



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

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COMMITTEE AGAINST TORTURE

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

**Initial reports of States parties due in 1998**

**KENYA\* \*\***

[6 June 2007]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\* The annexes to the present report may be consulted in the files of the Committee secretariat.

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**List of acronyms**

NARC	National Rainbow Coalition
KANU	Kenya African National Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
CERD	The Convention on the Elimination of Racial Discrimination
CEDAW	The Convention on the Eradication of All Forms of Discrimination Against Women
CAT	The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OAU	Organisation of African Unity
DSI	Directorate of Security Intelligence
CID	Criminal Investigations Division
NSIS	National Security Intelligence Service

## **PART I**

### **GENERAL INFORMATION**

#### **General introduction and country information**

1. The Government of the Republic of Kenya has the honour and pleasure to submit to the Committee against Torture (hereinafter referred to as “the Committee”), in conformity with Article 19 (1) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (hereinafter referred to as “the Convention”), its Initial report under the Convention.
2. Kenya has not submitted a state report since it became a party to the Convention on 21<sup>st</sup> February 1997. The reasons for this state of affairs are manifold, and include political, social, and economic problems obtaining for most of the Country’s post-independence history. In recent years, and particularly with the ascension to power in 2002 of the National Rainbow Coalition (NARC) party administration, Kenya has increased its capacity to undertake state reporting and other human rights related activities. It is in this light that this report has been prepared.
3. This report has been prepared with reference to the Committee’s Guidelines on the Form and Content of Initial Reports under the Convention and is a result of wide consultations within the Government the Kenya National Commission on Human Rights, other national institutions, Non Governmental Organisations, the Committee against Torture, Civil Society organizations and other stakeholders who play an important role in the promotion and protection of the human rights under this Convention.
4. The final report was subjected to validation by all the stakeholders who had been consulted and who are engaged in the field of human rights and torture-related issues to ensure that the report is representative of the de facto situation prevailing in the country at the time of reporting.
5. This report discusses in a candid manner the policies and laws pertaining to the implementation measures that the Government has taken to comply with the Convention and also the difficulties and the short falls observed in relation to these measures. It also highlights the strategies currently in place or underway to address the existing gaps.

#### **Land and people**

6. Kenya is an East African country that lies astride the Equator covering a total area of 582, 650 km<sup>2</sup> of which 560,250 km<sup>2</sup> constitutes dry land while water takes the rest of about 13,400km<sup>2</sup>. Approximately 80% of the land area is arid or semi-arid, and only 20% is arable.
7. The total population is estimated at 32 million people, 75% -80% of whom live in the rural areas. The population distribution varies from 230 persons per km<sup>2</sup> in high potential areas to 3 persons per Km<sup>2</sup> in arid areas. Only about 20% consists of high to medium potential agricultural land, and supporters of 80% of the population. The remaining 20% of the population lives in the 80% of the land, which is arid and semi-arid.

8. The country's population is characterised by high mortality rates, low and declining life (46.4 years), slightly increased fertility rates (from 4.7 children per woman in 1995-1998 to 4.8 in 2000-2003), high infant mortality and death rates (72 per 1000), maternal mortality rate is 590 (per 1000) and declining population growth rates (which could be attributed to the HIV/AIDS pandemic). Kenya is also faced with a high dependency burden, with over 50% of the population below 15 years.
9. The national language is Kiswahili while the official language is English, though numerous other local languages are spoken. There are 42 officially recognized ethnic groups. The major Religious orientations include Christianity, Islam, Hinduism, and African Traditional Religion. Economic activities revolve mainly around Pastoralism, agriculture, the urban formal and informal sectors.
10. Poverty remains a major impediment to both the fulfilment of basic needs and the realization of the full potential of many Kenyans, particularly women and children. The population in absolute poverty was estimated at 50% in 2000. The economy has been characterised by stagnation in economic growth in the last two decades. Between 1997 and 2002, the economy grew by an annual average rate of only 1.5%, below the population growth estimated at 2.5% per annum, thus leading to a decline in per capita incomes. Currently, approximately 56% of Kenyans live below the poverty line of less than \$1 per day. The economy however has been registering some improvement. In 2005, economic growth rate was 5.8%, and this rate is expected to rise to 6.7% by the end of May, 2007.
11. Kenya has faced numerous challenges in the efforts of fulfilling her reporting obligations under the various international human rights instruments including the current Convention. Some of these include; poor political and economic governance characterised by corruption and inequitable allocation/misallocation of resources. This situation has been exacerbated by exogenous factors in the recent past. These include droughts and deteriorating external environment. In 2000 and 2004, Kenya suffered severe droughts and famine that hampered the performance of the productive sectors, especially agriculture and manufacturing. Due to the decline in food production, budgetary resources were diverted to famine relief, thus interrupting the development momentum. Another external factor which affected the country, like other developing countries, is the deteriorating terms of trade, especially the falling of international prices of primary exports. Coupled with these are the concerns created by HIV/AIDS, Malaria and poor infrastructure.

### **General political structure**

12. Kenya gained independence in 1963 and has evolved into a multi-party democracy. After years under a single-party state system, the Constitution was amended in 1991 and the first multi-party elections were held in 1992. Kenya African National Union (KANU) was the party that won the initial elections in 1964 and managed to retain power for 39 years through 8 general elections. Only in 2002 did KANU lose the general elections for the first time to the National Rainbow Coalition (NARC), a grouping of 14 political parties. The change to a multi-party system marked a political transition, which involved fundamental constitutional re-engineering aimed at transforming the state apparatus from instruments of repression and exploitation to

agents of African development and self-actualization. There is renewed hope that with good governance, relationships with bilateral and multi-lateral donors will improve, thus increasing the chances of progressive realization of Human Rights in general.

13. There are three arms of the Government: the Legislature, Executive, and Judiciary. Chapter III of the Constitution establishes the Parliament. Section 30 provides that the legislative power of the Republic shall vest in the Parliament of Kenya, which shall consist of the President and the National Assembly. This National Assembly represents 210 constituencies spread throughout the 8 provinces and consists of members elected in national elections, nominated members and ex officio members. The Presiding Officer in Parliament is the Speaker, and is elected by the members. There are 210 elected members, 12 nominated members, 2 ex officio members, namely the Attorney General and the Speaker.

14. The President heads the Executive arm of the Government, as per Chapter II of the Constitution. The President is mandated to appoint a Vice President and ministers from among the elected members of Parliament. This is provided for in section 16 of the Constitution. The Executive acts through a Cabinet that consists of the President, the Vice President and other ministers. The function of the Cabinet is to aid and advise the President in the Governance of the country.

15. As a check against excesses of Government, section 17 (3) of the Constitution provides that the Cabinet shall be collectively responsible to Parliament for all things done by or under the authority of the President or the Vice President or any other minister in the execution of his office.

16. Chapter IV of the Constitution establishes the Judiciary. Section 60 thereof provides for the High Court as a superior court of record and with unlimited original jurisdiction in civil and criminal matters. Section 64 provides for the Court of Appeal. This is the highest court in the country. It only hears matters on appeal from the High Court. It has no original jurisdiction to hear any matter.

