

# KENYA

## Follow Up Report to the HR Committee NGO Report from Independent Medico Legal Unit (IMLU) July 2015

CCPR/C/KEN/CO/3

Follow-up report from the Government:  
Due date: July 2013  
Submitted in February 2014

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### Assessment Grades of the Human Rights Committee for the State follow-up reply/action (as of Dec 2014)

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#### Reply/action satisfactory

A: Response largely satisfactory

#### Reply/action partially satisfactory

B1: Substantive action taken, but additional information required

B2: Initial action taken, but additional information and measures required

#### Reply/action not satisfactory

C1: Response received but actions taken do not implement the recommendation

C2: Response received but not relevant to the recommendations

#### No cooperation with the Committee

D1 No response received within the deadline, or no reply to a specific question in the report

D2 No response received after reminder(s)

#### The measures taken are contrary to the Committee's recommendations

E: The response indicates that the measures taken are contrary to the Committee's recommendations

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## Summary of the assessment

Recommendation in par. 6	Grade	Overview
The State party should strengthen its efforts to increase the participation of women in the public and private sectors, and where necessary, through appropriate temporary special measures to give effect to the provisions of the Covenant. In this regard, the Committee recommends that the State party ensure that the two-thirds rule enunciated by the new Constitution is implemented as a matter of priority.	<b>B2</b>	The role of women in the 2013 election is slightly better compared to the 2007 election due to the seats reserved for women. There are no women out of 47 Governors and only 9 women appointed as Deputy Governors (out of 47). There are 6 women out of 18 Cabinet Secretaries. There are 2 women out of 7 members of the Supreme Court.
Furthermore, the Committee urges the State party to include in its next periodic report, disaggregated statistical data on the representation of women in the private sector.	<b>B2</b>	The National Gender and Equality Commission (NGEC) is mandated to gather statistical data regarding the representation of women. Initial statistics on the participation of women in the public sector are already available.
Recommendation in par. 13	Grade	Overview
The State party should, as a matter of urgency, pursue all cases of post 2007 election violence to ensure that all allegations of human rights violations are thoroughly investigated and that the perpetrators are brought to justice, and that victims are adequately compensated. In this regard, the State party should ensure that the recommendations of the Commission of Inquiry into the Post-Election Violence (Waki Inquiry) are duly implemented.	<b>C</b>	Regarding the investigation and prosecution of the violence, very little was done. In February 2014, the Director of Public Prosecutions of Kenya (DPP) said that none of the 4'000 cases related to PEV could be prosecuted due to the lack of evidence. None of them were forwarded to the Court. Recent figures show that only four cases are currently reviewed by the Courts. All four cases are related to sexual gender based violence and are still pending
Recommendation in par. 16	Grade	Overview
The State party should take urgent measures to address overcrowding in detention centres and prisons, including through increased resort to alternative forms of punishment such as parole and community service.	<b>C</b>	Regarding the overcrowding in prisons, the 2013 Presidential Pardon allowed the release of more than 4'000 detainees and therefore the situation has slightly improved. Alternative sentences slightly are more frequently pronounced by the Courts.
The State party should also ensure that allegations of torture and ill-treatment are effectively investigated and that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that the victims are adequately compensated.	<b>C</b>	Recent reports revealed several incidences of torture and ill-treatment by State officials, in particular the law enforcement agencies. Similarly in 2013, IMLU documented 138 cases of torture cruel inhuman and degrading treatment by state agencies. Of these cases the Kenya Police were responsible for 105 cases and the Administration Police 13 cases. This means that members of the National Police Service were responsible for 118 cases (85% of the cases).
The State party should ensure that law enforcement personnel continue to receive training on torture and ill-treatment by integrating the 1999 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) in all training programmes for law enforcement officials.	<b>N/A</b>	
The State party should ensure that the Prevention of Torture bill includes a definition of torture that is in line with article 1 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment.	<b>C</b>	NGOs recall that torture and ill treatment often occur in the first hours of detention. In this context they are concerned by the fact that the article 49 of the Constitution which requires to present detainees before a judge within 24-hours upon arrest is not respected. It is not confirmed that the Prevention of Torture Bill will be passed by the end of 2014 but on a positive note there is a lot of will power from the Office of the Attorney General. The draft is in line with the requirement of the Convention against Torture.

