

## Committee against Torture

### **Concluding observations on the second periodic report of Kenya, adopted by the Committee at its fiftieth session (5-31 May 2013)**

#### **ADVANCE UNEDITED VERSION**

1. The Committee considered the second report of Kenya (CAT/C/KEN/2) at its 1146<sup>th</sup> and 1149<sup>th</sup> meetings, held on 15 and 16 May 2013 (CAT/C/SR.1146 and 1149), and, at its 1164<sup>th</sup> and 1165<sup>th</sup> meetings, held on 29 May 2013 (CAT/C/SR.1164 and 1165), adopted the following conclusions and recommendations.

#### **A. Introduction**

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and to have submitted its periodic report under it, as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation. The Committee also welcomes the submission of the State Party's core document in 2011 (HRI/CORE/KEN/2011).

3. The Committee notes with appreciation the high-level delegation and its frank dialogue with the Committee, covering various areas of concern under the Convention.

#### **B. Positive aspects**

4. The Committee welcomes the efforts made by the State party to strengthen its legal and institutional framework to safeguard universal human rights protection, including, inter alia, the following:

(a) Enactment of the Constitution, in 2010, including especially:

(i) The comprehensive Bill of Rights, with the non-derogable right to 'freedom from torture and cruel, inhuman or degrading treatment or punishment' (art. 25(a));

(ii) The principle of direct incorporation of international treaties (art. 2 (6)) and the "general rules of international law, including customary international law" (art. 2 (5)) into the domestic legal framework of the State party;

(b) Ratification of Treaties Bill, in 2012;

(c) Enactment of the Judges and Magistrates Vetting Board Act of 2011 with the on-going judicial reform, including the establishment of office of Director of Public Prosecutions;

(d) Enactment of the National Gender and Equality Commission Act, in 2011;

(e) Enactment of the Independent Electoral and Boundaries Commission Act, in 2011.

5. The Committee also welcomes the delegation's commitment to invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Kenya.

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

### **Definition of torture and appropriate penalties for acts of torture**

6. While noting that the National Police Service Act (2011) criminalises torture and ill-treatment committed by police officers and provides for appropriate penalties, the Committee remains deeply concerned that the draft Prevention of Torture Bill (2011) is still not enacted. (arts. 1 and 4)

**Considering that the State party has ratified the Convention in 1997, the Committee urges the State party to table, as a matter of urgency, the Prevention of Torture Bill (2011) before the Parliament, so that its provisions, which include a comprehensive definition of torture in line with article 1 of the Convention and render all acts of torture punishable by appropriate penalties, become the applicable law.**

7. The Committee is concerned by the delegation's statement that while the provisions of the Convention are incorporated into the national legal system as enforceable rights, in practice, law enforcement officers, who have committed acts of torture, are not charged with the offence of torture, but rather with other offences such as murder, assault, and rape. (art. 4)

**The State party should ensure that, in the presence of evidence of acts of torture, all public officials should be prosecuted for the crime of torture, in accordance with the definition as contained in article 1 of the Convention.**

8. While welcoming the information provided by the State party on the proposed amendments to the penalties for acts of torture and ill-treatment of children in the Child Justice Bill (2011), the Committee remains deeply concerned that the current Children Act (2001) provides for a penalty of "imprisonment not exceeding twelve months or a fine of fifty thousand Kenya shillings or both" for acts of torture and other forms of ill-treatment of children which are not commensurate with the gravity of these crimes. (arts. 1 and 4)

**The Committee urges the State party to enact the Children's Act (Amendment) Bill (2011) and the Child Justice Bill (2011), with a view of ensuring that the national legislation provides for appropriate penalties for acts of torture and ill-treatment of children, which take into account the grave nature of these offences.**

### **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.**

#### **Police reform and investigations**

11. While noting with appreciation the on-going police reforms, in particular the enactment of the National Police Service Act (2011), the establishment of the IPOA and the adoption of a Police Code of Conduct, the Committee remains deeply concerned by the persistent failure of the State party to promptly, impartially and effectively investigate all allegations of acts of torture and ill-treatment by police officers and to prosecute the alleged perpetrators. (arts. 12 and 13)