17. The Judiciary is headed by the Chief Justice, and consists of Judges of the Court of Appeal and High Court, as well as magistrates. Section 65 provides that Parliament may establish courts subordinate to the High Court. Such courts shall have jurisdiction and law may confer powers on them. As a result, the Magistrates Courts and the *Kadhi* (Islamic) Courts are established by statute.

### **General legal framework within which human rights are protected**

18. The Legal Structure in which human rights are protected involves the following:

(a) Judicial Authority:

The High Court is established by the Constitution of Kenya as the court that has unlimited original jurisdiction. Below the High Court are the court martial, magistrates' courts and tribunals. The High Court also has inherent jurisdiction to hear cases of violations of fundamental rights. Thus, a complaint touching on the rights in the Convention against Torture would be dealt with as a violation of fundamental rights, and would be heard by the High Court.

If any person alleges that any of their fundamental rights have been, are being or are likely to be contravened in relation to them, then that person may apply to the High Court for redress. The High Court has original jurisdiction to hear and determine such an application, and may issue appropriate orders (section 84 of the Constitution). It is worth noting that the Bill of rights in the Current Constitution does not provide for economic, social and cultural rights. There was, however, an inclusion of social, economic and cultural rights in the Draft Constitution that was voted down in the national referendum of 21 November 2005. The Bill of rights was not controversial and it is envisaged that the new constitution will contain the same. The Constitutional Review is on-going and the Government is still committed to the promotion of these rights among other issues.

(b) Legislative Authority:

Parliament of Kenya is vested with the power to enact legislation. In the field of human rights, Parliament has established the following institutions:

- (i) The Kenya National Commission on Human Rights;
- (ii) The Kenya National Commission on Gender and Development;
- (iii) The Kenya Anti-Corruption Commission;
- (iv) National Council for Children Services;
- (v) National Council on Persons with Disabilities; and
- (vi) The Law Reform Commission whose mandate includes review of all oppressive laws.

19. International treaties are not considered as part of the law of Kenya and cannot be directly applied by the courts, tribunals or administrative authorities in the absence of domestic legislation domesticating the same. However, the courts interpret the laws of Kenya so that they do not conflict with treaties Kenya is a party to and the practice is that after ratification, legal and administrative structures are set up to support such instruments.

20. Kenya has ratified the following international human rights conventions:

- (a) The International Covenant on Civil and Political Rights (ICCPR);
- (b) The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- (c) The International Convention on the Elimination of all forms of Racial Discrimination (CERD);
- (d) The Convention on the Elimination of all forms of Discrimination against Women (CEDAW);

(e) The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and

(f) The Convention on the Rights of the Child (CRC).

21. In addition, the Country has ratified:

(a) The Convention on the Non-applicability of Statutory Limitation to War Crimes and Crimes Against Humanity;

(b) The International Convention Against Corruption;

(c) The Convention Relating to the Status of Refugees;

(d) The Optional Protocol to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; and

(e) The Rome Statute of the International Criminal Court.

22. At the regional level, Kenya has ratified the following key human rights Instruments:

(a) The African Charter on Human and Peoples' Rights;

(b) The African Charter on the Rights and Welfare of the Child;

(c) The OAU Convention Governing Specific Aspects of Refugee Problems in Africa; and is a signatory to the OAU Convention Against anti-Corruption.

### **The extent to which human rights treaties have been domesticated**

23. Kenya is a dualist state requiring domestication of international instruments in the national arena through legislation by Parliament. In this regard, the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and recently the Convention relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa have been fully domesticated by promulgation of the Children Act (Chapter 586 of the Laws of Kenya) and the Refugees Act respectively. The provisions of these laws are closely modelled on those of the international and regional instruments. The Country has also fully domesticated the Geneva Conventions through The Geneva Conventions Act. Further, in a bid to domesticate the Rome Statute of the International Criminal Court and enable Kenya comply with its obligations thereto; the Government has published the International Crimes Bill.

24. Despite the fact that other international human rights instruments have not been domesticated through national legislation, it is worth noting that the language of the Bill of rights in the Constitution of Kenya is similar to that of the ICCPR and African Charter on Human and Peoples Rights. It is however to be noted that the Bill of Rights in the current Constitution is limited to civil and political rights, but the proposed Constitution for Kenya will seek to incorporate both socio-economic and group rights.



## **PART II**

### **GENERAL LEGAL FRAMEWORK UNDER WHICH TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ARE PROHIBITED IN KENYA IN ACCORDANCE WITH THE PROVISIONS UNDER THE CONVENTION**

#### **Information in relation to each substantive article of the Convention**

##### **Article 1**

25. Acts constituting torture and other cruel, inhuman or degrading treatment or punishment are criminal and/or civil wrongs in Kenya (See Appendix One). In addition, the Kenya National Commission on Human Rights is empowered to monitor and investigate abuses of human rights whether these are inflicted by or at the instigation of public officials or not. Together, these mechanisms ensure that Kenya is at all times in compliance with its obligations under the Convention against Torture. While the laws of Kenya prohibit torture, and other cruel, inhuman, or degrading treatment or punishment, the Constitution of Kenya, does not define torture, thereby creating interpretation problems. This issue will be more particularly addressed under Article 2.

26. The Government, in principle and in practice does not condone acts of torture committed by its officers in the performance of their duties. Granted, there are numerous cases wherein torture has been alleged, and upon investigation, if proven, the Government then initiates internal department-specific corrective and disciplinary measures against the errant officers and in some instances proceeds to prosecute them under the Penal Code. (See Table 1, Annex 2.)

27. It is necessary to note at this point that the various acts that constitute torture as defined in the Convention are contained in different Acts of Parliament. These acts would include common assault, rape, and indecent assault and murder in the event that these occur in the presence of a public official or perpetuated by the same official in the course of his duties.

28. A victim of torture can obtain monetary compensation from the Government upon his own institution of a claim in a civil court. Currently, there exists no Government Rehabilitation Program for victims of torture. However, the prison system has rehabilitation programs that can be used for the benefit of victims of torture. Non-governmental organisations, religious organisations and civil society groups such as the Independent Medico-Legal Unit have several rehabilitation programs for victims of torture.

29. The Criminal Law (Amendment) Act Number 5 of 2003 provides that a criminal court may order a person convicted of a criminal offence to compensate the injured party such sum as the court considers could justly be recovered in a civil suit against the convicted person for damages.

30. Currently, the Government in collaboration with national and international development partners has initiated reforms in the training curricula for law enforcement and public officials with an emphasis on human rights and prohibition of torture. This is in realisation of the need for the Government to live up to its obligations under the various international human rights instruments to which it is party.

## Article 2 (1)

### Legislative measures

31. Kenya has taken legislative measures to prevent acts of torture within its jurisdiction. The Constitution of Kenya prohibits torture but the definition of torture in the Constitution falls short of what is provided for in Article 1 of the Convention. Section 74 (1) provides that “*No person shall be subject to torture or to inhuman or degrading punishment or other treatment.*”

Subsection 2 goes on to provide that “*Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in Kenya on 11<sup>th</sup> December 1963.*” Section 74 (2) of the Constitution of Kenya provides the exception, this in essence being the death penalty, which is applicable to specific capital offences under the Penal Code including murder, treason and robbery with violence.

