



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

Distr.: General  
30 November 2012

Original: English

---

**Committee against Torture**

**Consideration of reports submitted by States parties under  
article 19 of the Convention**

**Second periodic report of States parties due in 2012, submitted in  
response to the list of issues (CAT/C/KEN/Q/2) transmitted to the State  
party pursuant to the optional reporting procedure (A/62/44, paras. 23  
and 24)**

**Kenya\*, \*\***

[28 September 2012]

---

\* The initial report of Kenya is contained in document CAT/C/KEN/1; it was considered by the Committee at its 852nd and 854th meetings, held on 13 and 14 November 2008 (CAT/C/SR.852 and 854). For its consideration, see CAT/C/KEN/CO/1.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

## **Introduction**

1. The Republic of Kenya welcomes this opportunity to submit their second report under the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention) in accordance with the list of issues prior to the submission of the second periodic report of Kenya (CAT/C/KEN/2).
2. This report outlines the various legislative, judicial, administrative or other measures that have been taken in the country to give effect to the provisions of the Convention since the presentation of Kenya's initial report in 2008.
3. The report has been prepared having due regard to the list of issues as provided by the Committee on Torture and their concluding remarks on Kenya's initial report. The Report provides the Government's responses to specific issues raised by the Committee on the implementation of articles 1 through 16 of the Convention, including information relating to the Committee's previous recommendations.
4. In developing the report wide consultations were undertaken within Government, the Kenya National Commission on Human Rights, other National Institutions, non-governmental Organizations, Civil Society organizations and other stakeholders including academic and policy analysis institutions.
5. Since the presentation of the last report significant progress has been made in Kenya in the promotion and protection of human rights. The most important achievement has been the enactment of a new Constitution on 27 August 2010. The Constitution of Kenya 2010 provides a stronger constitutional, legal and institutional framework for the promotion and protection of human rights and fundamental freedoms in the country. The Constitution contains a number of provisions that resonant well with the Convention. It explicitly recognizes the position of international instruments and rules and allows for their incorporation into the Kenyan legal system. The provisions of the Convention are incorporated as enforceable rights in Kenya.
6. Freedom from torture and other cruel, inhuman and degrading treatment or punishment is a non-derogable right enshrined in the Bill of Rights. While protecting the right to freedom and security of the person, the Constitution also elaborates stringent rules on the right to a fair trial as a key tenet of justice, and which cannot be limited at all times. The rights of an arrested person are extensively laid out. The Constitution further offers protection to those detained, held in custody or imprisoned under the law, clarifying that such persons, retain all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or a fundamental freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned.

## **Articles 1 and 4**

### **Reply to the issues raised in paragraph 1 of the list of issues (CAT/C/KEN/Q/2)**

7. The enactment of the Constitution in 2010 significantly strengthened the application of the Convention in Kenya in a number of ways: Firstly, article 2 (5) of the Constitution incorporates the general rules of international law into the laws of Kenya. Essentially, the general rules of international law, including customary international law, shall be a source of law in Kenya. Torture is an absolute and non-derogable offence under customary international law and the referenced article delegitimizes any action by the State, whether legislative, administrative, judicial or any other measures that authorizes torture in Kenya. Secondly, article 2 (6) then states that any treaty or convention ratified by Kenya shall form part of the laws of the land. This means that the entirety of the provisions of the Convention

is lawfully applicable and enforceable in the Kenyan legal system. Thirdly, article 25 further reinforces the Convention's provisions by embracing freedom from torture and cruel, inhuman or degrading treatment or punishment as fundamental rights which cannot be limited, whatever the circumstances. Fourthly, article 21(4) obligates the State to enact and implement legislation to fulfil its obligations in respect of human rights and fundamental freedoms. In this regard and in recognition of its obligations under the Convention, the Government of Kenya has developed a Prevention of Torture Bill 2011.

8. The Bill was developed, in collaboration with the Kenya National Commission on Human Rights, the International Commission of Jurists (Kenya) and the Independent Medical Legal Unit. The Bill provides a legislative framework for the prevention, prohibition and punishment of acts of torture and other cruel, inhumane or degrading treatment or punishment and rehabilitation of victims of torture. Torture in the Bill is defined in full conformity with article 1 of the Convention. The Bill prescribes the penalty for the commission of torture as imprisonment for a term not exceeding twenty five years. In a case where the act of torture results in death, the penalty is life imprisonment.

9. The Bill further defines "cruel, inhuman and degrading treatment or punishment" as deliberate and aggravated treatment or punishment not amounting to torture, that is inflicted by a person in authority or agent of the person in authority against a person under his custody, causing suffering, gross humiliation or debasement to the person". The commission of cruel, inhuman and degrading treatment or punishment is limited to public officers, persons acting in an official capacity or a person acting at the instigation or with the consent or acquiescence of a public officer. The penalty for committing the offence is a fine of one million Kenya shillings or imprisonment for a term not exceeding fifteen years or both.

10. Other offences related to torture and cruel, inhuman or degrading treatment or punishment proposed in the Bill include the offences of aiding and abetting, knowingly using information obtained by or through torture and the publication of information relating to a witness declared by the court to be vulnerable. The Prevention of Torture Bill further contains a number of noteworthy components that fortify the country's compliance with the Convention:

- (a) The Bill grants Kenyan courts, jurisdiction over offences of torture as provided for in Convention against Torture;
- (b) It sets out an elaborate procedure for reporting and independent and impartial investigations for acts of torture;
- (c) It sets out the procedure for legal proceedings relating to vulnerable witnesses;
- (d) It creates the National Assistance Fund for Victims of Torture;
- (e) It safeguards the protection from torture of prisoners or detainees being transferred;
- (f) It states that torture is an extraditable offence;
- (g) It prohibits the expulsion, return or extradition of a person to a country where they are likely to be tortured;
- (h) It sets out the limitation of time to institute civil proceedings as six years commencing with the date when it first became reasonably practicable to bring an action;
- (i) It provides for the making of other regulations, by the Government in consultation with the Kenya National Commission on Human Rights, for the better implementation of the objects of the bill;

(j) It safeguards the rights of any person charged with any offence under the bill to assistance in communicating with a representative or State;

(k) It sets out, but does not limit, examples of acts that may constitute torture.

11. The Bill is being reviewed by the Commission on the Implementation of the Constitution (CIC) whose mandate is to monitor whether the process and contents of legislation are in full conformity with the Constitution. After review and the necessary stakeholders' consultations, the Bill will be submitted to Cabinet for approval and onward transmission to Parliament.

12. The National Police Service Act 2011 criminalizes torture and other cruel, inhuman and degrading treatment or punishment committed by the police. In the Act the definition of torture is borrowed to the letter from the Convention. A police officer who commits acts of torture is liable on conviction to imprisonment for term not exceeding twenty five years. While those found guilty of subjecting a person to cruel, inhuman or degrading treatment faces imprisonment for term not exceeding fifteen years.

13. The Children Act 2001 offers protection to children against torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty.

**Reply to the issues raised in paragraph 2 of the list of issues**

14. The Constitution of Kenya safeguards the freedom and security of the person and contains an absolute prohibition of torture and other, cruel, inhuman or degrading treatment. In 2010 the Government, through the Kenya Law Reform Commission began a comprehensive audit of all laws to ensure that they accord with Constitution provisions as per Schedule 5 of the Constitution including the above referenced pieces of legislation. It was noted that the enactment of the Prevention of Torture Bill, 2011, into law will effectively cure the gaps existing in the Penal Code, Evidence Act and Criminal Procedure Code referred to under paragraph 8 of the Committee's concluding observations. Further amendments to these pieces of legislation will constitute a mere repetition of the contents of the Prevention of Torture bill.

**Reply to the issues raised in paragraph 3 of the list of issues**

15. The Bill of Rights sets out general rights extending to citizens and specific rights for groups including children, the youth and persons with disabilities. Article 53 sets out strong safeguards for the rights of children. In 2010 the Government embarked on a holistic review of the Children's Act, to bring its provisions in line with constitutional and generally accepted international standards. As a result, The Children's Act (Amendment bill) 2011, which proposes a number of modifications to the Children's Act was prepared. One of the changes sought is the raising of the age of criminal responsibility from eight to twelve years. Parliament is now in the process of passing a high number of pending constitutional bills and the Children's Act (amendment bill) 2011 has been lined up for prompt attention.

16. The Children Act 2001 offers protection to children against torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. The penalty for this offence is a term of imprisonment not exceeding twelve months or a fine of fifty thousand Kenya shillings or both. The Children Act (Amendment) Bill does propose amendments to the provisions relating to torture in the mother Act by expanding the realm of punishable offences to include the prohibition of corporal punishment and any cultural practices which dehumanizes or are injurious to the physical and mental well being of the child. It also proposes that where the word "arrest" appears anywhere in the text it must be substituted with the word "apprehend".