**The Committee urges the State party to take all necessary measures to ensure that the National Police Service Act (2011) is effectively implemented, ascertain that all allegations of acts of torture or ill-treatment by police officials are promptly, effectively and impartially investigated, duly prosecuted under the offence of torture or other cruel, inhuman or degrading treatment or punishment and, on conviction, punished appropriately. In particular, the State party should ensure that:**

(a) **The Independent Police Oversight Authority (IPOA) has sufficient financial and human resources to effectively carry out its mandate, including the collection of independent data on complaints, investigations, prosecutions, convictions and penalties against law enforcement officials for acts of torture and ill-treatment;**

(b) **The National Police Service Commission is sufficiently funded and that it prioritises the use of a vetting system whereby alleged offenders are suspended from duty, pending investigation, and appropriately prosecuted;**

**(c) The Coroners Service Bill (2011) is enacted and the independent medical examiners service, proposed therein, promptly established.**

#### **Conditions of detention**

12. While acknowledging the steps taken by the State party to improve the conditions in all places of detention, including the enactment of the Power of Mercy Act (2011) and the allocation of additional financial resources and the measures taken to reduce overcrowding, the Committee remains deeply concerned about detention conditions, in particular the persistent levels of overcrowding, lack of appropriate health services, prevalence of prison violence, including inter-prisoner violence and sexual abuse, and the practice of detaining children under the age of four alongside their mothers. (arts. 2, 11 and 16)

**Recalling its previous recommendation (para. 15), the Committee urges the State party to strengthen its efforts to bring the conditions of detention into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (ECOSOC resolution 663 C – XXIV - 1957) and, in particular, to:**

**(a) Take all appropriate measures to address the high level of violence in prisons, including sexual violence, to prevent sexual exploitation of detainees and to punish those found responsible of such acts;**

**(b) Further reduce the overcrowding in prisons by increasing the use of non-custodial measures and Community Service Orders, especially for minor offences;**

**(c) Adopt the draft Correctional Policy with a view to effectively improving the conditions in all places of detention and ensuring that adequate health services are made available.**

**In addition, the State party should reduce the practice of imprisoning children with their mothers, by increasing the use of non-custodial measures, and ensure that, if detention is unavoidable, their condition of detentions are in accordance with the Bangkok Rules (A/RES/65/229).**

13. While welcoming the information provided by the delegation on the measures taken to address the issue of HIV in prisons, the Committee remains concerned by the prevalence of HIV in places of detention and by allegations of transmission of HIV among detainees. (art. 16)

**The Committee urges the State party to adopt all necessary measures to protect detainees from contracting HIV, including through awareness raising campaigns and, when appropriate, by making condoms available.**

#### **National Human Rights Institution**

14. The Committee welcomes the re-establishment of the Kenya National Commission on Human Rights (KNCHR) in 2011, following the enactment of the KNCHR Act (2011), and its work in monitoring the conditions in prisons and detention centres, but remains concerned by the lack of an unconditional commitment of the State party to providing adequate funding to the Commission to enable it to carry out its mandate. It further regrets the lack of information on the dissemination of reports on the Commission's visits of places of deprivation of liberty. (art. 2)

**The State party should unconditionally commit to providing the Commission with sufficient financial resources necessary to enable it to carry out its mandate in accordance with the Paris Principles (adopted by General Assembly resolution 48/134, 1993). In addition, the reports produced by the KNCHR on its visits of places of detention should be made public.**

### **Pre-trial detention**

15. While welcoming the information provided by the State party on the measures to reduce the length of pre-trial detention, the Committee remains concerned by the high number of detainees awaiting trial, and the long period of pre-trial detention, up to four years. The Committee acknowledges the improvements to the bail system but is concerned that the bail conditions are still too prohibitive to be effective in practice. (arts. 2, 11 and 16)