## Detailed Assessment

### Paragraph 6:

While welcoming the establishment of the National Gender and Equality Commission and the inclusion of the principle in article 27(8) of the Constitution that requires that “no more than two-thirds of members of elective and appointive bodies shall be of the same gender”, the Committee notes with concern that women remain underrepresented in the public sector and other elected and appointed bodies. The Committee is also concerned at the lack of data on the representation of women in the private sector (arts. 2, 3 and 26).

Recommendation from the HR Committee	Grade	Action taken by the State	Additional measures needed Other comments
<p>The State party should strengthen its efforts to increase the participation of women in the public and private sectors, and where necessary, through appropriate temporary special measures to give effect to the provisions of the Covenant. In this regard, the Committee recommends that the State party ensure that the two-thirds rule enunciated by the new Constitution is implemented as a matter of priority.</p>	<p><b>B2</b></p>	<p><b>A) Legislative branch:</b> The 2013 general election was the first one in Kenya to have some form of affirmative action. 47 County representatives' seats were specifically reserved for women in the National Assembly. In addition 16 women were elected on the regular lists of candidates (out of 290 constituency seats) and 6 other women were nominated to fill in half of the special interest seats (representing persons with disabilities, youth, minorities, marginalised groups). In total, there are currently 69 women in the National Assembly out of 350 members (19.7%). Regarding the Senate, there are 18 women (26%), all directly nominated. None of them were elected. Nominated members have no right to vote with respect to County issues, which constitutes the bulk of Senate's business. There were 88 women directly elected in the County Assemblies out of a total of 1450 elected members. Additional women were nominated through affirmative action to achieve a one-third representation in each of the 47 County Assemblies.</p> <p><b>B) Executive branch:</b> There are no women out of 47 Governors and only 9 women appointed as Deputy Governors (out of 47). There are 6 women out of 18 Cabinet Secretaries (Ministers).</p> <p><b>C) Judicial branch:</b> There are 2 women out of 7 members of the Supreme Court.</p> <p><b>Full application of the two-thirds rule will not take place before 2015</b> In a majority advisory opinion of December 2012, the Supreme Court stated that the two-third gender rule was to be “realized progressively” with respect to Parliament (five-year framework) <b>and gave the date of 27<sup>th</sup> August 2015 to have a mechanism in place in view of the 2017 general election.</b> In August 2015, the Government proposed a bill amending the Kenyan constitution with the aim to implement the rule of a maximum of two-thirds of either gender in parliament through a top-</p>	<p>The role of women in the 2013 election is slightly better compared to the 2007 election. This is mainly due to the seats reserved for women (County women representatives). However, the negative aspect of the list reserved for women is that they were frequently prevented to run under the regular lists of candidates, which were mainly reserved for men. Although the 47 County women have the same mandate as other members of the Parliament, they frequently consider themselves and are considered by others as second-class members.</p> <p>In addition, some women running for the 2013 election faced physical violence during the race. Findings<sup>1</sup> by African Women &amp; Child Feature Services indicate that most women who experienced violence were those who were aspiring for the post of Member of Parliament, MP at 37.2% followed by Gubernatorial (20.9%), Senatorial (19.8%), County Representatives (9.4%), Women representatives (8.1%), Presidential (4.7%). The assessment reveals that violence targeting women candidates mainly occurred during the party nomination stage (42.2%) which took place in second half of January 2013 followed by the campaigns (33.7%), registration of voters by the electoral body (22.9%) and on the Election Day (1.2%). The main perpetrators of violence against women aspirants were members of their own political alliances (38.5%), their political competitors (22%), organized / mobilized gangs (19.8%), election officials (16.5%) and security officials / police (3.3%).</p> <p><b>2) Women in the private sector</b> NGEC launched a “Project on Equality and Inclusion in the Private Sector” (EIPS) with some major companies operating in Kenya (Safaricom, Equity Bank and Nation Media Group). The aim of this project is to “promote the inclusion of persons with disability, women, youth, older persons marginalized groups and minorities”. Based of the results of this first phase,</p>

<sup>1</sup> Electoral Violence Targeting Women Aspirants in the 2013 General Elections in Kenya Print Media Monitoring Report.