17. The Children Act (Amendment Bill) proposes amendments to section 18(1) of the Children's Act 2001, to include the prohibition of corporal punishment and any cultural practice, which has the effect of dehumanizing or is injurious to the physical and mental well being of the child. It further proposes that (18)(1) be renumbered to 18(2) to read as follows; "*No child shall be subjected to unlawful apprehension and deprivation of liberty*" and anywhere the word "arrest" appears to be replaced with "apprehend."

**Reply to the issues raised in paragraph 4 of the list of issues.**

18. The Constitution of Kenya contains several safeguards for the protection of women, children and all persons from all forms of violence. Besides embracing the principle of the inherent dignity of the person, the Constitution also safeguards the fundamental freedom and security of the person. It explicitly outlaws any form of violence from either private or public sources. Freedom from torture and cruel, inhuman and degrading treatment or punishment and freedom from slavery and servitude are some of the non-derogable rights in the constitution;

19. The Prohibition of Female Genital Mutilation Act, 2011 was enacted in 2011 and provides new opportunities for the total elimination of female genital mutilation. The Act criminalizes the practice and provides heavy sanctions. In the Act, chiefs and children's officers are allowed to enter any premise without a warrant to ascertain whether such a crime has been or is about to be committed. It further stipulates that culture and religion cannot be used as an excuse to perform the procedure.

20. In 2009 the Government in collaboration with various stakeholders developed the *National Framework towards Response and Prevention of Gender-Based Violence in Kenya*, which has formed the basis for investigations of instances of sexual violence and strengthen coordination of responses to stem it. The Framework set out a number of actions to be taken to address the problem of gender based violence. Actions so far taken include:

- The establishment of community structures that are responsive to sexual and gender-based violence at grass-root levels;
- Awareness creation on prevention within communities and community-based institutions;
- strengthening behaviour change programmes that address sexual and gender-based violence;
- The participation of men has been increased in measures for prevention of sexual and gender-based violence at community levels;
- The capacity of the Kenya Police has been enhanced through training to respond adequately to cases of sexual and gender based violence.

21. The National Gender and Equality Commission Act was enacted in 2011. The Act establishes the Commission. The Commission is a constitutional body whose core mandate is to promote gender equality and freedom from discrimination as provided in article 27 of the Constitution. The Commission conducts periodic audits to ensure that special interest groups including women, minorities, and marginalized groups, persons with disability, the youth and children are protected from discrimination. The National School Health Policy (2009) also addresses issues relating to FGM and early/forced marriage to students in schools.

22. For the criminal justice system of any country to function effectively it must be anchored on a strong witness protection system, as the entire court process is predicated on the evidence that is presented by witnesses, who are ready to come forth without fear to testify as to the facts that are controverted before the judicial officer. In April 2010 the Witness Protection (Amendment) Act was passed. This legislation will encourage women

who are victims of sexual abuse, domestic violence and other abuses and who fear reprisals to come forward and seek legal redress.

23. The Commission on the Implementation of the Constitution is conducting a review of the Family Protection Bill and the Matrimonial Property Bill (2007) with the objective of aligning them with constitutional provisions as required by the Supreme law. Various stakeholders and the public at large were provided with an opportunity to give their views on the Bills. The Bills will be submitted to the Honourable Attorney General for onwards transmission to Parliament after the incorporation of views in the Bills.

24. The Family Protection Bill, 2007 adopts provisions for the protection and relief of victims of domestic violence. It sets out elaborate procedures for complaint, investigation and prosecution of cases of domestic violence, creates a range of offences related to domestic violence and empowers various organs and officers including law enforcement officers to take specified measures in dealing with domestic violence. The Family Protection bill proposes: measures to curb domestic violence, sets out the procedures for investigation and prosecution of cases of domestic violence, and creates offences that relate to domestic violence.

25. The Matrimonial Properties Bill, 2007 on the other hand provides a framework that guarantees equality for married men and women in dealing with matrimonial property in terms of right to ownership, access, control and disposition of matrimonial property. In the Bill, matrimonial property includes the matrimonial home or homes, household goods and effects in the matrimonial home/s, immovable property owned by either spouse which provides the basic income for the sustenance of the family and any other property acquired during the life of the marriage and which the spouses agree to be part of the matrimonial property. However any property held by a spouse as trust property shall not form part of the matrimonial property. Spouses may enter into an agreement before or during the marriage, which would otherwise determined their property rights. The Bill makes provisions for joint ownership of property, and recognizes the contribution made by a spouse towards improvement of property that is not matrimonial property.

26. The Equal Opportunities Bill has been excluded from the pending bills with the view that article 27 of the Constitution on equality and freedom from discrimination covers the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. Initials discussions are underway to develop an equality and non-discrimination legislation that will cover all the relevant issues.

27. Kenya enacted the Counter Trafficking in Persons Act in the year 2010 to implement Kenya's obligations under the United Nations Convention against Transnational Organized Crime particularly its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and to provide for the offences relating to trafficking in persons. As a deterrent measure, the penalties for offences under the Act are quite punitive with substantial fines and in some cases imprisonment for life.

28. The Counter Trafficking in Persons Act, 2010 creates a Counter Trafficking in Persons Advisory Committee to enhance inter-agency co-operation in combating trafficking in persons. The committee consists of members drawn from the Government, Kenya National Commission on Human Rights, trade unions and civil society organizations dealing with women and children with a proven record of involvement in prevention and suppression of trafficking in persons. The Government has taken the following steps to disseminate information on laws relating to domestic violence and other relevant laws:

(a) The Office of the Director of Public Prosecution and the Task force on Implementation of the Sexual Offences Act conducted countrywide public forums to sensitize the general public on sexual offences and gender based violence;

(b) The Government through the Ministry of Gender, Children and Social Development has intensified and conducted public awareness on, and facilitated community dialogue on the Female Genital Mutilation Act 2011 and the dangers of FGM in the four districts where the practice is rampant. In partnership with the faith based organizations, the Government has continued to conduct alternative rites of passage for girls in place of FGM;

(c) Sexual Offences, Gender Violence and Victim's Rights Section was set up in the Office of the Director of Public Prosecutor to conduct trainings and sensitization of investigators, police prosecutors and judicial officers on Sexual and Gender based violence cases throughout the country with the objective of enhancing their capacity to respond effectively to these crimes. The Section also conducts specialized training on forensic investigations, crime scene management, collection, preservation and presentation of evidence;

(d) A Prosecutor's Manual on Sexual Offences has been developed and is being used to train investigators and Police Officers on the investigation and prosecutions of sexual offences;

(e) Gender units have been set up in all ministries to enhance gender sensitivity in administrative operations when giving services. There are also various awareness initiatives that have been undertaken by ministries even in collaboration with CSO to sensitive members of the public on gender issues; and

(f) The training curriculum for police officers has been reviewed and now incorporates training on human rights including the prohibition of torture and ill treatment. The curriculum was engendered through the concerted efforts of Government and UN women. Gender Violence Recovery centres have been opened in major public hospitals across the country to deal with matters of gender violence.

## **Article 2**

### **Reply to the issues raised in paragraph 5 of the list of issues**

29. The reform of the justice sector has remained a government priority since 2003. The enactment of the Constitution of Kenya, 2010, resulted in the adoption of critical legislation and administrative measures that have greatly enhanced the integrity, efficiency and transparency of the judiciary- transforming it into an independent establishment capable of effectively administering justice, checking impunity, upholding and enforcing the Bill of Rights. The courts are required by constitutional imperatives to strictly uphold and enforce the bill of rights. In this regard, Kenyan judges have given effect to the provisions relating to: The right to a fair trial, rights of arrested persons and the rights of the person deprived of liberty among others, which have gone a long way in preserving the dignity and liberty of persons. Further, the Constitution outlaws the remand in custody of any person for an offence that is punishable by a fine only or by imprisonment for not more than six months. This provision has been adhered to faithfully by the courts thus resulting in enhanced decongestion of prisons and remand institutions as well as safeguarding the rights of those accused.

30 For the judiciary to function effectively the public and the nation at large must have confident in its ability to be an independent and impartial arbiter of disputes of whatever nature, be it the enforcement of the fundamental freedoms and rights enshrined in the constitution or a presidential election petition. To restore public confidence in the judiciary, judges and magistrates who administer justice on a daily basis must be only those persons who pass the test for integrity and ethics. To ensure that the principles of integrity, accountability and transparency are upheld in the judiciary, the Judges and Magistrates Vetting Board Act was enacted in 2011. The Act creates the Vetting of Judges and

Magistrates Board which is currently vetting judicial officers so as to ensure that the judicial officers in place comply with the standards professionalism and integrity as required by law.

31. Above all, the constitution specifies that only those persons with high moral character, integrity and impartiality can be appointed to the superior courts of Kenya. The Judicial Service Commission Act further buttresses this position by providing strict criteria for the appointment of Judges. The Act creates the Judicial Service Commission, which is in charge of evaluating applicants for the position of judge and in this regard must be guided by principles, which include, integrity, the elements of which shall include— (i) a demonstrable consistent history of honesty and high moral character in professional and personal life; and (ii) respect for professional duties, arising under the codes of professional and judicial conduct.