32. In addition, neither the Penal Code nor the Criminal Procedure Code contains any provisions on a specific offence called torture. However, acts of torture can and have been prosecuted under crimes such as assault, assault occasioning actual bodily harm, assault occasioning grievous bodily harm, rape, sexual assault, murder, attempted murder etc, which are provided for under the Penal Code, the Police Act and other laws such as the Children Act.<sup>1</sup>

33. There have been amendments to the Police Act referred to criminalize acts of torture among police officers. Recent amendments to the Evidence Act through the Criminal Law Amendment Act of 2003 have had a positive impact on the prevention of torture and other cruel, inhuman or degrading treatment or punishment. Previously, the bulk of complaints of torture were made against law enforcement authorities in relation to obtaining confessions from suspects. This Act has repealed section 28 of the Evidence Act which allowed the admitting as evidence confessions made before the Police/in police custody.

34. The Evidence Act Chapter 80 Laws of Kenya was amended in 2003 and now provides that “No confession made by any person whilst he is in the custody of a police officer shall be proved as against such person, unless it is made in the immediate presence of a judge or a magistrate.”

35. This amendment ensures that only confessions made in court will be admissible. This amendment to the Evidence Act goes a long way into reducing the instances of acts that constitute torture to procure confession by investigating authorities.

36. Corporal punishment is universally considered an inhuman and degrading treatment in addition to demeaning those upon whom it is inflicted. The Constitution of Kenya permits corporal punishment as an exception to the general prohibition against torture provided that it is sanctioned under a written law. This notwithstanding the Government, through the Criminal Law Amendment Act of 2003, abolished the use of corporal punishment under the Kenyan Penal laws.

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<sup>1</sup> The laws referred to are provided in Annex 1.

37. The recently enacted Community Service Order Act may also be regarded as having a positive impact in the prevention of torture or other cruel, inhuman and degrading treatment in prison and detention facilities. 11,000 convicted persons who would otherwise be serving custodial sentences in our over crowded jails are now engaged in community service projects from their homes under the supervision by the Provincial Administration i.e. Provincial Commissioners, District Commissioners, District Officers, Chiefs and Assistant Chiefs.

38. These public officials are subject to internal disciplinary measures by the Government as their employer. They are also liable to prosecution under the law in cases where they have been accused of committing acts that constitute torture according to Article 1 of the Convention. The Government admits that it is a challenge to compile accurate statistics on the complaints against torture and ill-treatment due to the unavailability of automated and disaggregated data and due to the current scenario where the people entrusted with the data would be the same people that the public would complain about. It is hoped that with the establishment of an independent civilian oversight body and the efforts of the National human rights body, these incidences will be minimized.

39. The military also has its own military disciplinary system i.e. the Court Martial, in instances where a military officer has been accused of committing acts that constitute torture according to Article 1 of the Convention.

#### **Judicial measures**

40. There are a number of cases where public officials have been charged and prosecuted in criminal courts for acts constituting torture according to Article 1 of the Convention. In addition, some victims of torture have filed claims for compensation in civil courts and have been paid compensation by the Government of Kenya as a result of acts constituting torture according to Article 1 of the Convention. A claim filed in civil courts is independent from a case filed in a criminal court. A victim of torture can thus file a claim for compensation in a civil court regardless of whether or not an alleged perpetrator of acts that constitute torture has been tried in a criminal court.<sup>2</sup>

41. The courts have in cases where culpability has been proved granted sentences favouring plaintiffs for the award of compensation. The actual payment of compensation by the Government has been erratic and is a great challenge as shown in Table 1.

42. In 2003, the Kenya National Commission on Human Rights was established by law. It has quasi-judicial powers to investigate human rights violations including torture. It also has powers to make impromptu visits to prisons and other detention facilities e.g. police cells. The Commission has hitherto complained that they have been denied permission to visit some facilities and even went to court to safeguard this power. The High Court upheld this power and the Government issued a strict warning to Officers who had withheld such permission to the National Human Rights body.

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<sup>2</sup> Kindly refer to Table 1 in the Annex 2 to see the success rates of such references.

### **Other measures**

43. The Judicial Commission of Inquiry on Tribal Clashes was established to investigate tribal clashes that occurred before, during and after the first and second multiparty general elections held in 1992 and 1997. The report of this Commission has been made public and it recommended, *inter alia*, that acts that constitute torture as defined in Article 1 of the Convention be investigated further with the possibility of prosecution of the perpetrators. This is a process that is currently ongoing as it is a very important aspect of national unity touching on the land tenure system and the general unity of the country.

44. There are specific human rights training programmes for Police officers and other Public officers on the prevention and the prohibition of acts that constitute torture as defined in Article 1 of the Convention. The Police and Prisons departments are currently undertaking reforms to improve their human rights record. Training programs have been developed for this purpose with a view to, among others, sensitise the officers on the humane treatment of persons in custody.

45. These and other shortcomings with respect to compliance with the Convention's provisions prohibiting torture and other cruel, degrading treatment or punishment are being addressed in radical reforms in the Police and Prisons departments specifically with regard to the complaints procedure (see reform measures being undertaken to implement Articles 11 and 12 of the Convention).

46. To improve the accountability of investigative services, the authority to arrest has been removed from the Directorate of Security Intelligence (DSI) and the Organisation has been separated from the Criminal Investigation Division (CID). The DSI has now been transformed and established by an Act of Parliament (the National Security Intelligence Services Act) into the National Security Intelligence Service (NSIS) with a specific mandate of conducting intelligence work only.

47. In addition, the Government of Kenya has taken a bold step by opening to public scrutiny the previously secret Nyayo House torture chambers. This was a bold statement by the Government on torture.

48. Members of Parliament can raise matters of complaints that concern acts that constitute torture as defined in Article 1 of the Convention in Parliament either on behalf of their constituents or as a matter of national interest.

### **Article 2 (2)**

49. Under Section 83 of the Constitution of Kenya the provision prohibiting torture is non-derogable. Section 83 (1) states: "*Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of sections 72, 76, 79, 80, 81 or 82 when Kenya is at war, and nothing contained in or done under the authority of any provision of part III of Preservation of Public Security Act shall be held to be inconsistent with or in contravention of those sections of this Constitution when and in so far as the provision is in operation by virtue of an order made under section 85.*"

50. This is consistent with the provisions of the four Geneva Conventions of 12<sup>th</sup> August 1949, which the country has fully domesticated, and their two Additional Protocols of 1977 relating to the conduct of combatants during armed conflicts.

