



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

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Committee against Torture

**Information received from Kenya on follow-up to  
the concluding observations on its third periodic  
report\***

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\* The present document is being issued without formal editing.



## Introduction

1. The Government of Kenya is honoured to present to the Committee against Torture (the Committee) the follow up report to the concluding observations of the third periodic report to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention).
2. The Committee considered the third periodic report of Kenya (CAT/C/KEN/3) at its 1897th and 1900th meetings, held on 4th and 5th May 2022, and adopted the concluding observations during its seventy-third session and at its 1908th meeting, held on 11th May 2022.
3. The Committee has requested for additional information on follow-up to the Committee's recommendations on extrajudicial killings enforced disappearances and excessive use of force (para 12 (a)); the National Human Rights Commission (para 14); and female genital mutilation (para 40).
4. This present report provides the additional information requested by the Committee.

## Extrajudicial killings, enforced disappearances and excessive use of force

### Follow-up information relating to paragraph 12 (a) of the concluding observations (CAT/C/KEN/CO/3)

5. The security sector remains critical to long-term sustainable development. However, challenges still exist in effective implementation of security sector reforms. The Government has enacted various strategies and continues to rely on various institutions in the pursuit of security sector reforms.
6. To curb cases of extrajudicial killings, enforced disappearances and excessive use of force, His Excellency the President of Kenya issued a directive for the disbandment of a Special Services Unit under the Directorate of Criminal Investigations. The Unit allegedly has been behind several cases of extrajudicial killings and enforced disappearances of both citizens and foreign nationals. On 16<sup>th</sup> October 2022 the Director of Criminal Investigations disbanded the unit with immediate effect. Four former police officers of the disbanded Special Services Unit are currently facing prosecution for the murder of two Indian nationals and their Kenyan driver.
7. The Independent Policing Oversight Authority (IPOA) which is an independent entity established to provide for civilian oversight over the work of the police in Kenya has continued to dispense its mandate. IPOA has developed the Independent Policing Oversight Authority (General Operations) Regulations, 2022 pursuant of Section 39 of the Independent Policing Oversight Authority Act.<sup>1</sup> On 14<sup>th</sup> April 2023 the National Assembly's Committee on Administration and Internal Affairs started the review process for the Regulations after which it will be tabled at the floor of the full House, for enactment.<sup>2</sup> Once enacted, the Regulations will enhance police accountability and mechanisms for addressing complaints against the police service.
8. IPOA continues to dispense its oversight role by holding the National Police Service (NPS) accountable and investigating NPS action or inaction in cases of abductions, extrajudicial killings and enforced disappearances. Among the cases that the IPOA has investigated include the incidences in which 25 dead bodies were found dumped in River Yala on diverse dates and the alleged killing of Pakistani investigative journalist Arshadi Sharif by Kenyan police
9. Additionally, and according to IPOA's January-June 2022 performance Report.

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<sup>1</sup> <https://ipoa.news/2022/06/13/ipoa-regulations-a-call-for-your-input/>.

<sup>2</sup> <https://ipoa.news/2023/04/14/ipoa-makes-last-leg-efforts-to-regulate-services/>.

10. In the period January to June 2022, the Authority conducted at least 326 inspections of police premises to ensure compliance to human rights standards in policing.

11. Over the same period the authority in discharge of its mandate to conduct investigations into police misconduct completed 447 investigations. As at 30<sup>th</sup> June 2022 IPOA had managed to institute 170 cases before the courts. In November 2022 IPOA made recommendations to the Director of Public Prosecutions in response to a video footage filmed on 31<sup>st</sup> March 2017 of a police officer, Ahmed Rashid, allegedly killing two teenagers. The recommendation made by IPOA in November 2022 for charges to be preferred against Ahmed Rashid followed after IPOA had conducted investigations into the matter and found evidence that demonstrated that the death of the two teenagers was perpetrated by the Police.

12. As a result, the Director of Public Prosecutions (DPP) preferred Murder Charges against Ahmed Rashid in 2022 following the investigation findings by IPOA into the deaths of Jamal Mohamed and Mohamed Dahir Kheri.

13. In 2022 in Republic Versus Fredrick Ole Leliman & 4 others Criminal Case No. 57 of 2016 the Court sentenced three police officers and a police informer in 2022 to varying sentences from 20-30-year prisons sentences to death which is commuted to life imprisonment for their involvement in murder of Advocate Willie Kimani, his client Josephat Mwendwa and Joseph Muiruri following their disappearance on 22<sup>nd</sup> June 2016 and their bodies found dead on 1st July 2016.

14. In February 2023, the Magistrate court in the case of Republic Vs George Kimani and Abubakar Abdalla Mohamed MCCR/E066/2020, sentenced the two former police officers to two-years in prison. The two police officers had been charged with assault of three men who were on their way to conduct a customary marriage ceremony by the Director of Public Prosecution (DPP) upon the recommendation of the Independent Policing Oversight Authority (IPOA).