32. The State has taken a number of steps to improve the overall quality and efficiency of the Kenyan judicial system. These include the establishment of the Judicial Training Institution in 2008, to provide induction courses and continuing professional development for judges, magistrates and all judicial officers. The school offers courses in the area of human rights as well as regional and international human rights treaties. Other trainings on human rights have been organized for judges and magistrates by the Kenya National Commission on Human Rights as well as under the Governance, Justice, Law and Order Reform Programme.

33. Members of the judiciary must be well equipped with the necessary tools to perform their functions efficiently. This would include the provision of information and communication technology, up to date libraries, court rooms and also research assistants. The Judiciary Fund was established by the Constitution to be used for administrative expenses of the judiciary and any other purposes as may be necessary for the performance of the responsibilities of the judiciary. The Fund is administered by the Chief Registrar of the Judiciary. The Fund is a charge on the Consolidated Fund and therefore frees the finances of the judiciary from the control of the executive arm of Government

34. To enhance the efficiency of judges in the dispensation of justice and other judicial services, the Judicature Act was amended to increase the number of Court of Appeal judges from 14 to 30 and the High Court judges from 70 to 150. This is critical because the ratio of Kenyan judges to the people seeking justice has been quite low resulting in the congestion of courts and delayed justice. In some cases persons in remand have stayed in custody for years without their matters being finalized due to the low number of judges in the country.

35. A National Council on the Administration of Justice was launched in July 2011. The main function of the Council is to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system. The members of the Council are drawn from government ministries and agencies involved in the legal and justice sector- the private sector and civil society organizations dealing with human rights issues and the provision of legal aid to women and children.

#### **Reply to the issues raised in paragraph 6 of the list of issues**

36. Access to justice is a fundamental human right well protected by the Constitution of Kenya. The State is mandated to ensure that all persons can access justice and if any fees are required it must be reasonable. Moreover the constitution requires that an arrested person is entitled to a legal counsel at State expense if substantial injustice would otherwise result. Indeed in *David Njoroge Macharia v. Republic, Court of Appeal of Kenya, Criminal Appeal No. 497 of 2007*, the court reaffirmed the State's responsibility in provision of legal aid. In recognition of the substantial human and financial resources required to provide this right the court directed that the judgment should be served to government to enable it put in place the necessary structures for the full realization of this right. Currently the ratio of



lawyers to people in Kenya stands at 1:40,000 which is way below acceptable international standards and thus has proved quite a challenge in ensuring the right.

37. In order to ensure that access to justice is not hampered in anyway the following measures have been taken:

(a) The budget for the Judiciary has been increased significantly compared to the previous years. This increased budget will to a large extent boost the State's efforts to enhance access to justice in the country by ensuring the building of more courts to reduce the distance to courts and increasing the number of mobile courts;

(b) The Civil Procedure Rules have been amended to simplify the process of filing cases in court. In this regard, amendments to the Appellate jurisdiction Act (2009) namely Sections 3A and 3B ushers in a new management culture of cases and appeals in a manner aimed at, achieving the just determination of the proceedings and ensuring the efficient use of the available and administrative resources of the courts for the timely disposal of the proceedings at a cost affordable by the respective parties;

(c) The Kenya Law Reform Commission is undertaking an audit of the laws that impact negatively on access to justice with a view to having them amended to remove all impediments that hinder access to justice;

(d) Under the Persons with Disabilities Act, people with disabilities are not required to pay filing fees in certain matters;

(e) The Constitution provides for the waiving of court fees in public interest matters and there has been simplification of the laws and avoidance of technicalities;

(f) The National Legal Aid and (Awareness) Programme which was appointed by the President in 2007 on a pilot programme is being evaluated with a view to rolling it out countrywide. In collaboration with civil society organizations the Programme conduct trainings on self representations; and

(g) A draft National Legal Aid Policy and a Legal Aid Bill have been developed through a highly participatory and consultative process involving the Government, civil societies and Kenya National Commission on Human Rights. The Policy provides a comprehensive and coherent national framework for the provision of legal aid in Kenya. The legislation provides for the provision of legal aid for the poor in Kenya and sets out guidelines for eligibility, funding and handling of both civil and criminal cases.

38. Following exhaustive stakeholders' consultation during the constitutional review process it was agreed that the role envisaged for the Office of Public Defender was adequately addressed by the National Legal Aid and Awareness Programme.

#### **Reply to the issues raised in paragraph 7 of the list of issues**

39. The police have an enormous responsibility to protect citizens, their property and to enforce the law in the interest of the society at large. The Constitution stipulates in sufficient detail the rights of an arrested person, notably that an arrested person must be brought before a court as soon as reasonably possible but not later 24 hours after being arrested with exceptions when the 24 hours fall on a day that is not an ordinary court working day. The police must also promptly inform the arrested person the reasons for arrest and allowed to communicate with an advocate or other persons whose assistance is necessary. All police officers are expected to understand and implement these constitutional provisions and in this regard a hand book on the bill of rights and comprehensive guidelines for arrest was distributed to all police officers countrywide. A Code of Conduct for the Police prohibits the use of torture in addressing any transgression against the law.

40. Unlawful and arbitrary arrests do not constitute government policy and officers anywhere in the country against whom adequate evidence of bribery is presented either to the police or the Ethics and Anti-Corruption Commission are charged in court. 60 police officers have been charged with corruption between 2008 and 2011.

**Reply to the issues raised in paragraph 8 of the list of issues**

41. The Constitution directs that an accused person on any charge could apply for and be released on bail/bond, where there is no compelling reason against such a release. This is a great departure from the old constitution where bail was not granted to persons accused of murder. In *Republic v. Danson Mgunya & Another*, Mombasa High Court Criminal Case No. 26 of 2008, the court reaffirmed the expanded constitutional right for bail in all offences including capital offences by awarding bail to two suspects facing the death penalty in a murder trial, an offence in respect of which no bail could be granted under the old constitutional dispensation.

42. In 2011, a Draft Bail Information and Supervision policy and a bill were prepared to provide for the generation and use of Bail information and for the Supervision of persons admitted to bail where required. The policy and bill were developed by government with the technical input from civil society organizations.

**Reply to the issues raised in paragraph 9(a) of the list of issues**

43. The Government of Kenya does not sanction torture and ill treatment by State officials or any other person working in their capacity. Any allegations of torture or ill treatment are comprehensively investigated and prosecuted. Those found guilty of acts of torture and ill treatment are convicted or face heavy penalties. The Constitution of Kenya particularly safeguards the freedom and security of a person and prohibits torture as well as cruel, inhuman or degrading treatment. Article 49(1)(c) of the Constitution guarantees the right of an accused person to communicate with an advocate and other persons whose assistance is necessary.

44. The Government of Kenya has over the years taken various steps to prevent acts of torture and ill-treatment of suspects in police custody. In this regard the holistic reforms recommended by the National Taskforce on Police Reforms, established by the President in 2009, and supported by the Constitution, have been operationalized as follows:

(a) **Independent Police Oversight Authority.** Civilian oversight over the police is mandatory for democratic control and governance of the security sector. The Independent Police Oversight Authority, created by the Independent Police Oversight Authority Act 2011 is as such crucial as it provides much needed accountability and monitoring functions over the Police Service. The Authority is authorized to inspect police premises, including detention facilities under the control of the National Police Service. It is also mandated to investigate any death or serious injury occurring or suspected of having occurred as a result of police action. Where appropriate, the Authority provides relevant information to enable a victim of unlawful police conduct, to institute and conduct civil proceedings for compensation in respect of injuries, damages and loss of income. The body plays a major role in restoring public confidence in the police;

(b) **The National Police Service.** The National Police Service was established by the National Police Service Act of 2011. The Service holds a constitutional duty to train its staff to respect human rights, fundamental freedoms and dignity of the human person. The Police must comply with constitutional standards of human rights and fundamental freedoms. Towards this end, a training curriculum which includes torture and ill-treatment as one of the examinable subjects has been prepared and more than 18,000 police officers have been subjected to this training module. The Act defines and criminalizes acts of

torture or any cruel, inhuman and degrading treatment of punishment committed by police officers. It also provides sanctions for the offence.

(c) **The Kenya Police Service Code of Conduct.** The Code of Conduct establishes the standard for professional and ethical behaviour for the Police;

(d) **The Draft Prevention of Torture.** The draft Prevention of Torture Bill was prepared to provide the necessary legal framework for the prevention, prohibition and punishment of acts of torture and ill treatment.

#### **The National Coroner's Service**

45. The State has also prepared the National Coroners Bill to provide for a National Coroner's Service, which shall have jurisdiction to investigate the cause of death where the deceased person is reported to have died: a violent or an unnatural death; a sudden death of which the cause is unknown; in police custody; in prison, or in such a place and in such circumstances as to require an inquest under any other law, and shall as soon as practicable hold an inquest into such death. It also provides that whenever a person dies while in custody, the person in charge shall forthwith notify the coroner with jurisdiction in the area where the prison is situated and shall not dispose of the body except with a warrant issued by such coroner. The bill is currently undergoing stakeholders' consultations.