51. In addition, the Government of Kenya states that while conducting investigations or activities aimed at the suppression of terrorism within its territory, it shall not torture or use torture as an excuse while investigating persons suspected or accused of committing terrorist activities. The Government introduced a Bill on the suppression of Acts of Terrorism in 2003 and subjected it to public debate. The first draft was rejected owing to the fact that it allowed, inter alia, for law enforcement officers to arbitrarily assess and determine what constituted terrorist conduct and the persons who could be classified as terrorists. It potentially derogated from rights contained in the Constitution relating to the rights of an accused person and the right to freedom of association. A second Bill is being subjected to public debate to ensure that the fight against terrorism is tempered with reason and the protection of human rights.

### **Article 2 (3)**

52. In Kenya, an order from a superior officer or public authority is not a justification to commit acts that constitute torture as defined in Article 1 of the Convention. Under the Police Act, Cap 84 Laws of Kenya, section 15 (1) states that: *“Every Police Officer shall promptly obey all lawful orders in respect of the execution of his office which he may receive from his superiors in the Force.”* If a Police Officer obeys an unlawful order, then section 63 of the same Act prescribes a penalty of three months or to a fine of five thousand shillings or both.

### **Article 3 (1)**

53. Kenya has ratified the 1951 Geneva Convention Relating to the Status of Refugees; the 1967 Protocol on the Status of Refugees and the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa and recently passed a Refugees law. The principle behind these initiatives is the principle of non-refoulement. In practice, Kenya does not extradite persons when there is reasonable belief that they will suffer torture and other cruel, inhuman or degrading treatment or punishment. For instance, Kenya has for a number of years now refused to hand over to Uganda a lady by the name of Alice Lakwena despite repeated requests for it to do so. This is because the Government of Kenya had reasonable belief that her safety was not guaranteed if she was returned to Uganda.

### **Article 3 (2)**

54. The Minister for Immigration is the competent authority to handle all matters under the Immigration Act. This includes all matters concerning extradition, expulsion and deportation of persons from Kenya. While the Immigration Act was enacted before Kenya ratified the Convention against Torture, it is in consonance with the principle of Article 3 (1) of the Convention. It however does not mention torture and other cruel, inhuman and degrading treatment.

55. The Minister may delegate part of his powers to the Principal Immigration Officer by regulations made under this Act that govern the day to day operations of matters mentioned above.

56. The decisions of the Principal Immigration Officer can initially be forwarded on appeal to the Minister. A second appeal lies from the Minister's decision to the High Court. The lodging of an appeal with the High Court stays the order from the Minister until the matter is heard and determined by the court. Thus, all orders for expulsion will be stayed pending the decision of the High Court.

57. The system of administrative laws promulgated by the executive arm of Government always leaves a residual right of judicial review of administrative discretion. Any person aggrieved by decisions from the Ministry of Immigration may seek redress in court.

58. Training programs have been conducted in conjunction with United Nations High Commission for Refugees for Police and Immigration Officers who work at border control points and in areas where refugee camps are located. However, the training does not cover a wide spectrum of officers. Due to the dearth of officers to attend and participate in the conduct of interviews, officials in the employ of United Nations High Commission carry these out for Refugees.

59. The Government has recognised this challenge and seeks to address it through the newly passed Refugees Act. Under this law, *no person shall be refused entry into Kenya, expelled, extradited, or returned from Kenya to any other country or subjected to any similar measure...* where he may be subject to persecution on account of race, religion nationality, and membership of a particular social group or political opinion.

60. There is also a Refugee Secretariat that the Government of Kenya is currently upgrading to a department under the Ministry of Immigration. It is envisaged that the proposed Department will be independent, impartial and have power to hire experts. It will be funded from the Consolidated Fund. This will ensure that there are trained officers who can aptly handle refugees and identify cases of complaints of torture.

61. In practice, Kenya has continued to receive refugees for many years despite the absence of domestic legislation. The new refugees' law will now consolidate the Government's control over the refugee situation and put in the domestic scene the international standards as they affect refugees.

#### **Article 4**

62. There is no definition in the laws of Kenya for torture, attempted acts of torture, commission of torture or orders to commit torture by persons in authority. Thus, acts of mental and psychological torture cannot be punished under the present penal system.

63. The Committee that was mandated to coordinate the drafting of this report has recognised that there is a lacuna in terms of the absence of a definition of torture in our laws. The legal regime in Kenya provides that a person can only be charged with offences that are duly defined and criminalised in a written law. This creates a challenge to our judicial officers in determining torture cases. The Committee has thus made recommendations for the inclusion of the definition of torture in our laws in conformity with the definition of torture in the Convention. The Kenya Law Reform Commission has been seized of this deficiency.

64. The Police Act Cap 84 Laws of Kenya states that *every police officer shall promptly obey all lawful orders in respect of the execution of his office which he may receive from his superiors in the Force*. If a Police Officer obeys an unlawful order, then such officer will be liable, in addition to internal disciplinary mechanisms, to a penalty of three months imprisonment or to a fine of five thousand shillings or to both. It is important to note that this fine and penalty to be imposed here, is for the act of carrying out an unlawful order and not for the acts that actually constitute an unlawful order. The officer can however also be charged under the Penal Code for the acts constituting torture.

### **Article 5**

65. The Penal Code is the primary legislation that deals with offences in Kenya. The Penal Code applies within the entire territory of Kenya. It also applies to offences committed aboard ships and aircrafts within the country's jurisdiction. Such acts are considered extraditable offences. Since torture is not named as an offence in the Kenyan penal system, it is not possible to classify it as an extraditable offence.

66. Once it has been proved that a crime has been committed, the penalties are meted out on any person, citizen or alien, present in the territory of Kenya who is proved to have committed the said offence.

67. Kenya will extradite a person accused of offences contained in the Extradition Acts within the country to his country of origin under the provisions of its extradition Acts. The basic ingredients surrounding extradition would apply, such as the fact that the act must be an offence in both countries. Kindly refer to Article 8 for a more detailed explanation.

68. In relation to international obligations and the principle of universal jurisdiction, Kenya is a party to the Rome Statute. The Government has further embarked on the process of domestication to give effect to this principle and to give the country jurisdiction over international crimes.

### **Article 6**

69. As stated in Article 4, Kenya does not have definition of torture as an offence under its laws. However, should the act complained of fall under the category of extraditable offences, the Government shall communicate the presence of the alleged offender, to the person's country of origin through diplomatic the channels. This will be done through the Police in conjunction with the Ministry of Foreign Affairs and the Attorney General.

70. The person will in practice be arrested and remain in police custody pending further investigation. If the risk of flight by the person arrested is high, then bail will be denied. If the investigations give credible evidence of the commission of an offence, then the person will be produced before court and charged accordingly.

### **Article 7**

71. In Kenya, persons accused of acts of torture face prosecution for offences in the Penal Code as informed hereinbefore. There is no distinction in law between nationals and foreign nationals. Foreign nationals who are accused of torture in their countries and who are within

Kenya's territory will be arrested and extradited to face trial. It is necessary to note that even though Kenya has not entered into an extradition treaty with any country specifically for torture, the Government has expressed that it will support and co-operate with any nation to fight torture and other cruel, inhuman or degrading treatment or punishment.