		<p>up mechanism. <b>The draft government bill is minimalistic, as further provisions will have to be amended</b> (Elections and Political Parties Acts, Elections Regulations, etc.) in order to ensure more women are nominated to run for open seats and that women's nomination for top-up seats is competitive.</p> <p>It is of concern that <b>the 20-year sunset clause has been maintained</b>, and applies to all legislative bodies (National Assembly, Senate and County Assemblies). For the latter it is therefore a setback. At present the top-up mechanism under Art. 177 of the Constitution applies to the county level with no deadline. But this top-up mechanism shall also lapse in 2037 along with those that the bill proposes to introduce at the national level. The reserved seats for women as they exist today in parliament will remain after this date. However no such arrangement exists at the county level.</p> <p>In addition, the bill introduces <b>the principle of a maximum of two mandates on a special seat</b>. But this restriction only applies to special interest seats (youth, persons with disabilities) and to top-up seats. It therefore exonerates the 47 women county representatives at the National Assembly and the 16 nominated seats for women in the Senate.</p>	<p>similar activities will be launched at a broader level.</p>
<p>Furthermore, the Committee urges the State party to include in its next periodic report, disaggregated statistical data on the representation of women in the private sector.</p>	<p><b>B2</b></p>	<p>The National Gender and Equality Commission (NGEC) is mandated to gather statistical data regarding the representation of women in the public and private sectors. Initial statistics on the participation of women in the public sector are already available. NGEC is carrying out further research to provide statistics regarding women representation in particular in the private sector.</p>	

**Paragraph 13:**

While noting the efforts by the State party to cooperate with the International Criminal Court in prosecuting those who bear the greatest responsibility for the post 2007 election violence and the continuing work of the Truth, Justice and Reconciliation Commission (TJRC), the Committee regrets the lack of investigations and prosecutions of the other categories of perpetrators which exacerbates the climate of impunity that prevails in the State party (arts. 2, 6 and 7).

Recommendation from the HR Committee	Grade	Action taken by the State	Additional measures needed Other comments
<p>The State party should, as a matter of urgency, pursue all cases of post 2007 election violence to ensure that all allegations of human rights violations are thoroughly investigated and that the perpetrators are brought to justice, and that victims are adequately compensated.</p> <p>The State party should ensure that the recommendations of the Commission of Inquiry into the Post-Election Violence (Waki Inquiry) are duly implemented.</p>	<p><b>C</b></p>	<p>Based on the recommendations of the Waki Commission, the Truth and Justice Reconciliation Commission (TJRC) completed its report and transmitted it to the President on the 21st May 2013. In spite of the elaborate timelines that had been established in the Truth Justice and Reconciliation Commission Act there is delay in the implementation of the report. In August 2013, the National Assembly passed the Truths Justice and Reconciliation Commission Amendment Act, which gave the National Assembly powers to revise the report. The report is yet to be published by the government printers and tabled before the National Assembly. This has caused undue delay in the implementation of the recommendations in the TJRC report.</p> <p>Regarding the investigation and prosecution of the violence, very little was done. The Judicial Service Commission Committee (JSCC) was created to assess the possibility of establishing an "international crimes division in the High Court of Kenya" to investigate post-elections violence cases. The JSCC report, made public in October 2012, supports the establishment of such a division<sup>2</sup>. So far, there has been no progress toward this proposal. In 2013, several NGOs raised concerns regarding this situation.</p> <p>In February 2014, the Director of Public Prosecutions of Kenya (DPP) said that none of the 4'000 cases related to PEV could be prosecuted due to the lack of evidence<sup>3</sup>. None of them were forwarded to the Court. Recent figures show that only four cases are currently reviewed by the Courts. All four cases are related to sexual gender based violence and are still pending<sup>4</sup>.</p>	<p>The Independent Policing Oversight Authority (IPOA) was established through an Act of Parliament published in November 2011 to provide for civilian oversight over the work of the police in Kenya. The Authority has been in existence for the last two years. They deal with complaints from members of public and even police officers on the conduct of members of the National Police Service. IPOA has been plagued by numerous challenges including limited human and financial resources (more information available at <a href="http://www.ipoa.go.ke">http://www.ipoa.go.ke</a>).</p>