#### **Reply to the issues raised in paragraph 9(b) of the list of issues**

46. This section should be read with the earlier one on access to justice.

47. Under the new constitutional imperatives the provision of legal counsel for an arrested person is mandatory, if substantial injuries would otherwise result. While the court in Kenya has reaffirmed this right it has noted the substantial human and finance resources needed to provide this right effectively. In Kenya the ratio of lawyers to people is 1: 40,000 which is way below accepted international standards and thus impacts negatively on the provision of this right. However several universities have established law faculties and it is hoped that in the coming years the number of lawyers in the country will increase.

48. Arrested persons are permitted to communicate with relevant representatives in line with constitutional directives. Naturally this includes medical examiners and relatives. In this regard the National Police Service has constructed new facilities and upgraded others to facilitate the humane treatment of detained persons.

49. In recognition of constitutional and international human rights law safeguards that all human beings, and this includes arrested persons and prisoners, have certain unalienable rights, the Government has developed draft legislation on the humane treatment of persons detained, held in custody or imprisoned- the Persons Deprived of Liberty Bill 2012.

#### **Reply to the issues raised in paragraph 9(c) of the list of issues**

50. Statistical Summary of Torture related cases of law enforcement officials between the years 2006 – 2011

<i>ITEM</i>	<i>CATEGORY</i>	<i>NO. OF CASES</i>
1.	Cases reported to Police Stations	35
2.	Cases filed in Court	34
3.	Cases finalized by Court	6
4.	Cases pending before Court	28
5.	Cases pending further investigations of both known and unknown suspects	1

51. A task force set up by the Commissioner of Police to investigate on allegation recorded by Human Rights watch in Dabaab that there are several Somali refugees in Daabab who alleged that they were tortured by officers. The task force's findings were not conclusive and therefore the matter has now been referred to Independent Policing Oversight Authority.

**Reply to the issues raised in paragraph 10 of the list of issues**

52. The Kenya National Commission on Human Rights (KNCHR) has been restructured and transformed into an independent constitutional Commission. The Commission operates independently and its core mandate is to further the protection and promotion of human rights in Kenya and to act as a watch-dog over the Government in the area of human rights. It is the principal organ of the State in ensuring compliance with obligations under international and regional human rights treaties.

53. Article 249 of the constitution directs Parliament to allocate adequate funds to enable the Commission perform its work effectively. In this regard the Government has within its available resources, allocated sufficient funds to the Commission to operate effectively in line with the Paris principles. The Commission operates independently to monitor and ensure that all human rights legislations are strictly adhered to and lobbies pro-actively for legal frameworks consistent with international standards and good practices in human rights.

54. The Kenya National Commission of Human Rights is mandated to visit prisons and other places of detention or related facilities to access and inspect the conditions under which inmates are held and make appropriate recommendations thereon.

**Reply to the issues raised in paragraph 11 of the list of issues**

55. To ensure that all allegations of torture are investigated promptly and accurately, effectively and impartially relevant safeguards have been incorporated into the Prevention of Torture bill, 2011. The bill lays down the procedure for investigation which consists of the following key components:

56. All complaints of torture or related offences in the bill must be registered in writing. If reported to a body other than the police, the matter should be referred to the police, other relevant investigatory authorities or the Directorate of Public Prosecutions for investigations. A police officer who receives such complaint should promptly report the same to the Officer-in-Charge of the police station in whose jurisdiction the offence has been committed for the purposes of initiating investigations. The offence should be investigated by the Directorate of Criminal Investigation where it is alleged that the offence has been committed by a police officer from a given police station, unit or county, the

person to investigate must be drawn from another police station, unit or county of the police whichever the case may be. The offence should be investigated in accordance with the provisions of the Criminal Procedure Code. Where the complaint is made in court, the court must record the same and order an investigation within fourteen days.

57. The bill also provides that the prosecution may tender in evidence, a victim impact statement on the extent of the harm suffered in order to prove whether an offence was committed and for purposes of assisting the court in the determination of an appropriate sentence. Where a person is convicted of an offence related to torture the court may order that person to make restitution or compensate the victim for costs of medical and psychological treatment and any other relief that the court deems fit. The victim may also institute civil proceedings for compensation.

58. The National Police Service Act criminalizes acts of torture and any form of ill treatment committed by police officers and provides for stiff sanctions.

**Reply to the issues raised in paragraph 12 of the list of issues**

59. Please make reference to the reply above to the issues raised in paragraph 4 of the list of issues.

60. Besides the pending Bills mentioned in paragraph 4, laws are currently being developed under the stewardship of the ministry in charge of land issues in Kenya, to address the governance of land management and use in Kenya, in line with these constitutional provisions which acknowledge that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.

**Reply to the issues raised in paragraph 13 of the list of issues.**

61. The Government enacted the Prohibition of Female Genital Mutilation Act in 2011. The Act articulates a comprehensive definition of female genital mutilation (FGM) criminalizes the practice and provides stiff sanctions. Offences committed under the Act attract a fine of Kshs. 100,000 or imprisonment of not less than three years or both. Of particular note is the fact that where the mutilation results into death a life imprisonment sentence may be meted out. Kenyan courts are conferred extra territorial jurisdiction in respect of all these offences in the Act. The Act empowers chiefs and children's officers to enter into places without warrant to ascertain whether such, a crime has been or is about to be committed. It further stipulates that culture and religion cannot be used as an excuse to perform the procedure.

62. The Government faces a huge challenge in collecting evidence for prosecution of perpetrators as most of the concern communities do not view female genital mutilation as a crime and therefore fail to report it. The fight against the practice will thus only be possible when the cultural attitudes of the people are changed. An Anti- FGM Board created by the Act is charged with the responsibility of designing and coordinating of public awareness programmes to educate communities on the ills of this practice. The Ministry of Gender Children and Social Development has intensified and conducted public awareness for, as well as facilitated community dialogue on the dangers of FGM in the four districts where the practice is rampant. In partnership with the faith based organizations, the Government has continued to conduct alternative rites of passage for girls in place of FGM. Public forums have been organized with local traditional community leaders such as the Njuri-ncheke, Ameru Council of Elders who declared publicly to support the abandonment of the practice of FGM in their community. It is perceived that involvement of community leaders is likely to have a big impact on this retrogressive practice.

63. A National Policy on the Abandonment of Female Genital Mutilation was formulated in 2010 to guide government and other stakeholders on the necessary strategies

that would lead to the total abandonment of the practice. Besides this policy, the National School Health Policy (2009) addresses issues relating to FGM and early/forced marriage to students in schools.

64. The Constitution of Kenya forbids harmful cultural practices. In addition the children's Act (no. 8 of 2001) directly outlaws the practice under section 14. Under section 20 of the same act, it provides for a penalty of one year imprisonment and a fine of about 600 dollars, or both.

**Reply to the issues raised in paragraph 14 of the list of issues**

65. Measures taken to combat the trafficking of persons for purposes of prostitution and forced labour include the enactment of the Kenyan Citizenship and Immigration Act No. 2 of 2011 Part VI, Immigration Controls, Section 33, and the Sexual Offences Act. The Counter Trafficking in Persons Act was enacted in 2010 to implement Kenya's obligations under the United Nations Convention against Transnational Organized Crime particularly its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and to provide for the offences relating to trafficking in persons and for connected purposes. As a deterrent measure, the penalties for offences under the Act are quite punitive with very high fines and in some cases imprisonment for life.

66. The legislation creates a Counter Trafficking in Persons Advisory Committee to enhance inter-agency co-operation in combating trafficking in persons. The committee consists of members drawn from the Government, Kenya National Commission on Human Rights, trade unions and civil society dealing with women and children with a proven record of involvement in prevention and suppression of trafficking in persons.

67. Hotels in the coastal towns have now signed a code of conduct that seeks to prevent abuse of children in their hotels. In addition, key stakeholders, notably police investigators, prosecutors, and community leaders have been sensitized and trained particularly under the Sexual Offences Act. The implementation of the Children's Act has also had positive effects in the protection of children against their trafficking and abduction. There is currently no statistical data collected on the number of people trafficked, the number of prosecutions and sanctions imposed on persons involved in human trafficking.

**Reply to the issues raised in paragraph 15 of the list of issues.**

68. The Constitution 2010 identifies the right to the highest attainable standard of health which includes the right to health care services, including reproductive health care. A draft health bill that gives life to this constitutional right has been submitted to cabinet for approval. A Family Health Reproductive bill prepared by the Kenya Law Reform Commission is scheduled to be tabled in Parliament for discussions.

69. The Government of Kenya does not condone the abuse of mothers who seek reproductive health services in hospitals. Any allegations of this conduct are taken very seriously and dealt with appropriately. To reinforce government efforts in this regard a General Service Charter that stipulates the rights of patients accessing health services is available to all hospitals and health facilities. Public hospitals have also developed respective service charters which stipulate the time within which patients should be attended to as a matter of right. The service charters are posted publicly on hospital boards in the national languages of the State. An aggrieved patient, including women seeking reproductive health services, has the right to complain in the respective hospitals to the Medical Superintendent for violation of her rights. The Ministry in charge of health services conducts quarterly medical audits of all public health facilities in the country which highlights cases of negligence and poor service delivery to patients.

