

ICJ Kenya Statement to the Committee Against Torture in the Context of COVID-19 Pandemic

Mr. Chairperson, on behalf of the Council of the Kenyan Section of the International Commission of Jurists (ICJ Kenya), I join our partners OMCT in thanking you and the Committee for allowing us to share our views and perspectives from the continent during this unprecedented times.

ICJ Kenya is a jurist based membership institution based in Kenya. Our mission is to promote human rights, justice, rule of law and democratic space through application of legal expertise and international and regional best practices.

With the number of the COVID-19 infections in the continent on the rise, several African states continue to put in place measures to curb its spread. From the onset and noting state responses to the pandemic, ICJ Kenya immediately echoed the advisory guidelines that were provided by African Commission on Human and People's Rights, (henceforth the Commission) that are contained in its statement dated 24th March 2020. The Commission urged state parties to the African Charter to ensure human rights based approach to effecting responses to the COVID-19 in Africa.

The Commission reiterated the obligation of States to ensure that the measures adopted complied with, and I quote *"principle of legality, and if necessary, should be proportional to the broader objective of safeguarding public health"*.

In a subsequent ICJ Kenya Communique, we repeatedly urged the Kenyan government to mitigate the adverse impact of the measures adopted on the poor and most vulnerable in society. We further urged the state to ensure that the measures complied with principles of non-discrimination and equality, provision of timely and accurate access to information on containment measures and consider the impact on measures on the vulnerable, including those in prisons and other places of detention.

It is against this background and framework that ICJ Kenya and other civil society actors in the continent have continued to monitor and track state action; we have been guided by principles of legality, necessity, proportionality, accountability and precaution.

Regrettably, whereas the numbers of infections continue to be on the upward trend, the direct state responses have increased human rights violations in equal measure which amount to torture, cruel and degrading treatment. While collective civil society voice has raised alarm on the violations including calling on governments to comply with the human rights standards, the number of violations have increased and not commensurate with the accountability mechanism. Therefore, ICJ Kenya wishes to bring the following to the Committee's attention, in so doing, will cite a few examples,:

Mr. Chairperson

1. Increased **Police Brutality** that has led to loss of life, including children, despite public outcry. Reports indicate that law enforcement agents resorted to excessive use of force such as beatings, kicking, flogging, and shooting amounting to torture, cruel, inhuman, or degrading treatment in an effort to ensure the public compliance with lockdown and curfew orders.

Just this month in Kenya for example, two police stations were torched by members of public. One case was a direct response to death of a disabled shoe maker. It is reported that the deceased challenged a police officer for harassing a motor bike taxi rider for not wearing a mask. Relatedly and on another incident, a law enforcement official dragged a naked young woman on a dusty road using a motorbike to the police station ostensibly on suspicion of having stolen cooking gas. The plight of the young woman was captured on video that went viral. The treatment of the young women who sustained severe injuries and humiliation is only but the tip of the ice bag.

2. **Increased Sexual and Gender Based Violation.** On the 2nd April 2020, the Chief Justice of the Republic of Kenya in a press briefing on the administration of justice noted a 35.8% increase in the number of SGBV cases filed during the pandemic period. Additionally, there have been reports of a sharp rise in rape, defilement, abuse and other violence against women and girls in their homes as a result of the lockdown. Other reports also indicate that States have not taken the necessary steps to address this issue and to provide adequate support and assistance to these women and girls. The lack of state action has exposed the most vulnerable to acts amounting to cruel and degrading treatment.
3. **Forced expropriation, evictions and destruction of houses.** There have also been instances of forced expropriation, evictions and destruction of houses by States, forcing people to live in inhuman and degrading conditions in spite of the pandemic and lockdown measures. Reports further indicate that women and children have been forced to spend many nights outside in the cold.
4. **Lack of prioritization of access to adequate health care and services:** Civil society actors have raised alarm on state responses intended to curb the spread of the virus which disproportionately impact on the most at risk and vulnerable populations such as persons in detention, prisoners, masses of people living in highly contested and poor neighborhoods, IDP camps, refugees, asylum seekers and migrants. These categories of persons lack sanitation and continue to live in degrading conditions.

In concluding therefore **Mr. Chairperson**, ICJ Kenya requests the following of the Committee;

- That the Committee should keep state parties in check, particularly during this pandemic period by periodically sending advisories or guidelines that would address human rights violations that amount to torture, cruel and degrading treatment;

- Remind state parties the use of terms such as “necessity”, “national emergency” or “public order”, cannot be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment;
- Keep the channels of communication with civil society actors open, especially where update information is provided on the human rights violations that amount to torture cruel and degrading treatment;
- Request state parties particularly those to undergo compliance review, to provide briefing reports on responses to provisions of the UNCAT during the COVID 19 period;
- The Committee should prioritize the voice of victims and hold state parties accountable for remedial action and reparations for any violations. We specifically urge the Committee to address measures that have been put in place for victims of police brutality during the Covid pandemic period.

Finally, ICJ Kenya recommends to the Committee that on Kenya, which was to be reviewed by the Committee earlier in the year and in light of the foregoing, that the country compliance review should be undertaken on line. The constructive face to face dialogue can be held as part of the follow up procedures and responses to concluding observations once the travel restrictions are lifted.

I thank you for your time and attention.