**The State party should take all necessary measures to reduce the overcrowding in places of detention, in particular, by:**

- (a) Strengthening its efforts to reduce the backlog of cases, including by increasing judicial capacity and reviewing the current criminal justice policy;**
- (b) Enacting the draft Bail Information and Supervision Bill (2011); and**
- (c) Affording non-custodial sentencing measures and sensitising the relevant judicial personnel to the use of such measures, in accordance with the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules, adopted by General Assembly resolution 45/110, 1990).**

### **Arbitrary arrests and police corruption**

16. The Committee is concerned by persistent allegations of the widespread practice of arbitrary detention by the police, frequently connected to extortion of those detained and particularly targeting economically disadvantaged neighbourhoods. (arts. 2, 11 and 16)

**Further to the recommendations made in paragraph 11 of the present concluding observations, the State party should also take all necessary measures to determine cases where vulnerable persons are prone to arbitrary arrest, to prevent such acts and to put in place systems to ensure that police corruption is promptly, effectively and impartially investigated. Perpetrators should be suspended from duties while under investigation and brought to justice.**

### **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 the 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.

#### **Refugees and counter-terrorism measures**

19. While the Committee commends the State party's efforts for providing sanctuary to a population of over 600,000 refugees and recognises the State party's legitimate national security concerns, in particular with regard to the State party's border with Somalia, it remains concerned by allegations of police violence, including killings, in refugee camps and by the level of sexual and gender-based violence in these camps. It is also concerned by the State party's failure to effectively investigate, prosecute and punish those acts perpetrated by the security forces during the 'special operation' in Mandera, in October 2008; in Dadaab refugee camps, between 2008 and 2010; in Eastleigh between mid-November 2012 and late January 2013. In particular, the Committee is concerned by the absence of effective investigation into the police killing of two refugees in the Dagahaley refugee camp in June 2011. (arts. 2, 11 and 12)

**The Committee urges the State party to ensure that all police and military operations, including counter-terrorism activities, are carried out in full compliance with the Convention and the State party's obligations under international law. The State party should promptly, effectively and impartially investigate any allegation of torture and ill-treatment of ethnic Somalis perpetrated by the police and to ensure that those responsible are prosecuted and punished according to the gravity of their acts. The State party should compile and publish data on the investigations carry out, including by any committees of inquiry established in this context, and their outcomes.**

#### **Non-refoulement**

20. The Committee notes the information provided by the delegation that the State Party operates an open border policy with Somalia and all asylum applicants are treated in accordance with the State party's obligations under international and regional conventions on human rights and refugees. Nevertheless, the Committee recalls its previous recommendations (paras. 16 and 17), and notes with concern reports of cases of deportations effected without due process and of Somali asylum seekers being returned back at the border, for reason of national security. (art. 3)

**The State party should amend its legislation and bills, including the Refugee Bill (2006), the Extradition (Contagious and Foreign Countries) Act (2010), the Extradition (Commonwealth Countries) Act (2010), the Kenya Citizenship and Immigrations Act (2011) and the draft Refugee Bill (2012) to ensure that its law conforms to its non-refoulement obligation under article 3 of the Convention. The State party should enact the amended Refugee Bill (2012) and adopt the Draft**

**National Refugee Policy (2012) to ensure that all asylum applicants are afforded due process. The State Party should also ensure that, in practice, under no circumstances, foreigners are expelled, returned or extradited where there are substantial grounds for believing that the person would be in danger of being subjected to torture in the country of destination.**

#### **Witness Protection**

21. The enactment of the Witness Protection (Amendment) Act (2010) and the establishment of the Witness Protection Agency (2011) are welcome reforms by the Committee. However, it is concerned that, in practice, witnesses and their families are reportedly still vulnerable to threats and reprisals by law enforcement personnel who seek to eliminate evidence that could be used against them under this Act. The Committee is concerned that the Agency's budget overemphasises administrative matters and allocates an insufficient amount of resources for the purpose of witness protection. (arts. 2, 13 and 16)