70. Persons who have suffered any abuse in public hospitals can report the matter to the Commission on the Administrative Justice set up as an Ombudsman and deals with complaints against public institutions.

71. To ensure that poor patients are not marginalized in the provision of health service including cases of child delivery, public hospitals assess their socio-economic situation through social workers from their Social Work and Counselling departments of the hospitals. Thus, public hospitals no longer detain nursing mothers who are unable to pay medical bills after delivery.

### **Article 3**

#### **Reply to the issues raised in paragraph 16 of the list of issues**

72. Refugee Regulations developed in 2009 contain operational guidelines to ensure the effective implementation of the Refugee Act, 2006. The Refugee Act of 2006 is the main legislative framework covering the administration of refugee matters in the country. It specifies the objective procedures for processing the applications of those seeking refugees status and prohibits the refoulement of persons seeking admission into the Kenyan territory. The applicants and their families are allowed to remain in Kenya, during the period of determination of their status and the period of appeal in case of unsuccessful applicants. The Department of Refugee Affairs under the Refugee Act is the main body responsible for refugee matters in Kenya. The Department of Refugee Affairs conducts regular border surveillance to monitor possible blockage or arbitrary return of asylum seekers and refugees and compile reports on their findings. Any legal issues and violations identified are referred to the Minister of Immigration or pursued through public interest litigation with the assistance of the two civil society organizations. It is noteworthy to state that no official order has been made by the Government for the arbitral return of refugees and asylum seekers.

73. The Government is in the process of drafting a National Refugee Policy to address the many challenges that continue to confront the country. A Refugee Bill 2012 was developed and is currently under review by the Commission on Implementation of the Constitution

74. The Kenya Citizens and Foreign National Management Service created by the Kenya Citizens and Foreign National Management Service Act of 2011 also deals with refugee matters. Appeal tribunals set up by the Act provide safeguards for the protection of refugees where persons dissatisfied with the decision of the Commission of Refugees Affairs or any Committee of the board of the Service can seek for the review of the said decision.

#### **Reply to the issues raised in paragraph 17 of the list of issues**

75. We currently do not have any documented evidence of expulsions, returns or extraditions that have taken place since the consideration of the initial report.

#### **Reply to the issues raised in paragraph 18 of the list of issues**

76. The statistics relating to application for refugees since 2010 are as follows:

YEAR	Applications	Recognized	Rejected
2010	18,931	6,733	1,866
2011	14,287	5,028	1,691
2012 (Jan-March)	6,119	940	562

#### **Reply to the issues raised in paragraph 19 of the list of issues**

77. Investigations undertaken revealed that Abdulmalik was arrested with an array of identification papers showing that he was not registered as a Kenyan with the National Registration Bureau. Due to insufficient evidence to prefer any charge upon him, he was released on 28 February 2007. Although Abdulmalik was released in Kenya, the Government later learnt that he was detained at Guantanamo bay when a *habeas corpus* application filed by his relative before a court in the United States of America stating that his detention at Guantanamo bay was a violation of Abdulmalik's rights. Reportedly, the aforementioned application was dismissed as he was found to be a threat to the United States Government.

78. Senior officers have been directed to keep themselves apprised of precedence setting court rulings and observe them in performance of duty. Our courts also have authority to cite any individual for contempt. The ruling of the courts, especially the constitutional courts serve as a reference point for all officers in decision making positions.

79. Further, the police investigate all cases of renditions and most recently found that nine Kenyan nationals believed to have been captured in Somalia were detained in Ethiopian Prisons. Upon further investigations the Government of Kenya intervened and the nine Kenyan nationals were reunited with their families.

80. In the new constitutional dispensation, the judiciary has been emphatic on the need for observance for human rights and compliance with due process in extraditions. In a judgment delivered on 30 September 2010 in *Zuhura Suleiman v. Commissioner of Police & 3 Others 6, High Court Miscellaneous Application No. 441 of 2010 (Nairobi)*, the High Court held that the rendition of a Kenyan suspect of terrorism to Uganda for prosecution without due process was unlawful.

81. Further, in a judgment delivered on 28 September 2010 in *Mohamed Aktar Kana v. Attorney General, High Court Constitutional Application No. 544 of 2010 (Nairobi)*, the High Court made orders barring the intended removal of a suspect from Kenya to Uganda without due process and declaring the move as a breach of his constitutional rights.

#### **Articles 5 and 7**

##### **Reply to the issues raised in paragraph 20 of the list of issues**

82. Since the concluding observations by the Committee, the State has received no such request.

##### **Reply to the issues raised in paragraph 21 of the list of issues**

83. Kenya has not signed an extradition treaty specifically related to torture.



## Article 10

### Reply to the issues raised in paragraph 22 of the list of issues

84. The National Police Service is the main institution charged with the responsibility of training police officers in Kenya. The Service develops training policies, approves training curricula and reviews the curricula to ensure its relevance to policing standards. The Service is required by the constitution to train its staff to respect human rights and fundamental freedoms in the course of the performance of their responsibilities. Human rights education feature in many forms throughout the curriculum of police, as well as a more in-depth training on the absolute prohibition of torture. More than 18,000 police officers have been subjected to this training, which has brought about tremendous positive change in attitude and behaviour of police officers with regard to work and responses towards those arrested / deprived of liberty.

85. In the National Police Service budgetary allocation for training of police officers was increased by 50 per cent in 2012. The service is developing assessment and appraisal tools to evaluate the impact of training programmes on police conduct.

### Reply to the issues raised in paragraph 23 of the list of issues

86. The National Police Service with the help of United Nations Women has developed a comprehensive curriculum for training police officers on gender based violence. The curriculum has been engendered with the assistance from the United Nations Women.

87. Since the Concluding Observations, the Government, through the Ministry of Justice, the Prisons Department, the Kenya National Commission on Human Rights and the University of Nairobi have held extensive consultations on the integration of the Istanbul Protocol into its system for forensic investigation of torture with the International Rehabilitation Council for Torture Victims and Independent Medico-legal Unit.

88. The Government is in the process of developing assessment and appraisal tools to monitor the impact of training programmes on the reduction of cases of torture, violence and ill- treatment.

### Reply to the issues raised in paragraph 24 of the list of issues

89. According to the Constitution of Kenya 2010, an arrested person can only be detained for a period of 24 hours before being arraigned in court. This limits what was previously used as an opportunity for torture of suspects. Further, the Rules of Confession under the Evidence Act have been reviewed and are protective of suspects.

### Reply to the issues raised in paragraph 25 of the list of issues

90. The rights of persons detained, held in custody or imprisoned are now guaranteed under the Constitution of Kenya which provides that such persons retain all the rights and freedoms contained in the Bill of Rights except where a particular fundamental right or freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned. To implement these constitutional requirements the Government has prepared the Persons Deprived of Liberty Bill 2012. The Bill provides for the humane treatment of persons detained, held in custody or imprisoned and gives effect to the provisions of international human rights instruments and rules on such persons. The obligations of law enforcement officers and private persons in authority in relation to persons deprived of liberty are set out in the Bill. The Bill is currently being subjected to stakeholders' review. It also guarantees the right of such persons to petition for an order of habeas corpus.

91. To reduce overcrowding in prison especially in respect of persons held in pre-trial detention, the Constitution stipulates that all offences are bailable unlike in the previous constitutional dispensation. In *Republic Versus Dansom Mgunya and Kasim Sheebwana Mohammed, Criminal Case 26 of 2008*, the court invoked the provision to grant bail to the accused who had been in remand since 2008.

92. Further, the Constitution outlaws the remand in custody of any person for an offence that is punishable by a fine only or by imprisonment for not more than six months. This provision has been adhered to faithfully by the courts thus resulting in enhanced decongestion of prisons and remand institutions as well as safeguarding the rights of those accused.

93. The Judiciary and the Probation Department have achieved a tremendous decrease of congestion in prisons through the use of Community Service Orders provided for under the Community Service Orders Act. The Magistrates' Courts, identifies petty offenders who are facing sentences of three years and below to be placed on community service. For those already imprisoned, the Probation Department classifies petty offenders who have been sentenced to below three years and those who have clean records with residual sentences of three years, to undertake community services. It only covers misdemeanours and not serious offences. The total number of offenders who have benefited from this programme increased to 59,000 as at September 2011. A judge routinely visits prisons to hear cases and grievances of prisoners.

94. A draft Correctional Policy has been developed which provides the framework for the improvement of conditions in correctional facilities. The Policy is currently under technical review by the Kenya Law Reform Commission.

95. The President of Kenya is empowered by the constitution and under advisement of the Advisory Committee on the Power of Mercy to granting pardon to a person convicted of an offence; postponing the carrying out of punishment either for a specified or indefinite period; substituting a less severe form of punishment; and remitting all or part of a punishment.