15. In further evidence of the Government's resolve to end extrajudicial killings a Strategic Plan has been developed to end extrajudicial killings and enforced disappearances in the country. The Action Plan was developed and submitted to the Cabinet Secretary Ministry of Interior by the IPOA on 4<sup>th</sup> November 2022 following a directive by the His Excellency the President.

16. IPOA from January to June 2022 referred 9 complaints to the Internal Affairs Unit of the Police (IAU) for further action. The IAU's responsibility lies in ensuring the compliance by the National Police Service with constitutional human rights and fundamental freedoms standards. To monitor, review and audit investigations and actions by Internal Affairs Unit of the police IPOA oversees the work of the IAU to independently verify that the internal police system deals with complaints against officers fairly and effectively. The Authority can take over investigations if not satisfied with IAU's intervention.

17. In a move geared towards furthering the fight against corruption and ending the political weaponization of the criminal justice system, His Excellency the President issued an executive order granting financial independence to the National Police Service. With effect from 15th September 2022 the Inspector General of Police was designated the Accounting Officer for the financial year 2022/2023. Additionally, the President also appointed a Principal Administrative Secretary/Accounting Officer of the NPS to further aid in operations.

18. The Government also apportioned IPOA an additional 8% budgetary allocation in the fiscal year 2022/2023 compared to the fiscal year 2021/2022 when allocations increased from Ksh 0.950 billion to Ksh 1.025 billion. This guarantees that the agency has sufficient resources to fulfil its mandate.

19. As part of the ongoing security sector reforms on 21st December 2022 the Government established a National Taskforce on Improvement of the Terms and Conditions of Service and other Reforms for Members of the National Police Service and Kenya Prisons Service. Among the objectives of the Taskforce are to:

(a) Identify the legal, policy, administrative, institutional and operational constraints on effective service delivery by the National Police Service (hereafter, NPS) and the Kenya Prisons Service (hereafter, KPS);

(b) Identify and recommend legal, policy, administrative, institutional and operational reforms in the NPS and KPS for effective service delivery;

(c) Review and recommend improvement of the terms and conditions of service;

(d) Review and recommend improvement of matters relating to welfare of officers in all cadres of the NPS and KPS and all other matters incidental to the optimal service delivery by the NPS and KPS.

20. Review and recommend on any other matter incidental to improved terms and conditions of service and other reforms in the NPS and KPS.

21. The recommendations will assist the Government to proactively address some of the deficiencies in the security sector, including welfare of officers, autonomy, accountability and responsiveness, while improving the capacity of our security agencies to respond to the security challenges facing the country. The task force presents another opportunity for a candid conversation about policing in Kenya since the 2007-8 post-election violence (PEV) when the various commissions of inquiry and task forces recommended structural changes that became manifest after the 2010 Constitution was passed.

22. In addition, the taskforce will consider recommendations from the IPOA, Salaries and Remuneration Commission, National Police Service Commission, and the Kenya National Commission on Human Rights (KNHRC) has made over the years, mainly to transform policing in Kenya into world-class standards.

23. Moreover, the taskforce is expected to recommend the review of the remuneration of the members of the two Services and consideration of new and applicable allowances to enhance professionalism, and effectiveness within the service institutions.

24. On October 28, 2022, the Director of Public Prosecution announced the preferment of charges in the matter of systematic police attacks on civilians in Kisumu County, including the widely decried murder of Samantha Pendo “Baby Pendo”.<sup>3</sup> This announcement included the intention to proceed with cases against police officers responsible for the death of Baby Pendo as well as other atrocities committed during the 2017 post-election period.

25. The Baby Pendo case marks the first crimes against humanity case to be brought in the Kenyan national courts. It is also the first such case alleging crimes committed in the context of post-election violence under a theory of command responsibility, a form of legal responsibility being applied in this case under the Kenyan 2008 International Crimes Act.

26. The National Coroners Service is expected to play a critical role towards ending all forms of extra-judicial executions by among others establishing a framework for investigations of reportable deaths and determination of the causes of reported unnatural deaths in the country. To this end, the Government is committed to expediting the establishment of the National Coroners Service. The Government through the Office of the Attorney General and Department of Justice established a Multi-Agency Committee in 2020 charged with spearheading the operationalization of the National Coroners Service.

27. Further, in the fiscal year 2022-2023 the Government allocated Kshs. 30million towards this endeavor. So far tremendous progress has been made towards establishing the necessary structures including the appointment of an Acting Coroner General. Additionally, the committee is also reviewing proposed legislative amendments to the National Coroners Act, 2017 aimed at facilitating the smooth operations of the Service. Additionally, efforts to come up with Regulations to implement the Act are underway.