<sup>2</sup> See ICTJ Briefing paper <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Kenya-Prosecutions-2013.pdf>

<sup>3</sup> <http://mobile.nation.co.ke/blogs/International-Crimes-Division-bring-accountability/-/1949942/2197978/-/format/xhtml/-/ch6vpg/-/index.html>

<sup>4</sup> See <http://www.icj-kenya.org/index.php/media-centre/news/596-hearing-of-the-pev-sexual-gender-based-violence-case-begins-in-court>. As background information on the prosecutions of PEV case, see the FIDH-KHRC 2013 report: "The information I have is that the government gazetted a multi-agency task force on 20th April 2012. Its mandate was retrospective to begin on 6th February 2012. The Task Force was comprised of members drawn from the Office of the Director of Public Prosecutions (DPP), the State Law Office, the Ministry of Justice, National Cohesion and Constitutional Affairs, the Witness Protection Unit and the Police Service. The task force's mandate was to review the 6000 cases arising out of the 2007/2008 PEV that had been arbitrarily shelved by the office of the Attorney General. The Attorney General's office after an internal audit in 2009 had indicated that only 156 of these cases had been investigated and they all related to relatively minor offenses, such as theft, house-breaking, malicious damage to property, publishing false rumors, criminal possession of offensive weapons, and robbery

		The Waki Commission also recommended to undertake a "comprehensive reform of the Kenya Police Service and Administration Police" as well as to "establish an 'Independent Police Conduct Authority' to investigate police conduct and provide civilian oversight". An Independent Policing Oversight Authority (IPOA) was established in 2011.	
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**Paragraph 16:**

The Committee is concerned at continued reports of overcrowding, torture and ill-treatment in prisons and places of detention by law enforcement personnel. The Committee is also concerned that the Prevention of Torture bill has not yet been enacted into law (arts. 7 and 10).

Recommendation from the HR Committee	Grade	Action taken by the State	Additional measures needed Other comments
<p>The State party should take urgent measures to address overcrowding in detention centres and prisons, including through increased resort to alternative forms of punishment such as parole and community service.</p>	<p><b>C</b></p>	<p><b>Situation in Prisons</b>                      The <b>2012 presidential pardon allowed 6'700 inmates to be released</b>. 2'850 of those released were petty offenders, 2'586 first time offenders, 1'227 ordinary prisoners who had less than 9 months before completion of their sentences and 37 were released on account of being over 65 years and terminally ill. Figures also revealed that in 2013 50 remarkable inmates were released by the President to celebrate the 50 years of the Kenyan independence. The inmates however had to be vetted by the Power of Mercy Committee. The <b>2013 presidential pardon allowed the release of more than 4'000 detainees</b> and therefore the situation has slightly improved.                      Alternative sentences slightly are more frequently pronounced by the Courts, in line with the related provision of the Article 49(2) of the Constitution which provide: "A person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months". The Constitution also promotes the use of alternative dispute resolution mechanisms including traditional dispute resolution mechanisms. Article 159(2) of the Constitution. However the reality is that a good number of cases still continue to be examined by the courts.</p> <p><b>The persons deprived of Liberty Act 2014 was enacted in December 2014 and signed into law.</b> The act provides for the humane treatment of persons detained, held in custody or imprisoned and gives effect to the provisions of international human rights instruments. The obligations of law enforcement officers and private persons in authority in relation to persons deprived of liberty are clearly set out in the Act.</p> <p>In August 2014 the Chief Justice appointed a task force to develop Bail and Bond Guidelines. The objective of the guidelines is to harmonize the practice of issuance of bail by the courts and the police to ensure that they comply with the provisions of the Constitution. The guidelines will ensure that affordable bail terms are accorded to pre-trial detainees hence reduce the prison population</p>	