96. Part IV of the Prisons Act, Chapter 90 of the Laws of Kenya, provides for offences by prison officers and penalties. In this regard, nine prison officers facing allegations of torture in court have been interdicted as a disciplinary measure pending determination of their cases. Prison Rules under the same Act provide for offences by prison officers which are subject to internal disciplinary process. Some of them are:

- Using personal violence towards any prisoner;
- Using personal violence towards another prison officer; and
- Any other conduct to the prejudice of good order or discipline or security of a prisoner.

97. Three prison officers have so far been charged under Rule 124 (i) and one of them was convicted and fined Ksh.5,000 which is a punitive amount with regard to the level of income earned by prison officers. However, other penalties that can be meted depending on the seriousness of offences include stoppage or deferment of salary increment, reduction in rank and dismissal. Any prison officer who is found guilty of offences under Rule 124 is usually not considered for promotion and other benefits until the completion of a probation period with display of good conduct.

## **Articles 12 and 13**

### **Reply to the issues raised in paragraph 26 of the list of issues**

98. The Director of Public Prosecutor established a Multi Agency Taskforce to undertake a countrywide audit of all the local post election violence (P.E.V) cases under investigation and pending before court with a view to recommending ways and means of ensuring their fair and speedy determination. A number of cases have been prosecuted and convictions passed by Kenyan courts on various offences including rape. The Task force is still in the process of reviewing the cases.

99. In respect of Sexual and Gender Based Violence cases committed generally and during the post election violence, the Director of Public Prosecutions established a unit of officers to oversee and handle all matters pertaining to Sexual and Gender Based Violence. In particular the aim of the Unit is to enhance the capacity of investigators and prosecutors to investigate and prosecute offences including sexual and gender based offences. Towards this end the Unit has undertaken the following actions: -

(a) Developed and disseminated a prosecutors/investigators guide known as The Sexual Offences Manual that expounds the Sexual Offences Act as well as setting standards and recommendations on best practices to various service providers in the criminal justice sector. For the purpose of professional and effective investigation and prosecution of offences, State counsels in charge of prosecution, police prosecutors, police investigators, the judiciary and medical practitioners have been trained on the use of the Manual;

(b) Specialized trainings on forensic investigations have been conducted;

(c) The Taskforce on the Implementation of the Sexual Offences Act developed and published in the Kenya Gazette, Regulations for Effective Implementation of the Sexual Offences Act which included the development of a model charge sheet applicable in respect of all cases on Sexual Offences. All those officers involved in the investigation and prosecution of sexual offences have been trained on the regulations which are in use.

#### **Reply to the issues raised in paragraph 27 of the list of issues**

##### **Chunga Mpaka.**

100. Mandera's *Operation Chunga Mpaka (guard the Border)* was carried out in September 2008, to prevent crimes associated with cross border trafficking in illicit firearms. The military patrolled the border and the police carried out intelligence-led raids within Kenya. All complaints received were investigated and action taken.

##### **Mathare Operation**

101. Following the shooting of four policemen, in June 2007, in the Mathare area Government deployed a joint internal security operation to flush out the criminals and recover firearms. During the operation there was a shootout occurred when police raided the criminal hideout between the criminals and police, two criminals were killed. An inquest carried out soon thereafter cleared the police. There was one specific complaint of a woman who had been shot while lying in her bed. Investigations concluded that she was hit by a stray bullet during the shootout between police and criminals. The family was advised to pursue compensation through civil proceedings

#### **Reply to the issues raised in paragraph 28 of the list of issues**

102. The Prevention of Organized Crimes Act was enacted in 2010 as a response to the proliferation of organized criminal groups such as the Mungiki and Kisungusungu, involved in criminal activities in Kenya. The Act defines organized criminal groups and organized criminal activity and prescribes punitive penalties that take into consideration the grave nature of the penalties. Groups found to have committed criminal acts are dealt with under the law.

103. The formation of organized criminal groups in the country has been attributed to a number of factors, which include the high level of unemployment and poverty in the country. Idle youth are more prone to resort to violence. The creation of employment opportunity for the youth has therefore been prioritized in order to deal with challenges of poverty and security risks. Towards the end, the following measures have been taken:

(a) The Youth Enterprise Development Fund was conceived in 2006 as one of the strategies of addressing youth unemployment. The objectives of the Fund are to provide loans to existing micro-finance institutions (MFIs), registered non-governmental organizations (NGOs) involved in micro financing, and savings and credit co-operative organizations (SACCOs) for on-lending to youth enterprises. It also facilitate investment in micro, small and medium enterprises oriented commercial infrastructure such as business or industrial parks, markets or business incubators that will be beneficial to youth enterprises. The Youth Fund has recorded tremendous achievements since its conception. By 2012 the Fund had disbursed 5.9 billion shillings to over 157,000 youth enterprises across the country. These enterprises have grown and are employing many Kenyans as well as contributing to the Government exchequer. These efforts have also resulted in the creation of over 300,000 new jobs. Furthermore, the Fund has, with its partners, trained over 200,000 youth in entrepreneurship besides facilitating them with access to markets for their products. It has also helped to integrate thousands of young Kenyans into mainstream financial services. Moreover 6,000 young people have been facilitated to obtain employment outside Kenya through the fund;

(b) The Kazi Kwa Vijana programme was launched in 2009 as one of the strategies for poverty alleviation through employment creation. The aim of this programme is to stem the social ills brought about by unemployment, idleness and poverty. The programme provides the youth with an alternative source of livelihood to support themselves and their families. Those employed under KKV are engaged mostly in manual-based small projects in their own communities and are paid a small stipend;

(c) Constituency Development Fund The fund targets all constituency-level development projects, particularly those aimed at combating poverty at the grassroots.

104. With regard to the post election violence a number of prosecutions have taken place. As stated earlier the Director of Public Prosecutor established a Multi Agency Taskforce in 2012 to undertake a countrywide audit of all the local post election violence (P.E.V) cases under investigation and pending before court with a view to recommending ways and means of ensuring their fair and speedy determination. The team has reviewed a large number of files but the exercise is still ongoing. Statistical data relating to age and data will be made available as soon as the team finalizes it work.

#### **Reply to the issues raised in paragraph 29 of the list of issues**

105. Kenya does not allow its security services to engage in extra-judicial killings. Every case of death during police operations is investigated on its own merits- following such investigations 34 cases have been investigated and police officers prosecuted for the offence of murder between 2006 and 2011. Out of these cases three have been convicted, two have been acquitted and 29 are pending in various stages of prosecution in courts of law.

106. These prosecutions are meant to deter law enforcement officers from violating the constitutional right to life and to encourage strict adherence to the due process of the law and other regulations guiding the use of force by police officers. There has been a challenge of data storage and retrieval between the courts, prosecutions and the police. This challenge is being addressed in the ongoing reforms.

107. In 2009 the Government appointed a police reforms implementation committee to implement comprehensive police reforms including *legislative, structural, public accountability mechanisms, training, tooling, equipment, terms and conditions* of service. Taking into consideration all the dynamics including competing priorities against limited national resources, the social and historical dynamics, and the reforms are of necessity progressive and evolutionary. The critical issue is that Kenya has been consistently committed and there are visible dividends in many areas.

**Reply to the issues raised in paragraph 30 of the list of issues**

108. The Government appointed a team of senior police officers in May 2008 to investigate all allegations of human rights abuses, identify the perpetrators and make appropriate recommendations that may have occurred during the police- military operations in the Mt Elgon region (operation Okoa Maisha). The team conducted intensive investigations into the matter and found no evidence to show that security officers tortured victims as claimed.

109. This case is now under the review of the Truth, Justice and Reconciliation Commission who received the testimony of the people during hearings mounted in the area. The Commission is expected to present a report on its findings on whether or not atrocities were committed by the security agencies and make recommendations on the prosecution of any alleged perpetrators and the compensation of victims.

**Reply to the issues raised in paragraph 31 of the list of issues.**

110. In Kenya the police do not conduct evictions, they only provide security for persons authorized in law and valid court orders to conduct evictions, for instance, auctioneers with court orders. Naturally, the resistance of the evictees is normally characterized by violence which necessitates police officers to intervene to restore law and order.

111. In an effort to discourage undignified forced evictions, the Ministry of Lands with the assistance of the Economic and Social Right Centre developed draft Eviction and Resettlement Guidelines. The Guidelines are aligned to the new constitution and adhere to international standards. The guidelines will ensure evictions are carried out in a dignified and humane way and that human rights are not violated during evictions. The guidelines are being reviewed by various stakeholders after which they will be submitted to Cabinet for approval. While awaiting the Cabinet's approval the police are guided by their Code of Conduct which prohibits them from subjecting any person suspected of having committed an offence or not, to hardship, torture, inhuman treatment or any treatment in excess of what the law stipulates and what is deemed as necessary under the law. Once the Eviction and Resettlement Guidelines are approved the police and public officers will be trained on what is expected of them during evictions.