**The State party should take immediate and effective measures to ensure that the provisions of the Witness Protection Act are upheld in practice in order to effectively protect witnesses and their families, that any allegations of violations are promptly, effectively and impartially investigated, and that alleged perpetrators are prosecuted and punished. The State party should allocate sufficient resources to the Witness Protection Agency, to enable it to function effectively in practice.**

#### **Complaints mechanisms**

22. While the Committee acknowledges the steps taken by the State party to improve the quality and access to the "P3" form, it remains concerned by the impediments inhibiting its effective use to a victim of torture and ill-treatment such as the high fees charged by medical professionals for completion of the form and the insistence that the complaint form must be first filled in at a police station. (art. 13)

**Recalling its previous recommendation (para. 24), the Committee urges the State party to take effective measures to ensure that all victims of torture and ill-treatment have effective access to mechanisms of complaint and have their cases promptly, effectively and impartially investigated. In particular, the State party should:**

**(a) Review the "P3" form to ensure compliance with the standards of the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2004) and make the form available free of charge at all public hospitals;**

**(b) Ensure that the medical professionals filling in the "P3" form are adequately remunerated, including for giving testimony in court, to ensure that the right of a complainant is not tied to his economic situation;**

**(c) Take measures, including training of medical professionals, to integrate forensic medical services in the mainstream health framework;**

**(d) Take effective measures to ensure that victims alleging abuse in places of detention can complain to an independent and impartial institution.**

#### **Adequate compensation**

23. While acknowledging the information on modalities of compensation, the information on civil court decisions awarding compensation to victims of torture and ill-treatment, or their families, and the draft Victims of Offences Bill, the Committee regrets the continued absence of a comprehensive legislative framework providing for effective redress for victims of torture and ill-treatment and that healthcare for victims of torture is

not covered by the National Hospital Insurance Fund. The Committee is also concerned that victims are directed to lengthy and costly civil procedures to realise their rights. It remains particularly concerned that most victims of the 2007 and 2008 post-election violence and of “special security operations” continue to await redress and compensation. (art. 14)

**The Committee draws the attention of the State party to the recently adopted general comment No. 3 (2012) on article 14 of the Convention, which explains the content and scope of the obligations to provide full redress to victims of torture. In particular, the Committee highlights that persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention, should be considered victims of torture or ill-treatment, regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted,**

**The Committee urges the State party to:**

**(a) Repeal, as a matter of urgency, the one year limitation in claims in tort against government officials;**

**(b) Strengthen its efforts to reduce delays in civil compensation cases;**

**(c) Enact the Victims of Offences Bill mentioned in para. 118 of its report, with the view of establishing a comprehensive legislative framework to give effect to the right to redress, including compensation and medical rehabilitation;**

**(d) Consult with relevant stakeholders to properly and effectively regulate the National Fund for Victims of Torture which should be as soon as possible;**

**(e) The State party should ensure that the right to rehabilitation is included in the Prevention of Torture Bill (2011), that adequate resources are allocated for effective rehabilitation treatment and programmes, including medical and psychological, also when provided by non-State services. Rehabilitation services should be duly covered under the National Hospital Insurance Fund.**

### **Training**

24. While the Committee notes with appreciation the 50 per cent increase in the budget for the training programme of the police and the progress made on training over 25,000 police officers, it remains concerned by the limited scope of the programme and the lack of an effective evaluation mechanism of this training as well as of the absence of training for the military and relevant medical personnel. (art. 10)

**The Committee recommends that the State party should redouble its efforts on training the police on human rights, especially the provisions of the Convention, and extend the training programme to all law enforcement personnel, military personnel and carry out effective evaluation of the impact of the training programme. It should further ensure that all relevant medical and law enforcement personnel is trained on the Istanbul Protocol (2004) and take measures to ensure that the standards contained therein are properly applied in practice.**

### **Access to justice**

25. While the Committee takes note of the State party’s national legal aid scheme and welcomes the information that the Legal Aid Bill (2012) will be “enacted within one year”, it remains concerned about the persistent problem of access to justice, particularly by those without economic resources. (art. 2)



