



## OMCT E-Bulletin June 2022

### 73<sup>rd</sup> Session of the Committee Against Torture

This E-Bulletin is part of the OMCT's Anti-Torture Programme. The OMCT mobilises and coordinates activities of civil society organisations during the sessions of the United Nations Committee Against Torture (CAT). It facilitates the engagement of civil society by building coalitions, sharing information, ensuring timely and effective report submissions, advising on advocacy opportunities and supporting effective access to the CAT. Find out more about our work on our [website](#).

#### **Kenya**

##### *Excessive Use of Force and Violations of the Rights of Migrants and LGBTI Persons*

During the consideration of the third periodic report of Kenya, the Committee remained deeply concerned about: provisions of the Prevention of Torture Act; conditions of detention; excessive use of force, extrajudicial killings and forced disappearances; gender and sexual orientation-based discrimination and violence; treatment of refugees, migrants and stateless persons; and counter-terrorism measures.

The Committee welcomed the adoption of the 2017 Prevention of Torture Act, which establishes torture as a separate offence. However, the purposes of torture contained in the Kenyan law seem to be of a limited rather than illustrative nature.

The Committee was extremely concerned about acts of violence and excessive use of force during arrests or demonstrations by law enforcement officers, especially during the 2017 elections, during efforts to control the COVID-19 pandemic, and during counter-terrorism operations, including during the Usalama Watch Operation in 2014. Numerous cases of arbitrary arrests and detention, extortion, forcible relocation, refoulement, extrajudicial killing, torture, sexual and gender-based violence and enforced disappearance, which were perpetrated by State officials, particularly the police anti-terrorist unit, remained without investigations or prosecutions and create an environment of impunity. The Committee recommended prompt, impartial and effective investigations into such cases to ensure the prosecution of alleged perpetrators and adequate compensation for the victims. To this end, it urged the State party to train State officers on the use of force and expedite the establishment of the National Coroners Service for independent forensic examination in cases of extrajudicial killings.

Further, the Committee focused on overcrowding and poor material conditions in places of detention. It highlighted the inadequate hygiene, lack of ventilation, poor quality and insufficient

quantity of food and water, limited access to rehabilitation for the prisoners, and the prevalence of violence by the staff against the detainees. The Committee recommended bringing conditions of detention in line with the Mandela Rules by reducing prison overcrowding.

The Committee was deeply concerned about the continued sexual and gender-based violence, especially during the COVID-19 Pandemic, including domestic violence and marital rape. The Committee recommended ensuring awareness and implementation of the national laws on these crimes, prosecuting the perpetrators, especially those of the 2007 and 2017 elections, and ensuring that victims have access to reporting and medical forms, adequate reparations and psychosocial and material support. The Committee was also deeply concerned about the continued practice of female genital mutilation (FGM) among some communities and recommended the State eradicate the harmful practice through raising awareness and prosecuting and punishing perpetrators.

The Committee also expressed concerns about the continued criminalisation of same-sex relations, as well as reports of discrimination, harassment and violence against LGBTI individuals. The LGBTI community regularly face violence from law enforcement and vigilante groups, as well as barriers to accessing justice and remedies.

Finally, the Committee was concerned about the intended closure of the Daadab refugee camp risking mass expulsion, involuntary repatriation and refoulement of a very large number of Somali and South Sudanese refugees, potentially putting them at risk of being detained, tortured or killed upon their return to their country of origin. In particular, LGBTQI refugees and asylum seekers are subjected to refoulement on a de facto basis of their sexual orientation and gender identity.

**Issues for follow-up:**

- ❖ Extrajudicial killings, enforced disappearances and excessive use of force
- ❖ National Human Rights Commission
- ❖ Female Genital Mutilation

**Read more:** [Concluding Observations](#), [Meeting Summary](#) and [webcast](#).

## OMCT Submissions

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### KENYA

The OMCT contributed to an extensive joint [alternative report](#) headed by the Independent Medico-Legal Unit (IMLU), in Kenya, on which 24 CSOs, both Kenyan and international, collaborated. The result is a comprehensive overview of both the legal status and practice of torture in Kenya, which raises issues of concern while offering recommendations for each area. Despite positive legislative developments regarding torture, such as the Prevention Against Torture Act, the report finds that in practice there had been little implementation. IMLU documented 419 cases of torture between 2019 to 2021, an increase from previous years. Excessive use of force and extrajudicial killings by police or State forces are also reported to have increased, and there had been little progress in investigations and prosecutions of State officials for these acts. The report also includes recommendations on: reparations and redress for victims of torture; violence against women, including rape and female genital mutilation; counter-terrorism measures; discrimination and torture against the LGBTQI+ community; mental health; monitoring and accountability mechanisms for torture; and refugees and asylum seekers.