**Reply to the issues raised in paragraph 32 of the list of issues**

112. The Criminal Procedure Code in Kenya provides for the mandatory inquiry of all cases of deaths occurring during police operations or while in police custody. With regard to officers charged for murder, the number of cases pending before the courts are as follows: Rift Valley- 8, Eastern-5, Central-5, Western- 2, Nyanza-1, Coast-2, Nairobi Area-4, Traffic -2, CID-3, Railways- 2. One officer was convicted in the Western region, while 2 were acquitted in Nyanza. It must be noted that in Kenya, law enforcement officers are not charged with torture but rather with offences such as murder, assault and rape when they commit torture

**Reply to the issues raised in paragraph 33 of the list of issues**

113. The P3 Form has been revised to enhance its forensic quality by the inclusion of anatomical diagrams as well as a post-trauma section to be completed by a psychologist or

psychiatrist. The State has also introduced a Post-Rape Care (PRC) Form to ensure the unique evidential aspects of sexual violence are addressed. The forms are available in all public hospitals. Further, the Ministry in charge of health services has communicated to all medical officers through the Provincial Medical Officers that patients should not be charged for the filling of the said forms.

#### **Reply to the issues raised in paragraph 34 of the list of issues**

114. Data disaggregated by sex and length of sentence on prisoners including remandees, is set out below.

<i>gender</i>	<i>death penalty</i>	<i>under 1 month</i>	<i>1 month and less</i>	<i>3-6 months</i>	<i>6-12 months</i>	<i>12-18 months</i>	<i>18 months -3 years</i>	<i>3 years and over</i>	<i>remandees</i>
male	1552	489	1128	2184	1020	1928	3059	15718	21660
female	30	118	212	281	52	119	168	509	1002
<b>totals</b>	<b>1582</b>	<b>607</b>	<b>1340</b>	<b>2465</b>	<b>1072</b>	<b>2047</b>	<b>3227</b>	<b>16227</b>	<b>22662</b>

Total number of prisoners' population in custody as at 31 October 2011: 51229

### **Article 14**

#### **Reply to the issues raised in paragraph 35 of the list of issues**

115. As stated earlier in this report the Office of Director of Public Prosecutions set up an inter-agency task force within government to examine all post election cases pending under investigation and pending in court to ensure the expeditious prosecution and determination of cases. The team has reviewed a number of files but the exercise is still ongoing. Statistical data relating to age and data and information on cases pending before courts, those completed and the redress and/or amount of compensation awarded to the victims will be made available once all the cases have been examined. In 2011 the State also launched the Witness Protection Agency which is an independent body established under the Witness Protection Act, 2010. The State is confident that this independence will accord potential witnesses assurance of protection from harm by perpetrators accused of committing crimes during the violence.

#### **Reply to the issues raised in paragraphs 36 and 37 of the list of issues**

116. For a response to this question please cross reference with the reply above to the issues raised in paragraph 9(c) of the list of issues.

117. A number of victims of torture have sought and have been awarded compensation by the Courts in Kenya.

- In a judgment delivered on 8 of April 2010, the High Court presiding over a constitutional petition filed by a victim of torture 16 years after the ordeal in *Wachira Waheire v. Attorney General* (Nairobi High Court Miscellaneous Civil Case No. 1184 of 2003), awarded the applicant general damages of Kshs. 2.5 million.
- In a judgment delivered on 21 of July 2010, *Harun Thungu Wakabav. Attorney General* (Nairobi High Court Miscellaneous Application No. 1411 of 2004), the High Court presiding over a consolidated constitutional claim of 21 victims tortured at Nyayo Torture Chambers awarded the petitioners general damages totalling almost Kshs. 40 million.

- The High Court awarded the petitioner in *James Omwega Achirav. Attorney General High Court, petition 242 of 2009*, kshs 2.5 million as compensation for arrest and incarceration at the infamous Nyayo House torture chambers.
- Information on cases of torture pending in court and whether cases having been resolved. Please see paragraph 112 above.

118. A Task Force set up by the Office of the Vice President has finalized the drafting of a Victims of Offences Bill, having regard to article 50 (8) of the Constitution. The provision obligates the Government to enact legislation providing for the protection, rights and welfare of victims of offences. The draft legislation proposes the structure, processes and regulations for the rights of victims of offences and provisions of psychosocial support.

119. A Gender Based Violence Centres were set up in all major public hospitals in Kenya to provide medical and psychosocial support to victims of sexual abuses. The Center is working in close collaboration with the police, the Government Chemist and non-governmental organizations to ensure that the survivors of sexual abuse get assistance from one centre.

## Article 15

### Reply to the issues raised in paragraph 38 of the list of issues

120. Besides constitutional proclamations on the rights of an arrested person, the rules relating to the admissibility of confessions in Kenya is mainly set out in the Evidence Act, the Evidence (Out of Court Confession) Rules, 2009, and the Judge's Rules. Any confession or admission of guilt must be voluntary and free from coercion. Situations that may result in the lack of free will are set under section 26 of the Evidence Act. A confession made by an accused person is not admissible in criminal proceeding if it appears to the court to have been obtained through threats and torture with reference to the charge against the person. The Act further renders inadmissible confessions by accused persons that are not made before a judge, magistrate or a police officer of a rank not below chief inspector.

121. Under Rule 4 of the Evidence (Out of Court Confession) Rules, 2009, the recording officer is required to ensure that the accused persons is not subjected to any form of coercion, duress, threat, torture or any other cruel, inhuman, or degrading treatment. Moreover, according to the Rules a recording officer is stopped from taking a confession from an accused person who complains to him of being a victim of torture or whose physical appearance shows signs of physical injury including open wounds, body swelling, or shows extraordinary fatigue.

122. Judge's rules must also be upheld when confessions are been taken from an accused or arrested person and the usual cautions given.

123. The Prevention of Torture bill, 2011, seeks to render inadmissible in evidence any information, confession or admission obtained by torture. The bill also proposes to outlaw the use of such information by any persons with knowledge that the same was obtained by torture.

## Article 16

### Reply to the issues raised in paragraph 39 of the list of issues

124. Any person wishing to lodge a formal complaint with the police in cases of torture and ill-treatment and feels exposed or is wary of intimidation is at liberty to lodge the complaint with the complaints desk at Police Headquarters, Vigilance House, Nairobi. This

desk operates under an Assistant Commissioner of Police, a senior officer in the service, who may direct that a matter be investigated by the relevant police station. Further, the State has created a statutory civilian oversight body known as the Independent Police Oversight Authority and a constitutional body known as National Police Service Commission. The independent oversight over the National Police Service provided by these two bodies will enhance freedom from intimidation of persons wishing to report cases of torture and ill-treatment.

125. Kenya is one of the few countries in Africa that boasts of an independent witness protection agency. The Witness Protection Agency was launched in 2011 and provides special protection to persons in possession of important information and who are faced with potential risk or intimidation due to their cooperation with prosecution and other law enforcement agencies.

**Reply to the issues raised in paragraphs 40 of the list of issues**

126. Though article 26 (3) of the Constitution stipulates that a person can be deprived the right of life as authorized by a written law, the death penalty has not been carried out in Kenya since 1987 when the last person was executed. In that regard, His Excellency the President of Kenya commuted all death sentences of death row convicts, totalling to over four thousand, to life sentences in August 2009. They are currently undergoing counselling as they await placement to various rehabilitative programs offered by prisons.

127. Notwithstanding the retention of the death penalty in the Constitution, the judiciary has developed progressive jurisprudence on the death penalty. In a judgment delivered on 30 July 2010 in *Godfrey Ngotho Mutiso v. Republic 12*, the Court of Appeal of Kenya declared that the mandatory nature of the death penalty in the Penal Code was unconstitutional. The courts have however given conflicting decisions on this matter. On the measures taken to improve the conditions of detention for persons serving on death row in order to guarantee basic needs and rights, please refer to paragraphs 94-97 above.

**Reply to the issues raised in paragraph 41 of the list of issues**

128. Kenya has and continues to be a victim of terror attacks. The Constitution of Kenya provides for comprehensive provisions on protection of human rights and fundamental freedoms as enshrined in the Bill of Rights of the Constitution of Kenya. Indeed national security can only be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms. The Government thus ensures that any legislation, policy and administrative action taken in the fight against terrorism conform to the provisions of the Constitution. The Prevention of Terrorism 2012 was prepared this year and contains strict guidelines that are to be followed in any action to combat terrorism.

129. The Suppression of Terrorism bill, 2006, was tabled in parliament but was withdrawn on account of its non-compliance with international human rights standards including the relevant Security Council resolutions on terrorism.

**Reply to the issues raised in paragraph 42 of the list of issues**

130. The Constitution of Kenya enacted in 2010 states that all treaties ratified by the State will have the force of law in Kenya. Consequently, the ratification of all international instruments has been stayed pending the review, debate and passing of the Ratification of Treaties bill, 2012. The Bill provides the steps to be taken before the ratification of any international instrument. The Office of the Attorney General has advised that the process outlined in the legislation would be mandatory to give effect to any new treaty /protocol instrument that Kenya becomes a party to. The State has stayed any formal steps towards acceptance of competence of Committee against Torture under articles 21 and 22 pending the passing of the Ratification of Treaties bill. The bill was prepared by the Kenya Law



Reform Commission and is currently being analysed by the Commission on the Implementation of the Constitution.