28. Additionally, the Government has also committed to ratifying the International Convention for the Protection of All Persons from Enforced Disappearance. With this in mind the Government has established a Multi-Agency Taskforce on Extrajudicial Killings and Enforced Disappearances in Kenya whose terms of reference include, to consider the legal,

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<sup>3</sup> <https://partnersinjustice.org/wp-content/uploads/2022/10/Press-statement-Baby-Pendo.pdf>.

social, cultural and economic implications of the proposed ratification of the International Convention for the Protection of all Persons from Enforced Disappearance. The Committee shall also consider the relevant legislative amendments that need to be made to align domestic law with the Convention in the spirit of adherence to Article 18 of the 1969 Vienna Convention on the Law of Treaties.

29. The Government continues efforts to fully operationalize the Victims Protection Board. Towards this Regulations are currently under public participation and stakeholder engagement. When enacted the Regulations will pave the way for the Victim Protection Fund that will offer various remedies to victims of crime as part of a victim-centric approach to criminal justice. The Board will also be able to vet application under the Act to maintain accountability throughout its processes. The Government remains committed to ensure access to remedy to all victims of crime.

## **National Human Rights Commission**

### **Follow-up information relating to paragraph 14 of the concluding observations**

30. The Government is committed to supporting its National Human Rights Institution, the Kenya National Commission on Human Rights towards the delivery of its mandate. However, in order to mitigate against the tough economic times occasioned by among others a global pandemic the Government has established austerity policies aimed at reducing Government deficits and debt accumulation. Regardless and in appreciation of the mandate of the KNHCR the Government allocated the Commission Kshs. 441 million (USD 3,195,652) in the 2022/2023 financial year compared to Kshs. 399 million (USD 2,891,304) in 2021-2022. This was a 10.5% increase in budget allocation.

31. The Government also supported the KNCHR in its efforts at establishing and launching of a National Implementation Framework for Sustainable Development Goals (NIFSDG) for SDG Indicator 16.10.1. It seeks to measure the enjoyment of fundamental freedoms (e.g., freedom of opinion, freedom of expression and access to information, the right to peaceful assembly and freedom of association) on the premise that extrajudicial killing, enforced disappearance, torture, arbitrary detention, kidnapping and other harmful act against journalists, trade unionists and human rights defenders have a chilling effect on the exercise of these fundamental freedoms.

32. Under the framework, the KNCHR and the Kenya National Bureau of Statistics will facilitate the integration of data from official and non-official sources, thereby supporting the monitoring of the implementation of SDG 16.10.1 by ensuring that information is collected in coordinated manner.

33. The NIFSDG launched in November 2022 thus significantly improves the KNCHR's ability to monitor public agencies' compliance with its recommendations touching on issues referenced above.

## **Female genital mutilation**

### **Follow-up information relating to paragraph 40 of the concluding observations**

34. The National Assembly enacted the Children Act No. 29 of 2022 which criminalizes subjecting a child to female genital mutilation.<sup>4</sup> This provides advanced protection compared to the repealed Children Act of 2001 which only prohibited any person from subjecting a child to female genital mutilation.<sup>5</sup> The Children Act, 2022 provides that any person who subjects a child to female genital mutilation commits an offence and is liable on conviction to imprisonment for a term of not less than three years or to a fine of not less than five hundred

<sup>4</sup> Children Act No 29 of 2022, section 23(b).

<sup>5</sup> Children Act 2001, section 14.

thousand Kenya Shillings or to both.<sup>6</sup> In the event a child dies as a result of FGM the person shall be liable on conviction to life imprisonment.<sup>7</sup>

35. In commemoration of the International Day of Zero Tolerance for Female Genital Mutilation (FGM) on 6th February 2023 the Cabinet Secretary for Gender and Affirmative Action called for action to promote partnering with men and boys to transform social and gender norms to end FGM. The Cabinet Secretary noted that targeting male children and youth is critical in building a future generation that will not subscribe to male dominance but will promote partnership and mutual coexistence of men and women.

36. Further efforts to raise awareness among traditional leaders and sensitize them against the conduct of FGM has led to commitments to stop the practice of FGM signed by the elders and Government such as the declaration by the Samburu elders to end FGM and child marriage among the Samburu community, the commitment by the Kuria and Marakwet elders to end FGM, as well as the commitments by the Pokot and Laikipia Maasai elders to end FGM and child marriage among their communities with the Laikipia declaration coming during the commemoration of the International Day of Zero tolerance for FGM in 2023.

37. The Anti-FGM board has continued to support Counties develop specific Anti-FGM policies. In August 2022, the County Government of Narok in collaboration with Anti-FGM board launched the Narok County Anti-FGM policy. The Policy, among other things focuses on sensitizing the community on the dangers of engaging in FGM. It will also sensitize the girls on the Free Hotline numbers to call when they are at risk of being subjected to FGM. Similar policies have also been developed in Tharaka Nithi and Kajiado counties.