<p>The State party should also ensure that allegations of torture and ill-treatment are effectively investigated and that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that the victims are adequately compensated.</p>	<p><b>C</b></p>	<p><b>Torture and Il-treatment</b>  Recent reports revealed several incidences of torture and ill-treatment by State officials, in particular the law enforcement agencies<sup>5</sup>. Similarly in 2013 and 2014, <b>IMLU documented a total of 278 cases of torture cruel inhuman and degrading treatment by state agencies</b>. Of these cases the National Police Service officers were responsible for 213 of all the cases documented which is 76.6%.  Section 95 of the National Police Service Act of 2011 prohibits torture by police officers and provides for a penalty of 25 years if a person is found guilty for the offence of torture and 15 years for a person found guilty of acts amounting to cruel, inhuman and degrading treatment. However no police officer has been charged under this provision. This only entrenches the culture of impunity among police officers.  In 2014 IMLU undertook a survey on Torture and Ill-treatment of hawkers within the County of Nairobi. <b>It emerged that the County Law enforcement officers are responsible for 91.6% of the acts of torture</b>. The report further indicates that though 47.4% of the victims of torture and ill-treatment reported the cases to the police no action was taken in 78% of the reported cases.<sup>6</sup>  In June 2014 the then Cabinet in charge of internal Security Joseph ole Lenku acknowledged that the state owed victims of torture Ksh 250,000,000.00 in compensation. However since there was no budget to pay their awards they had to wait to longer before they receive the money.<sup>7</sup>  NGOs also documented several cases of torture and ill-treatment that occurred in the context of the fight against terrorism in the East and Horn of Africa, including cases of extrajudicial killings and torture of young Muslims by the "Anti-Terrorism Police Unit"</p>	<p>The state should ensure that all cases of torture and ill-treatment and extra judicial executions are investigated and perpetrators prosecuted. This will ensure that the culture of impunity among state agencies is not accepted.</p>
<p>The State party should ensure that law enforcement personnel continue to receive training on torture and ill-treatment by integrating the 1999 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) in</p>	<p><b>N/A</b></p>		

<sup>5</sup> See the Report "An Assessment by Stakeholders of Government's performance in implementation of UPR recommendations", Kenya UP stakeholders coalition, p. 30

<sup>6</sup> See the report **A Cry for Justice: Torture and ill-treatment of Hawkers and Small Scale Traders in Nairobi City County** available on [www.imlu.org](http://www.imlu.org)

<sup>7</sup> <http://mobile.nation.co.ke/news/Torture-victims-to-wait-longer-for-cash>



<p>all training programmes for law enforcement officials.</p>			
<p>The State party should ensure that the Prevention of Torture bill includes a definition of torture that is in line with article 1 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment.</p>	<p><b>C</b></p>	<p>NGOs recall that torture and ill treatment often occur in the first hours of detention. In this context they are concerned by the fact that the article 49 of the Constitution which requires to present detainees before a judge within 24-hours upon arrest is not respected.</p> <p><b>Adoption of the Prevention of Torture Bill</b></p> <p>In 2011 several NGOs and the Kenya National Commission on Human Rights (KNCHR) in collaboration with the then Ministry of Justice drafted the Prevention of Torture Bill. The draft Bill was presented to the then Minister of Justice the late Hon Mutula Kilonzo. However it was never presented to parliament. In 2014 the Bill was reviewed by IMLU in partnership with the Department of Justice and it was presented to the Attorney General on 27<sup>th</sup> October 2014. There seems to be a lot of will power for the enactment of the Bill from the Office of the Attorney General.</p> <p>The draft is considered to be in line with the requirement of the Convention against Torture, in particular the definition set in the article 1.</p>	<p>The state should fast-track the enactment of the Prevention of Torture Bill</p>