dualist state requiring domestication or incorporation of international instruments at the national level through an act of Parliament and it regrets that the State party has not yet incorporated the Convention into its legal framework. While acknowledging that torture is prohibited by section 74 (1) of the Kenyan Constitution, the Committee deeply regrets that the Penal Code and Code of Criminal Procedure do not contain a definition of torture and therefore lack appropriate penalties applicable to such acts, including psychological torture. (arts. 1 and 4)

The State party should ensure the incorporation of the Convention into its legal framework. Furthermore, the State party should, without delay, include a definition of torture in its penal legislation in full conformity with article 1 of the Convention and ensure that all acts of torture are punishable by appropriate penalties which take into account their grave nature as laid out in article 4, paragraph 2, of the Convention. The Committee urges the State party to seize the Kenya Law Reform Commission of this deficiency with a view to remedy it.

(...)

Age of criminal responsibility

11. The Committee is deeply concerned that the age of criminal responsibility in the State party is still set at eight years of age despite the recommendations made by the Human Rights Committee (CCPR/CO/83/KEN, 2005) and by the Committee on the Rights of the Child (CRC/C/KEN/2, 2007). (art. 2)

The State party should, as a matter of urgency, raise the minimum age of criminal responsibility in order to bring it in line with the generally accepted international standards.

Arbitrary arrest and police corruption

12. The Committee is deeply concerned about the common practice of unlawful and arbitrary arrest by the police and the widespread corruption among police officers, which particularly affects the poor living in urban neighbourhoods. The Committee is also concerned about the bail system currently in place. (art. 2 and 11)

The Committee urges the State party to address the problem of arbitrary police actions, including unlawful and arbitrary arrest and widespread police corruption, particularly in slums and poor urban neighbourhoods, through clear messages of zero-tolerance to corruption from superiors, the imposition of appropriate penalties and adequate training. Arbitrary police actions must be promptly and impartially investigated and those found responsible punished. The State party should also reform the bail system currently in place with a view to ensuring that it is more reasonable and affordable.

(...)

Use of force by police during post-election violence

19. The Committee notes with serious concern the numerous reports and allegations of disproportionate use of force and widespread torture and other cruel, inhuman and degrading treatment or punishment by members of the police forces during the 2007-2008 post-election violence, including sexual violence and gang rape. In this respect, the Committee welcomes the establishment of the Commission of Enquiry into Post-Election Violence, takes note of its recently published report, also known as the “Waki report”, and acknowledges its important findings. (arts. 11 and 12)

While taking note of the recently established special task force by the police to enquire on sexual-related crimes during the post-election violence, the Committee urges the State party to take immediate action to ensure prompt, impartial and effective investigation of all allegations of excessive use of force and torture by the police during this period, including sexual violence and gang rape, with the aim of prosecuting and punishing perpetrators with penalties appropriate to the grave nature of their acts. The State party should ensure that the victims of post-election violence obtain redress and adequate compensation.

(...)

Violence by state agents and access to land

21. While taking note of the inclusion of the issue of land reform in item 4 of the Kenya National Dialogue and Reconciliation Agenda, the Committee is concerned about the persistent linkage between widespread violence and torture by state agents and the problem of land in the State party. The lack of access to land, paired with other social and economic injustices, are frequently considered as root causes of torture and violence. In this connection, the Committee is deeply concerned about allegations of mass arrests, persecution, torture and unlawful killings by the military

in the Mount Elgon region during the “Operation Okoa Maisha” conducted in March 2008. (arts. 12 and 16)

The Committee urges the State party to take immediate action to ensure prompt, impartial and effective investigations into the allegations of use of excessive force and torture by the military during the “Operation Okoa Maisha” in March 2008. The State party should further ensure that perpetrators are prosecuted and punished according to the grave nature of their acts, that the victims who lost their lives are properly identified and that their families, as well as the other victims, are adequately compensated.

(...)

Redress and compensation

25. The Committee is concerned at the problems and delays, acknowledged by the State party, in providing compensation to victims of torture, including the victims of special police and military operations. The Committee is also concerned at the lack of data and statistical information on the number of cases of compensation to victims of torture or to members of their families. (art. 14)

The State party should take all appropriate measures to ensure that a victim of an act of torture obtains redress and has the right to a fair and adequate compensation, including the means for as full rehabilitation as possible. The State party should provide the Committee with statistical data on cases of compensation provided to victims or to members of their families.

(...)

36. The Committee requests the State party to provide, within one year, information on measures taken in response to the Committee’s recommendations, as contained in paragraphs 8, 11, 12, 19, 21 and 25 above.

(...)