72. The competent authority in Kenya for interpreting and determining matters of law is the Judiciary. Chapter IV Section 61 of the Constitution of Kenya establishes the High Court. The High Court is a superior court of record and has unlimited original jurisdiction in civil and criminal matters and such other jurisdiction and powers as may be conferred on it by the Constitution or any other law.

73. Section 72 of the Constitution provides that any person arrested for a criminal offence shall be produced in court. This must be done within a reasonable time, ranging from 24 hours to 14 days after arrest.

74. The courts then adjudicate over the criminal matter to its logical judicial conclusion. Section 77 (1) of the Constitution of Kenya provides that if a person is charged with a criminal offence, he shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

75. As stated before, the absence of the definition of torture in Kenyan penal statutes makes it difficult to state with authority what the courts have ruled on this but; the Judiciary has taken a stand and affirmed that it will treat with extreme seriousness abuse of office which permits torturous cruel and inhuman treatment.

### **Article 8**

76. Kenya has two laws on extradition-The Extradition (Contiguous and Foreign Countries) Act Chapter 76 and The Extradition (Commonwealth Countries) Act Chapter 77 Laws of Kenya. These laws provide for extraditable crimes such as homicide, abduction, rape, narcotics, damage to property, falsification of currency, forgery, misappropriation, fraud, piracy and slave dealings. The laws do not explicitly mention torture as an extraditable offence.

77. Under the extradition laws, Kenya will surrender to other countries persons accused or convicted of extraditable offences and receive persons returned to Kenya from such countries with which it has executed extradition treaties.

78. The Extradition Acts provide that a fugitive shall not be surrendered to another country if such surrender will prejudice him at trial, or cause him to be punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinion. This is provided for in section 6 (1) (3) of Chapter 77. Section 16 (3) of Chapter 76 permits the court to deny surrender if the fugitive will suffer a punishment too severe, unjust or oppressive.

79. The Suppression of Terrorism Bill of 2003 provides that Kenya may extradite a person suspected of carrying out terrorist activities to another country to face trial for acts of terrorism. Such extradition would be carried out in respect of offences falling within the scope of any counter-terrorism convention to which Kenya is party and would be carried out between Kenya and any country with which it shares an extradition treaty.



### **Article 9**

80. Kenya subscribes to the principle of reciprocity with other countries. Kenya has entered into various mutual assistance agreements with other countries that touch on matters of trade, defence and policing. However, the country has not entered into any mutual assistance agreement in relation to matters pertaining to acts of torture. For example, Kenya has co-operated with the International Criminal Tribunal for Rwanda in Arusha to extradite persons accused of war crimes, crimes against humanity and torture in Rwanda, by extraditing such Rwandese nationals who were present in Kenya to the Tribunal.

### **Article 10**

81. As the police personnel constitute the first contact with the criminal justice system, prohibition of torture and other cruel, degrading treatment or punishment is emphasised during police training. The police and prisons departments' training, which hitherto used to take six months, has now been increased to nine months. This has been necessitated by the expansion of the training curriculum in 2003 to include human rights and humanitarian law. Short refresher courses have also been integrated in the training schedules.

82. The Government through the national Universities and various medical training schools carry out training of doctors and Para-medics in Kenya.

83. Various Non Governmental Organisations (NGOs) have further provided assistance in terms of offering training courses for medical staff, prison warders, police and even judicial officers. The success of these trainings is attributable to a considerable extent, to the good cooperation between the Government and the concerned NGOs.<sup>3</sup>

84. These trainings have borne some fruits as the police force itself has identified the need to have special gender desks, diversion desks for children, complaints desks and suggestion boxes at police stations. Surveys recently carried out by reputable research bodies show that the common citizen now finds the police officers friendlier and therefore more approachable in the performance of their duties.

### **Article 11**

85. Kenya has rules and regulations governing the treatment of persons subjected to arrest and detention. These rules are contained in various Acts of Parliament annexed to this report. Currently the country is implementing a systematic reform of the legal and judicial sectors under which some of the rules and regulations have been reviewed, for example the prisons rules and regulations have been finalised while those under the Police and the Administration Police Acts are currently underway.

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<sup>3</sup> Kindly see Table 2 Annex 3 for detailed statistics of training carried out by Non Governmental Organizations.

86. In terms of notification to relatives and access to legal counsel, there is generally no major constraint. However, there have been challenges in providing facilities in the places of detention for purposes of communicating with family and legal counsel for crime suspects subjected to arrest. The general communication infrastructure in Kenya is wanting amid many competing basic needs.

87. Whereas Kenya aspires to fully comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners, it is constrained as the physical capacity of its facilities is overstretched. The prisons are currently holding more than double their capacity in terms of numbers. This is due to the fact that prisons have not been expanded with regard being had to the rise in the population.

88. The Kenya National Commission on Human Rights was established with a view to promoting the respect for human rights. The Commission is empowered to inspect detention facilities and investigate any claims of human rights abuse against persons in custody as has been stated before. In addition they have entered into partnership with some civil society organizations to visit detention facilities and give legal advice to inmates. So far the National Human Rights Body has done a very good job of guarding against excesses by public officials.

89. There are provisions in the prisons rules that allow for the appointment of independent inspectors by the Minister in charge of prisons. These inspectors make regular visits to prison facilities and make reports to the Minister. The law further provides for the appointment of visiting justices and prison ministers who may hear complaints from the prisoners especially those undergoing punishments. The visiting justices hear and address any complaints from the prisoners at any time.<sup>4</sup>

## Article 12

90. The Kenya National Commission on Human Rights, an independent and impartial statutory body, is mandated to investigate all human rights violations including torture.

91. The Police represent one level of interface between Government and the ordinary people. It is an institution of government which is in principle dedicated to serving the people. However, the nature of police work exposes the members of the force to situations where the human rights of ordinary people can be easily violated. The duties and responsibilities of the Police force include the following:

- (a) Maintaining law and order;
- (b) Preserving the peace;
- (c) Protecting life and property;
- (d) Preventing and detecting crime;

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<sup>4</sup> See Annex 4 to view the Prisons Standing Orders on the administration of prisons services.

- (e) Apprehending offenders;
- (f) Enforcing all laws and regulations that apply to the force.

92. Where police officers in the course of duty are accused of torture, they will face legal censure. Where there is a complaint of torture, the complainant is required to fill out a P3 Form (a medical examination form) which was for a long time only available at police stations. The Government is cognizant of the challenges posed by the current complaint mechanisms that could easily lend itself to partiality when the police investigate themselves. This is in addition to the well-founded fear that in the event that a police officer is the subject of a complaint, there is the likelihood of frustrating access to the medical examination form (the P3).

93. The Government is currently in the process of overhauling the whole national concept of law enforcement in order to translate and mainstream human rights values into reality in national public life. It is on this premise that H.E. the President appointed a national Task Force of eminent public and private sector personalities, including the KNCHR, in 2004 to spearhead national police reforms.

94. The Task Force is considering, among other matters for review, the creation of a joint complaints mechanism or a civilian oversight body, transfer of certain services, including issuance of P3 forms, from the police to other departments. The preliminary report of the Task Force was presented to a national stakeholder's debate in the later part of the year 2005. The final Task Force report will still be subjected to a stakeholders' forum.