38. The Government has also focused on efforts to enhance policy development, knowledge management and information on FGM by developing strategic documents being used by the Anti-FGM Board, partners, and communities in implementing Anti-FGM interventions. Some of the documents include Guidelines on Alternative Rites of Passage, Community Dialogue, and Male Engagement, a Handbook on FGM as well as a Tool Kit on FGM for Editors and Journalists.

39. The Anti-FGM Board in its 2019 to 2023 Strategic Plan has highlighted cross-border female genital mutilation as an emerging trend. In mitigating the cross-border FGM trend, the Anti-FGM has continuously taken measures to strengthen on-going cross-border initiatives on FGM, through community dialogues and surveillance on the effects of FGM. A costed Cross-Border Action Plan to end FGM among five member states including Kenya, Tanzania, Uganda, Ethiopia and Somalia has also been developed.

40. The Government has also channeled efforts towards sensitization, awareness creation and capacity building especially in hot spots across the country. The Anti-FGM Board, has thus managed to cascade the Presidential Directive on ending FGM, the consequences of FGM as well as its legal and policy framework across all the 22 FGM hot spot counties with over 10, 000 National Government Administrative officers engaged.

41. In addition, over 10 million Kenyans have been reached annually with Anti-FGM messages through the mass media; print, electronic and social media.

42. Further, the Board has promoted Public Participation and awareness creation on the effects of FGM and its existing legal framework by training and recognizing 66 Anti-FGM champions from all the 22 FGM hot-spot counties.

43. In 2022, the Anti-FGM Board working with UNICEF developed the PASHA mobile App. The purpose of the PASHA mobile app is to facilitate the reporting, tracking and monitoring of FGM cases through the sharing of information with the relevant Government agencies. The App will be used to report, in real time, cases of FGM and follow up on actions taken and progress of cases in courts.

44. The Government, through the Ministry of Public Service, Gender and Affirmative action in collaboration with key stakeholders has continuously worked with county Governments and non-Government actors towards the enforcement of the female genital

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<sup>6</sup> Children Act No 29 of 2022, section 23(2).

<sup>7</sup> Ibid section 23(3).

mutilation legislation. Referencing the Kenya Human Rights Report 2022, the Government has organized education programs to create public awareness relating to FGM law and spearheaded the prosecution of those in violation of the law on Female Genital Mutilation in the country.

45. The Government has continued to encourage initiatives by non-state actors in addressing the issues of female genital mutilation. For instance, the launching of Alale Anti-FGM Project in Pokot by the World Vision Child Protection in May 2022 to create awareness on FGM and address the emerging issue of cross-border FGM.

46. County Anti-FGM steering committees are now operational in all the 22 counties classified as hotspot. The committees which are chaired by the County Commissioners are required to monitor the FGM situation in their respective counties and report accordingly on a quarterly basis to the Multi-Agency Technical Committee. The table below provides data on law enforcement and girls who were facilitated to go through Alternative Rights of Passage (ARP).

<i>No.</i>	<i>Issue</i>	<i>June to Nov 2020</i>	<i>Dec to May 2021</i>	<i>June to Nov 2021</i>	<i>December to May 2022</i>
1.	No. of FGM cases Reported	192	117	92	100
2.	No. of girls rescued from FGM	205	200	37	445
3.	No. of FGM perpetrators arrested	61	37	36	45
4.	No. of ongoing FGM prosecutions	53	34	36	341
5.	No. of girls undergoing ARP		28 970	858	4 004

#### **Status of the FGM cases pending in court between December 2021–June, 2022**

	<i>County</i>	<i>No. of cases registered</i>	<i>No. of cases finalized</i>	<i>No. of cases pending in court</i>
1.	Wajir	0		0
2.	Bomet	3		3
3.	Samburu	2		2
4.	Narok	14		14
5.	Elgeyo Marakwet	1		1
6.	Kisii	0		0
7.	Meru (Marimanti)	1		1
8.	Kajiado	1		1
9.	Baringo	2		2
10.	West Pokot	15		15
11.	Taita Taveta	4		4
12.	Mandera	0		0
13.	Marsabit	0		0
14.	Isiolo	0		0
15.	Embu	2	1	1
16.	Tharaka Nithi	5	2	3
17.	Samburu	3	1	2
18.	Laikipia	2		2
19.	Nyamira	0		0
20.	Tana River	0		0
21.	Garissa	0		0

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	<i>County</i>	<i>No. of cases registered</i>	<i>No. of cases finalized</i>	<i>No. of cases pending in court</i>
22	Migori	35	20	15
23	Bungoma	0		0
24	Nyeri (Mukurweini)	2		2
	<b>Total</b>	<b>91</b>	<b>24</b>	<b>67</b>

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