**The State party should promptly table the Legal Aid Bill (2012) before Parliament, which should include the National Legal Aid policy, ensuring that it is operational country-wide and provide it with adequate resources to function properly, in order to ensure that lack of resources should not be an obstacle to accessing justice. Further, the State party should continue its efforts to increase the number of lawyers throughout the country.**

#### **Female genital mutilation**

26. While the Committee welcomes the enactment of the Female Genital Mutilation Act in 2011 and the Ministry of Gender, Children and Social Development's work on raising awareness against female genital mutilation, it remains concerned by the prevalence of the practice. The Committee is further concerned that the power to enter premises without a warrant that is afforded to "chiefs and children's officers" by the Act is not provided with legal safeguards. (arts. 2, 11 and 12)

**The State Party should redouble its efforts to eradicate the practice of female genital mutilation, including through awareness raising campaigns and by prosecuting and punishing perpetrators of such acts. The State party should ensure that all measures to combat the practice comply with legal safeguards.**

#### **Reproductive health facilities**

27. The Committee welcomes the waiver on maternity fees in public hospitals, but remains concerned about ill-treatment of women who seek access to reproductive health services, in particular the on-going practice of post-delivery detention of women unable to pay their medical bills, including in private health facilities. The Committee is further concerned by occurrences of forced and coerced sterilisation of HIV positive women and women with disabilities. (arts. 2, 12 and 16)

**The Committee urges the State party to strengthen its efforts to end the practice of forcible detention of post-delivery mothers for non-payment of dues, including in private health facilities.**

**The State party should strengthen its efforts to investigate allegations of involuntary sterilisations or other harmful practices in connection with reproductive health and identify and punish those who involved in such practices.**

**The State party should enact the Family Protection Bill to give effect to the right to health as provided for in article 43 of the State party's Constitution. The Commission on the Administrative Justice (Ombudsman) should publish detailed reports on complaints, follow-up and outcomes. The State party should ensure that the National Gender and Equality Commission effectively monitor the conditions in reproductive health facilities by the issuing periodic status reports.**

#### **Abortion in case of rape or incest**

28. While acknowledging the information provided by the State party that in practice physicians may allow abortion in cases where a woman has been subjected to incest or rape, the Committee is concerned that there is no right to abortion in such cases and, as a consequence, women are left in an unjustified discretionary situation with grave repercussions on their health on account of the resulting uncertainty for women and medical doctors. (art. 2 and 16)

**The Committee recommends that the State party amend its legislation, in order to grant women who have been subjected to rape or incest the right to abortion, independently of any medical professional's discretion.**

**The Committee recommends that the State party should evaluate the effects of its restrictive legislation on abortion on women's health, with a view of regulating this area with sufficient clarity.**

#### **Juvenile justice and age of criminal responsibility**

29. While noting the information that the draft Children Act (Amendment Bill) (2011) and the Child Justice Bill (2011) propose raising the age of criminal responsibility to 12 years, the Committee remains concerned that the Bills have not been enacted and that the criminal responsibility remains at 8 years. (art. 2)

**The Committee recommends the State party to adopt the child bills, with a view of rising the age of criminal responsibility to accepted international standards, as expressed in the General Comment No. 10 of the Committee on the Rights of the Child (paras. 32 and 33). The State party should ensure the full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, adopted by General Assembly resolution 45/113, 1990) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, adopted and proclaimed by General Assembly resolution 45/112, 1990).**

#### **Violence against children**

30. The Committee is concerned by the lack of effective monitoring of violence against children in schools and in public institutions. While the Committee welcomes the establishment of fourteen Child Protection Units in police stations, it remains concerned that these are concentrated in urban centres, leaving children in rural areas without such protection. (arts. 2 and 11)

**The State party should strengthen its complaints mechanisms, follow up procedures and support services for children who have been tortured and abused, including by extending Child Protection Units to police stations country wide and by affording country-wide child helpline call centres. The State party should also strengthen its inspection and monitoring of Charitable Children's Institutions to ensure that children do not serve long periods, unless under special circumstances. The State Party should take effective measures to ensure that all children are always protected from violence and other forms of mistreatment in schools and institutions.**