95. Whatever mechanism will be proposed, the Government is keen to have in place a system that will improve the credibility of the investigations on cases of complaints against law enforcement officers in order to inspire public confidence in the complaint mechanism. It is not possible at this point to pre-empt the recommendations of the Task Force in this regard. The Government, in a move to enhance accessibility, has availed the P3 form online. Acknowledging the limitation of internet access in the country, there is a move to ensure that the forms are available in other institutions such as hospitals and other public institutions.

96. The duties of medical practitioners are to examine and treat patients in situations of torture and fill in the P3 form. In cases of compensation of torture victims, a medical practitioner has to document the degree of injuries sustained for purposes of compensation. In case of death in prison or police custody, post-mortem is mandatory. A medical officer who fills a P3 Form or performs such post-mortem is required to give evidence in court.

97. The duty of the Armed Forces is to defend the country against external aggression. In situations of armed conflict, the *Geneva Conventions Act (Cap 198)* applies. In cases of armed forces engaging in acts of torture, the Kenya Armed Forces Act provides internal mechanisms of dealing with the perpetrators of torture.

98. The Children's Act empowers the Minister responsible for children matters to constitute an independent inspection team to carry out investigations relating to torture or any other form of child-abuse in the country. Such report should be acted upon within 6 months after submission thereof.

### **Article 13**

99. Under the Criminal Procedure Code, a victim of torture or any person who witnesses torture is at liberty to, at any time in any manner; report any case of torture to any police station, police officer, administrative officers or a court of law. Such complaints will be subject to prompt and impartial investigations. There are also provisions for complaints upon delay. To monitor these complaints, there are established hotlines and emergency lines maintained on a 24-hour basis at police stations, police divisions, provincial police headquarters and Criminal Investigations Department headquarters. Similarly, the Courts of law, the Kenya National Commission on Human Rights and the Ministry of Justice also receive such complaints on telephone, fax, post, e-mail and oral petitions. The Government is also in the process of setting up a public complaints office in order to speed up the processing of the citizens' grievances against public institutions and officials.

100. In the case of prisoners who allege torture, there are established mechanisms for them of making complaints to the officer in charge of the prison, the visiting justices, prison ministers, visiting magistrates and judges, District Commissioners, their lawyers, doctors, or any other competent authority including Non-Governmental Organisation (NGOs). The NGOs, who will have received a written consent from the complainant will liaise with the relevant government department and make necessary follow-ups. The Attorney General can institute any investigations relating to torture.

101. The Parliamentary Committee on the Administration of Justice and Legal Affairs receives complaints and has powers to investigate any cases of torture. This power has not been exercised in Kenya yet except in respect of an alleged assassination of a prominent politician.

102. The President may also at any time constitute a special commission to investigate any allegations of torture. This power has not as yet been exercised in Kenya.

103. The Government recently passed the Witness Protection Bill into law, which seeks to protect those who give evidence in criminal cases or record statements with the Police or any other law enforcement agencies and as a long-term strategy, more safeguards are proposed in Kenya's draft constitution including the creation of the office of the Ombudsman.

### **Article 14**

104. The Government of Kenya has acknowledged the existence of systemic torture in the past and as one of the ways of seeking redress, the Government has sought the forgiveness of Kenyans and opened up to the public the former torture chambers at Nyayo House. There are intentions of converting the Chambers into a national monument of shame.

105. Any person who has suffered damage as a result of any injury sustained may, in addition to filing a criminal case, institute a civil suit for compensation. Section 72 (c) of the Constitution of Kenya provides that a person who is wrongfully arrested or detained by another person shall be entitled to compensation thereof from that other person.

106. The Civil Procedure Act in section 19 gives provision for any person who is seeking compensation to do so through the courts in civil suits. The courts then assess the case and give compensatory awards. The Government is in cases of abuse of human rights directed to compensate the victims.

107. There is a limitation on the amount of time one has to sue the State for compensation. The *Statute of Limitations of Actions Act, Chapter 22 Laws of Kenya in section 4* provides that the period for instituting a suit for actions founded on torts, contracts, arbitral awards, recovery of sums by virtue of a written law and actions claiming equitable relief is six years. Section 43 of the same Act provides that the same limitations shall apply in proceedings by or against the Government.

108. There are judicial remedies that a victim of torture may seek such as filing civil suits in court for compensation for pain and suffering caused as a result of the torture. This is governed by the Civil Procedure Act, Chapter 21 Laws of Kenya. Kindly refer to Article 2 (1) for details on the challenges faced in terms of compensation to torture victims.

109. In the performance of their functions the Kenya national Commission on Human Rights has powers of a court to, if satisfied that there has been an infringement of any human right or freedom, order among others the payment of compensation or any other remedy or redress. A person or authority dissatisfied with an order made by the Commission may appeal to the High Court within twenty one days of such an order.

#### **Article 15**

110. As stated in Article 2 (1), a confession or any admission of a fact tending to the proof of guilt made by an accused person is not admissible and shall not be proved as against such person unless it is made in court. The rationale behind this law is to reduce the heavy reliance of the Police on statements in their investigations, and to increase the use of forensic evidence in making their cases.

111. Circumstantial evidence is admissible in court under the accepted principles of preponderance of possibilities. These are put to rigorous tests in court. Courts are hesitant to convict solely on the basis of circumstantial evidence especially where it is not obviously conclusive.

112. Under the Criminal Law Amendment Act of 2003, all statements made by a person in Police custody are not admissible in any court of law. This has effectively wrenched the procurement of confessions from the Police and into the courts. The earlier scenario was that, without fail, whenever a confession would be produced in court, accused persons always alleged that they had been tortured to sign such confessions. The Courts in such instances would be forced to have a trial within a trial.

### **Article 16**

113. As presented in Article 2 through to 7 (and more particularly described in Annex 1) the Government has demonstrated that it does not condone any acts that tend to diminish the dignity of any human being. There are adequate laws to deter the practice of torture and other cruel, inhuman or degrading treatment or punishment by public officers. The court process has also supported this despite the challenges faced in definition and implementation.

114. As already mentioned, the Government has, in compliance with its obligations under the Convention on the Rights of the Child, set up courts that are child-friendly and where the magistrates and other officers do not wear the sombre uniform that characterise other courts. The proceedings are also simplified. Children are also not held in the same enclosures as adults.

115. Female persons in police and prison custody are held in separate facilities from male persons.

116. The ongoing prison reforms have seen prisoners receiving prison uniform, bedding and other facilities to improve the living conditions. Taken in a holistic manner, the reforms being undertaken in the prisons and police departments will lead to better accountability on the part of the officers and lead to a reduction in the instances of acts of torture prohibited under this Convention.

117. However, the state concedes that the country still has a long way to go before all issues of standards are addressed in a satisfactory manner. For example the issue of congestion. There are situations where a prison constructed to hold one hundred and fifty persons currently hold more than six hundred. (Murang'a Prison). The number of people remanded is usually larger than that of persons serving prison terms. Under the Governance Justice Law and Order Sector Reform Programmes, all these causation factors are being looked at and addressed in a holistic manner.