**Reply to the issues raised in paragraph 43 of the list of issues**

131. The information is attached.

**Reply to the issues raised in paragraph 44 of the list of issues**

**General information on the human rights situation in the country and the implementation of human rights at the national level**

132. Kenya has made tremendous advancement in the promotion and protection of human rights since the last report through the enactment of a new constitution in August 2010. The Constitution embraces a comprehensive bill of rights which elaborates a stronger legal and institutional framework for the protection and promotion of human rights and fundamental freedoms in the country. Freedom from torture and other cruel, inhuman and degrading treatment, the right of a fair trial, rights of arrested persons and the humane treatment of persons deprived of their liberty are but some of the rights closely guided by the Bill of Rights.

133. The following table illustrates some of the legislative and institutional framework established after the last report to strengthen the promotion of good governance, respect for human rights, accountability and the elimination of inequities in the country and thereby safeguarding the rights of Kenyans:

<i>LEGAL FRAMEWORK</i>	<i>INSTITUTION</i>	<i>MANDATE</i>
Kenya National Commission on Human Rights Act, 2011	Kenya National Commission on Human Rights Act, Commission	Promote and protects human rights in the country
The National Commission on Gender And Equality Act 2011	The National Commission On Gender And Equality Commission	Promote gender equality and freedom from discrimination
The Commission on Administrative Justice Act 2011	The Commission On Administrative Justice	Investigate and report on any act or omission in public administration in any sphere of government
National Police Service Act	The National Police Service	Part of the mandate of the Service is to ensure staff compliance with constitutional standard of human rights and fundamental freedoms and to staff to respect human rights and fundamental freedoms and dignity
Independent Policing Oversight Authority Act	Independent policing oversight Authority	Provides for civilian oversight over the work of the Police.
Power of Mercy Act 2011	Advisory Committee on the Power of Mercy under the Power of Mercy Act 2011,	Advises the President on: granting pardon to convicted persons;

<i>LEGAL FRAMEWORK</i>	<i>INSTITUTION</i>	<i>MANDATE</i>
	which	postponing punishment; substituting a less severe form of punishment; and remission of punishment.
National Police Commission Act	The National Police Commission	The legislation was enacted to establish the National Police Commission, which recruits and appoints persons in the police service, exercises disciplinary control over and remove persons holding or acting in office within the service.
Judges and Magistrates Vetting Board Act 2011.	Vetting of Judges and Magistrates Board	Vets all judges and magistrates ensure their suitability to To ensure that the judicial officers in place comply with the standards professionalism and integrity as required by law.
The Supreme Court Act 2010	Supreme Court	Supreme Court of Kenya has exclusive original jurisdiction to: determine disputes relating to presidential elections; hear and determine appeals; hear appeals relating to interpretation or application of the Constitution
The Ethics and Anti-Corruption Commission Act, 2011	Ethics and Anti-Corruption Commission	Investigates and prosecutes corrupt suspects and asset recovery ,among other things
Commission For The Implementation Of The Constitution Act 2010	Commission for Implementation of the Constitution	Monitors, facilitates, coordinates and oversees the development of the legislation and administrative procedures required to implement the Constitution
Independent Electoral and Boundaries Commission Act	Independent Electoral and Boundaries Commission	The Commission is responsible for conducting or supervising referenda and elections to any elective body or office

<i>LEGAL FRAMEWORK</i>	<i>INSTITUTION</i>	<i>MANDATE</i>
Political Parties Act, 2011	Political Parties in Kenya	established by the Constitution, Provides for the registration, regulation and funding of political parties in Kenya in order to enhance multi party democracy
Environment and Land Court Act, 2011	Environment and Land Court	To hear and determine disputes relating to the environment and the use and occupation of, and title to, land
National Land Commission Act 2012	National Land Commission	The Commission has wide powers in the management and administration of public, private and community lands in Kenya.

134. Since the presentation of the initial report the judiciary has recorded a number of land mark decisions that have upheld human rights and fundamental freedoms as enshrined in the constitution 2010:

- (a) Prior to the enactment of the Constitution 2010, the courts were barred from granting bail to a person accused of murder, treason, robbery with violence and attempted robbery with violence. It is now possible for such a person to apply for and be released on bail/bond, where there is no compelling reason against such a release. In *Republic versus Dansom Mgunya and Kasim Sheebwana Mohammed*, Criminal Case 26 of 2008, The courts invoked article 49 of the constitution to grant bail to an accused person on a murder charge, who had been in remand since 2008;
- (b) In *Purity Kanana Kinoti v. Republic Of Kenya, Misc Criminal Application, High Court 752/2010*, in her petition the appellant asserted that she was detained by the police for more than 24 hours before being taken to court which constituted a violation of article 49(f) of the constitution. The court granted compensation;
- (c) Further, the Constitution outlaws the remand in custody of any person for an offence that is punishable by a fine only or by imprisonment for not more than six months. This provision has been adhered to faithfully by the courts thus resulting in enhanced decongestion of prisons and remand institutions as well as safeguarding the rights of those accused;
- (d) The courts have upheld the right to life and dignity of persons living with HIV/AIDS in cases filed before them. In the case of *P.A.O and 2 others v. the Attorney General of Kenya Petition No. 409 of 2009 Nairobi*, the Constitutional Court barred the Government from implementing the Anti-Counterfeit Act of 2008 which would affect access to affordable anti-retroviral drugs;

(e) Under article 50(h) of the Constitution, to have an advocate assigned to him/her at State expense, if substantial injuries would otherwise result, and be informed of this right promptly;

(f) The Court of Appeal of Kenya, *David Njoroge Macharia v. Republic, Court of Appeal of Kenya, Criminal Appeal No. 497 of 2007*, in a judgment delivered on 18 March 2011, reaffirmed the State's responsibility in provision of legal aid;

(g) In *John Kimita Mwanike v. Republic, High Court of Kenya at Nakuru*, the court held that despite section 204 of the Penal Code, which still states that any person convicted of murder shall be sentenced to death, a trial judge still retains the discretion not to impose the death sentence and instead impose such sentence as may be warranted by the circumstances and facts of the particular case;

(h) In *Kenya Anti-Corruption Commission v. Stanley Mombo High Court of Nairobi, civil suit no. 448 of 2008*-The Kenya Anti-Corruption Commission had filed a case before the High Court seeking determination of whether Mr. Amuti had in his possession unexplained assets and whether he should have been condemned to pay the Government the cash and value of properties acquired corruptly or in the alternative whether the cash, landed properties and motor vehicles should have been forfeited to the Government. The High Court stated that the absence of a fair trial in the process stipulated under the Anti-Corruption and Economic Crimes Act rendered the trial inconsistent with the Constitution.

**Reply to the issues raised in paragraph 45 of the list of issues**

135. The Government of Kenya has taken actions to promote and protect human rights in Kenya:

(1) The National Policy and Action Plan on Human Rights. The Ministry of Justice, National Cohesion and Constitutional Affairs developed and submitted to Cabinet a draft National Policy and Action Plan for the promotion and protection of Human Rights. The Policy provides a comprehensive and coherent framework for the promotion and protection of human rights. The main objectives of the Policy and Action Plan are to:

- To mainstream human rights in public policy development and resource allocation;
- To promote the respect, protection and fulfillment of all human rights by the State and non- State actors;
- To strengthen the capacity of all State and non- State actors to respect, protect and ensure the fulfillment of human rights; and
- To promote the human rights based approach to planning, implementing, monitoring and evaluating of programmes in all sectors in the country.

(2) A National Land Policy was developed by The Ministry of Lands and passed by Parliament. The policy provides a framework within which land disputes and historical injustices relating to land will be addressed. The policy recognizes the vulnerability of minority and marginalized groups and provides for collective land rights and a decentralized land governance structure.

(3) Other policies include: the National Policy on the Abandonment of Female Genital Mutilation was formulated in 2010, the draft National Legal Aid Policy, Pre bail policy and the draft National Refugee Policy.

(4) The mainstreaming of gender, disability issues in all government departments.

(5) To address the problem of sexual and gender based violence the following actions have been taken:

- Training and sensitization of investigators, police prosecutors and judicial officers on Sexual and Gender based violence cases throughout the country;
- Specialized training on forensic investigations, crime scene management , collection, preservation and presentation of evidence ;
- The development of the regulations for Effective implementation of the Sexual Offences Act;
- The development of the National Police Service Code of Conduct;
- Kenya National HIV and AIDS Strategic Plan of 2009/10 – 2012/13 lays out strategies for achieving universal access to essential services for HIV prevention, treatment, care and support using a number of approaches:

**Reply to the issues raised in paragraph 46 of the list of issues**

136. The new measures and developments undertaken to implement the Convention and the Committee's recommendations are set out below.

- Reform of the Police;
  - Training of the police and the development of curriculum with a compulsory course on torture;
  - Moratorium on the death penalty;
  - Reform of the judiciary;
  - Ratification of the Protocol to the African Charter on Human and peoples' Rights on the Rights of Women in Africa (Maputo Protocol);
  - Leadership and Integrity Act 2012.
-