**The findings of the National Gender and Equality Commission's monitoring of children's institutions should be made available and its recommendations should be implemented.**

#### **Mental health institutions**

31. The Committee is concerned by reports of deplorable conditions in psychiatric institutions and other places of deprivation of liberty and regrets the lack of information by the State party on the conditions in such institutions. (arts. 16)

**The State party should ensure that all places of deprivation of liberty, including psychiatric hospitals, are adequately monitored and that effective safeguards are in place to prevent any ill-treatment of persons in such facilities. The State party is urged to provide detailed information on the place, time and periodicity of visits, including unannounced, to psychiatric institutions and other places of deprivation of liberty and on the findings and the follow-up on the outcome of such visits.**

### **Human rights defenders**

32. The Committee is concerned that human rights defenders continue to report intimidation, harassment and ill-treatment by the police. The Committee is concerned by the State party's inability to provide effective support to human rights defenders and to promptly, effectively and impartially investigate, prosecute and punish acts of violence and intimidation against human rights defenders. The Committee regrets the lack of information on the investigation of the reported 9 November 2012 attack on the executive director of the NGO Kenyans for Justice and Development. (arts. 2, 12, 13 and 16)

**Bearing in mind the Committee's previous recommendation (para. 28), the State party should take effective steps to ensure that all persons reporting on acts of torture and ill-treatment are protected from intimidation and reprisals in any form. The State party should ensure prompt, effective and impartial investigations of any allegations of abuse or intimidations against human rights defenders, including the attack of 9 November 2012. The Committee encourages the State party to seek closer cooperation with civil society in upholding human rights, including the prevention of intimidation, reprisals and ill-treatment of human rights defenders.**

### **Death penalty**

33. While acknowledging that the death penalty has not been applied in the State party since 1987, the *de facto* moratorium on the death penalty and the President's initiative to commute 4,000 death sentences in 2009, the Committee remains concerned by the legal uncertainty following the High Court judgements, by the high number of death sentences passed, including for minor offences, and by the conditions of the 1,600 persons still on death row. (art. 2 and 16)

**The Committee recommends that the State party reconsider the possibility of reviewing its policy, with a view of abolishing the death penalty. The State party should ensure that all persons on death row are afforded the protection provided by the Convention and are treated humanely. The State party should support the efforts of the Kenya National Commission on Human Rights on conducting a survey and awareness raising measures regarding the public opinion on the death penalty.**

### **Deaths of police officers**

34. The Committee is concerned by reports of a high number of deaths of police officers while on duty, including in the context of special operations in the Mandera District and the Tana River District. (arts. 2, 10 and 16)

**The State party should ensure that police officers are trained and equipped appropriately to ensure sufficient preparation for the tasks at hand. The State party should improve the terms and conditions of service for police officers to the same level as other security forces and take effective measures to protect the lives of security officers.**

### **Data collection**

35. The State party should establish a system of compiling national statistics and should provide statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of extrajudicial killings, enforced disappearances, domestic and sexual violence as well as on means of redress, including compensation and rehabilitation, provided to the victims.

### **Cooperation with United Nations human rights mechanisms**

36. The Committee recommends that the State party strengthens its cooperation with United Nations human rights mechanisms, including by inviting Special Rapporteurs in areas related to this report.

### **Other issues**

37. Recalling the State Party's commitment during its Universal Periodic Review (UPR) in 2010 (A/HRC/15/8, para. 101.3), the Committee recommends that the State party consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

38. The Committee recommends that the State party consider making the declarations envisaged under articles 21 and 22 of the Convention.

39. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocols to: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child (on the Sale of Children, Child Prostitution and Child Pornography); and the Convention on the Rights of Persons with Disabilities.

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.

41. The State party is invited to submit its next report, which will be the third periodic report, by 31 May 2017. To that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

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