### **PART III**

#### **APPENDICES AND TABLES**

##### **Appendix One: Legally Punishable Offences (Articles 3, 4, 5, 6, 7, 8 and 9)**

**(a) The Constitution of Kenya**

**Protection from inhuman treatment (Section 74)**

“No Person shall be subject to torture or to inhuman or degrading punishment or other treatment.”

**(b) The Penal Code Chapter 63 of the Laws of Kenya**

**Common assault (Section 250)**

“Any person who unlawfully assaults another is guilty of a misdemeanour and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for one year.”

**(c) Assault causing actual bodily harm (Section 251)**

“Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years, with or without corporal punishment.”

**Rape (Section 140)**

“Any person who commits the offence of rape is liable to be punished with imprisonment with hard labour for life, with or without corporal punishment.”

**Indecent assault on females (Section 144)**

“Any person who unlawfully and indecently assaults any woman or girl is guilty of a felony and is liable to imprisonment with hard labour for five years, with or with corporal punishment.”

**Murder (Section 203)**

(a) “Any person who of malice aforethought causes the death of another person by unlawful act or omission is guilty of murder”;

(b) Section 204;

(c) “Any person convicted of murder shall be sentenced to death”;

(d) Section 205;

(e) “Any person who commits the felony of manslaughter is liable to imprisonment for life.”

### **Attempted murder (Section 220)**

Any person who:

(a) Attempts unlawfully to cause the death of another; or

(b) With intent unlawfully to cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life is guilty of a felony and is liable to imprisonment for life.”

### **The Evidence Act Chapter 80 of the Laws of Kenya**

Section 28 of the Evidence Act Chapter 80 now provides as follows: “No confession made by any person whilst he is in the custody of a police officer shall be proved as against such person, unless it is made in the immediate presence of:

(a) A magistrate; or

(b) A judge.

### **The Police Act Chapter 84 of the Laws of Kenya**

(a) Section 14 A (2) of the Police Act provides that: “No police officers shall subject any person to torture or to any other cruel, inhuman or degrading treatment,” Section 14 A (3) further provides that: “Any police officer who contravenes the provisions of this section shall be guilty of a felony.”

(b) The Police Act Cap 84 Laws of Kenya, Section 15 (1) states that ‘every police officer shall promptly obey all lawful orders in respect of the execution of his office which he may receive from his superiors in the Force. If a Police Officer obeys an unlawful order, then section 63 of the same Act prescribes a penalty of three months or to a fine of five thousand shillings or to both. It is important to note that this fine and penalty is for the act of carrying out an unlawful order and not for the acts that actually constitute an unlawful order. In addition the officer will be charged under the Penal Code for the acts constituting torture.



## Appendix Two: Case law on torture

**Table 1**

Case number	Nature of the case	Torture agent	Case summary
Criminal Case Number 36 of 2000	Torture	Police officers	A 12 year-old orphan died in suspicious circumstances on 1 <sup>st</sup> January 2000, which witnesses attributed to vile torture which he underwent in the hands of two administration police officers. The culprits (police officers) were arrested and charged with murder.
Inquest Number 20 of 1999/Criminal Case Number 721 of 2001	Torture	Police officers	<p>The deceased in this case died after being clobbered to death by police officers during arrest. The court order in the Inquest Number 20 of 1999 was for the arrest and prosecution of the officers.</p> <p>The officers were then charged in criminal case number 721 of 2001 for manslaughter and later acquitted under mysterious circumstances by a judicial officer who has since been removed from the bench.</p> <p>An appeal (still pending) was immediately lodged against the acquittal.</p>
Inquest Number 1 of 2001	Torture	Police officer and a Chief (Administration officer)	<p>The deceased was arrested by Police officers on 12th of October 2000, taken to a police station and released. He was however rearrested on the same day by a police officer and an administration officer (Chief).</p> <p>During the rearrest, he was handcuffed and beaten up by the officer and the chief after which he succumbed to the injuries.</p> <p>The order after the inquiry was for the arrest and prosecution of the Police officer and the Chief.</p> <p>The family of the deceased has also instituted a civil suit against the Attorney General for damages. The suit is pending in court.</p>

Case number	Nature of the case	Torture agent	Case summary
Civil case Number 1012 of 2003 (King'ong'o)	Alleged murder of inmates by Prison warders	Prison officers	Nine prison officers were charged with the murder of six inmates in September 2000. The families of the deceased have also instituted civil proceedings against the Government for the deaths. Both suits are pending before the courts.
High Court Civil Suit Number 52 of 2004	Torture of Police officers by colleagues	Police officers	<p>An armoury was broken into in Marsabit leading to the disappearance of colossal amounts of money.</p> <p>All five officers on-duty then were rounded up and tortured by their colleagues during arrest. They were later acquitted and they have since instituted a civil suit against the Attorney General, a Chief Inspector of Police &amp; the Police Commissioner.</p> <p>The matter is on-going.</p>
Inquest Number 144189 of 2003	Torture	Police officers	<p>A minor, acting through a next friend, allegedly conceived after being defiled by two police officers. After an inquest, the Police officers were arrested and charged.</p> <p>During the trial an order for a DNA test was made. The two accused persons (police officers) took part.</p> <p>DNA test results turned negative resulting in the acquittal of the said officers.</p>
Inquest number 10 of 2003	Torture	Forest Guards	<p>The Deceased, was shot dead by forest Guards in Kinangop.</p> <p>The Inquest ended with an order to prosecute the Forest Guards. However, these orders are yet to be complied with.</p>

<b>Case number</b>	<b>Nature of the case</b>	<b>Torture agent</b>	<b>Case summary</b>
Nairobi HCC Number 1084 of 2005	Unlawful presence of a foreigner in Kenya		The accused person is a foreigner charged with unlawful presence and the court ordered for his deportation. Subsequently, the accused person applied to have the court's decision for deportation quashed where temporary orders were granted.  The case is yet to come for a substantive hearing of the application.
Makadara Resident Magistrates Court Number 6111 A/05	Unlawful presence of foreigner in Kenya		The accused person, a foreigner was charged with unlawful presence in Kenya. The court heard and determined the case in favour of the accused person who was acquitted upon presentation to court of documentation in proof of his immigration status.
Chief Magistrates Court Makadara case Number 6585/04	Unlawful presence of a foreigner in Kenya		The accused was acquitted after giving sworn and documentary evidence in which he said he was a refugee seeking asylum in Kenya.

**Appendix Three: Non-governmental organisations training on torture**

**Table 2**

<b>Organisation</b>	<b>Officers trained</b>	<b>Date</b>	<b>Subject</b>
<b>The Independent Medico-Legal Unit (IMLU)</b>	24 Doctors, laboratory technicians, counselling psychologists, nurses, pharmacists and public health officials	1 <sup>st</sup> August 2005	To identify and offer medical assistance o victims and survivors of torture in prison.  To determine areas of public health concern such as sanitation, overcrowding, food and water within the prisons.
	33 Doctors	20th August 2005	Documentation of torture through reports that may be used in court.  Legal expectations of medical reports.
	1489 Administrative Police Recruits	10 <sup>th</sup> & 11 <sup>th</sup> September 2005	Incorporating human rights norms, values and tenets in policing.
	33 Prison officers	11th September 2005	Inspection mechanisms as a tool of eliminating Torture and cruel degrading treatment of persons in custody.
	23 Lawyers, Doctors and Journalists	11 <sup>th</sup> March 2006	Medico-legal investigations of torture and its utility in prevention and/or eradication of torture with special emphasis on the optional protocol to the Convention.

Organisation	Officers trained	Date	Subject
<p>The African Network for the Prevention and Protection Against Child Abuse and Neglect (ANPPCAN)</p>	<p>ANPPCAN has been involved in the training of child protection teams comprising of a Police officer, Children’s officer, a Doctor and a nurse in several districts in the country.</p> <p>In collaboration with the Government ministries/departments (Ministry of Education, Ministry of Health, the Police, Ministry of Labour and the Children’s Department) ANPPCAN has developed training curricular for teachers and the Police.</p>	<p>ANPPCAN facilitates the training of 240 Child Protection Teams annually.</p> <p>Between the year 1999 and 2003 ANPPCAN trained at least 180 police officers.</p>	<p>The curriculums developed are used to train public officers at the college level in aspects of child rights and child protection <b>including protection from torture.</b></p>

The other organisations that have undertaken the training of public officials on human rights and torture issues include The **Kenya National Commission on Human Rights** and the **Children’s legal Aid Network**.

#### **Appendix Four: Prison rules**

1. The Prisons Act Cap 90 of the Laws of Kenya section 5 gives the Commissioner Powers to administer prison services and exercise control and supervision of all prisoners. The Act further under Section 5 (2) provides that the Commissioner can make standing orders subject to the direction of the minister for the time being responsible for prisons.

2. A disciplinary court is provided for Order section 23 (1). The Courts established in each prison have powers to investigate and summon a prison officer suspected of committing a prison offence. The court can censure the officer and even dismiss such an officer found guilty. In extreme cases, the presiding officer can refer the matter to the police for further action.

3. Section 48 (2) of the Act requires the Commissioner to present a report on the general condition of the prison to the Board of Review which recommends necessary action to the Commissioner of Prisons and Attorney General.

4. The Act recognises the right of the prisoner to be heard under section 53. It stresses that for any punishment to be meted out to a prisoner, he should be given an opportunity to be heard before the meting out of the punishment.

5. The Act under Sect. 72 (2) provides for the appointment of visiting justices and prison ministers who may hear complaints from the prisoners especially those undergoing punishments. The visiting justices hear and address any complaints from the prisoners at any time. The prisons subsidiary Legislation Part IX on visiting justices stipulates the role of visiting justices as follows:

(a) Rule 106: Visiting justices shall visit the prisons to which they are appointed at regular levels and at any other time they think desirable. Visiting justice may inspect all wards, cells, separate cells, yards, and other rooms and divisions of the prison to which he is appointed and may inspect the prisoners at labour, in hospital or in separate or in other cells or wards.

(b) Rule 108: 'A visiting justice shall on every visit hear any complaints which any prisoner may wish to make to him, and shall especially inquire into the condition of those prisoners undergoing punishment.'

(c) Rule 110: 'It shall be the duty of a visiting justice to enter in the minute book, and to call the attention of the officer in charge to any irregularity in the administration of the prison which he discovers or any fault which he finds in the conduct of any prison officer or any improvement or repair which he thinks necessary to the prison building.'

(d) Rule 111: 'Provides that a report made by the chairman shall be shared with all the other visiting Board members, who will be expected to comment on it. Their comments will be sent to the minister with the report.'

6. The Prison Standing Orders under Section 5 (2) create the office of the Director of Inspection who conducts inspections in prisons and gives the report to Commissioner of Prisons.

7. Section 73 (1) of the Prisons Act provides for the Minister at the time responsible for Prisons or a judge to visit any prison to investigate the condition of the prison.

8. Prisoners can lodge complaints through their lawyers, doctors, welfare officers, spiritual leaders and the Attorney General may order inquest into the complaints. This is provided for under rule 59 (1-5) of the Prisons Subsidiary Rules.
9. Section 29 (-4) of the Prisons Act provides for the appointment by the Ministry of Health of a medical officer to be responsible for the health of prisoners and to advise the relevant authorities accordingly. However, at the moment, there is a serious shortage of this cadre of staff in Kenya prisons.
10. The complaint mechanism has raised concern though, as the first point of complaint by a prisoner would be to the officer in charge of the prison. This does not augur well for the apparent dispensing of justice when the initial report is issued to an official from the same institution that is holding the victim in custody. The Government has given its commitment to set up independent body to address such issues.
11. The Children's Act establishes the National Council for Children Services to oversee all matters relating to children and advise the government on the same. The Act prohibits and criminalises torture, cruel, inhuman and degrading treatment or punishment and further provides sanctions. It provides for rules and regulations for running of children services including homes where children deprived of their liberty are held. Based on the Beijing Rules, the Riyadh Guidelines and the UN Rules for the protection of children deprived of their liberty; a manual of operation for all staff dealing with children has been developed. The manual sets out National Standards that ensure that children deprived of their liberty are not subjected to any form of torture.
12. The manual provides for the periodic inspections whose findings are submitted to the director and the officer in-charge of the institution with a note for improvement. The recommendations in the note for improvement should be acted upon with a specified time frame and the recommendations communicated to the Director. The Act empowers the Minister to constitute an inspection team any time the need arises. The inspection report is submitted to the Minister and eventually to the National Council for children Services. The recommendations should be acted upon and a report submitted to the Minister within six months.

**List of annexes**

1. The Constitution of Kenya
2. The Penal Code Chapter 63 of the Laws of Kenya
3. The Administration Police Act Chapter 85 of the Laws of Kenya
4. The Chiefs' Authority Act Chapter 128 of the Laws of Kenya
5. The Prisons Act Chapter 90 of the Laws of Kenya
6. The Children Act Chapter 8 of the laws of Kenya
7. The Criminal Law Amendment Act of 2003
8. The Community Service Orders Act Chapter 10 of the Laws of Kenya
9. The National Social Security Intelligence Act Chapter 11 of the Laws of Kenya
10. The Preservation of Public Security Act Chapter 57 of the Laws of Kenya
11. The Geneva Conventions Act Chapter 198 of the Laws of Kenya
12. Immigration Act Chapter 172 of the Laws of Kenya
13. Extradition (Contiguous and Foreign Countries) Act Chapter 76
14. The Extradition (Commonwealth Countries) Act Chapter 77 of the Laws of Kenya
15. The Statute of Limitation of Actions Act Chapter 22 of the Laws of Kenya
16. The Civil Procedure Act Chapter 21 of the Laws of Kenya
17. The Witness Protection Act
18. The Refugees Act

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