



**The Republic of Kenya’s  
Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading  
Treatment or Punishment:  
Suggested List of Issues Prior to Reporting Relating to the Death Penalty**

**Submitted by The Advocates for Human Rights**  
a non-governmental organization in special consultative status with ECOSOC since 1996

**International Commission of Jurists—Kenyan Section  
Reprive**

**The Kenya Human Rights Commission  
The Cornell Center on the Death Penalty Worldwide  
and  
The World Coalition Against the Death Penalty**

for the 82<sup>nd</sup> Session of the Committee against Torture  
7 April–2 May 2025

Submitted 13 January 2025

**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

**The World Coalition Against the Death Penalty** is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

**The International Commission of Jurists—Kenyan Section (ICJ Kenya)** is a non-governmental, non-profit and a member-based organization. Established in 1959, ICJ Kenya is the only autonomous national section of ICJ based in Geneva, Switzerland. ICJ Kenya is registered as a Society under the Societies Act, Chapter 108, Laws of Kenya. The organization has a membership drawn from the Bar and the Bench. ICJ Kenya seeks to promote a just, free and equitable society. ICJ Kenya is a member of the World Organization Against Torture (OMCT) SOS-Torture Network and the East African Coalition on the Abolition of the Death Penalty. ICJ Kenya has observer status with the African Commission on Human and Peoples’ Rights.

**The Kenya Human Rights Commission (KHRC)** is a premier and flagship non-governmental organization in Africa with a mandate of enhancing human rights centered governance at all levels, a vision of a society of free people and a mission to root human dignity, freedoms and social justice in Kenya and beyond. KHRC works with more than thirty Human Rights Networks (HURINETs) and other grassroots community organizations based in more than thirty counties in Kenya; partners with more than thirty national level state- and non-state actors and coalitions; and more than fifty sub-regional, regional and international human rights organizations and networks. The KHRC has been recognized for countless, remarkable accomplishments, including but not limited to sustaining tenacity, resilience and commitment to provide the requisite political and technical responses and leadership to key human rights, governance and transitional justice issues at all the levels in society, building rights movements through facilitation of community-based human rights networks and incubation and support of nascent human rights organizations at the national, regional and international level. KHRC's work around abolition of the death penalty has entailed policy, advocacy and legal interventions that are aimed at complete abolition of the death penalty in Kenya. To this end, KHRC has been able to advocate for complete abolition of the death penalty at the national and transnational level. KHRC is a member of the World Coalition Against the Death Penalty.

**Reprieve** is a charitable organization registered in the United Kingdom (No. 1114900) in special consultative status with the United Nations Economic and Social Council (ECOSOC) that provides free legal and investigative support to those who have been subjected to state-sponsored human rights abuses. Reprieve clients belong to some of the most vulnerable populations in the world. Reprieve protects the rights of those facing the death penalty and delivers justice to victims of arbitrary detention, torture, and extrajudicial execution.

**The Cornell Center on the Death Penalty Worldwide** is a US-based research, advocacy, and training center focused on capital punishment and international law. It publishes reports and manuals on death penalty issues, provides transparent data on death penalty laws and practices around the world, trains capital lawyers in best practices, and engages in targeted advocacy and litigation. Its staff and faculty advisors have collectively spent more than eight decades representing hundreds of prisoners facing the death penalty. In 2019 it was awarded the World Justice Challenge Award in recognition for its work on behalf of death-sentenced prisoners in Malawi.

## EXECUTIVE SUMMARY

1. Kenya has not carried out any executions since the late 1980s. Nonetheless, courts continue to hand down death sentences without providing the heightened fair trial protections that international standards require in capital cases. Additionally, authorities have violated the prohibition against *non-refoulement* by forcibly repatriating people to countries that practice the death penalty and engage in other human rights abuses. Kenya should formally abolish the death penalty, commute the sentences of all persons on death row, revise laws to remove capital punishment from the list of available sentences, and investigate and prohibit the forced repatriation of foreign nationals to countries where they face the threat of the death penalty or other serious human rights violations.

### **Kenya fails to uphold its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

#### **I. Death Penalty (Concluding Observations para. 34)**

2. In its 2022 Concluding Observations, the Committee against Torture expressed concern that, despite the existence of a *de facto* moratorium on the death penalty, Kenya continued to sentence individuals to death, “including for relatively less serious offences, and that death row inmates face conditions of detention that, in and of themselves, can amount to ill-treatment.”<sup>1</sup> And while observing that Kenya had taken steps to implement the 2017 ruling in *Francis Karioko Muruatetu and another v. Republic of Kenya and five others*, which found the mandatory imposition of the death penalty for murder as outlined in section 204 of the Penal Code to be unconstitutional, the Committee expressed concern that courts have interpreted the *Muruatetu* decision to allow for the mandatory imposition of the death penalty for crimes other than murder.<sup>2</sup>
3. The Committee also expressed concern that Kenya has not provided concrete information as to when the resentencing of eligible death row inmates will likely conclude.<sup>3</sup> Finally, the Committee expressed concern that Kenya has failed to take concrete steps to “implement the recommendation of the Task Force on the implementation of the Supreme Court ruling on the death penalty to abolish the death penalty.”<sup>4</sup>
4. Kenya has not carried out an execution since 1987,<sup>5</sup> and in 2023, Kenya commuted 606 death sentences.<sup>6</sup> Despite this progress, courts have stepped up the application of the death penalty,

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<sup>1</sup> Committee Against Torture, *Concluding observations on the third period report of Kenya*, ¶ 33, (May 30, 2022). U.N. Doc. CAT/C/KEN/CO/3.

<sup>2</sup> Committee Against Torture, *Concluding observations on the third period report of Kenya*, ¶ 33, (May 30, 2022). U.N. Doc. CAT/C/KEN/CO/3.

<sup>3</sup> Committee Against Torture, *Concluding observations on the third period report of Kenya*, ¶ 33, (May 30, 2022). U.N. Doc. CAT/C/KEN/CO/3.

<sup>4</sup> Committee Against Torture, *Concluding observations on the third period report of Kenya*, ¶ 33, (May 30, 2022). U.N. Doc. CAT/C/KEN/CO/3.

<sup>5</sup> Mary Kulundu, *No, Kenya is not introducing the death penalty for wildlife poachers*, Fact Check, Apr. 12, 2019, available at: <https://factcheck.afp.com/no-kenya-not-introducing-death-penalty-wildlife-poachers> (last visited Nov. 27, 2024).

<sup>6</sup> Amnesty International, *Africa: Countries on the cusp of abolition must take a stand against the death penalty*, Oct. 10, 2024, available online at: <https://www.amnesty.org/en/latest/news/2024/10/africa-countries-on-the-cusp-of-abolition-must-take-a-stand-against-the-death-penalty> (last visited Dec. 6, 2024).

handing down 79 death sentences in 2022 and 131 in 2023.<sup>7</sup> As of October 9, 2024, 166 persons (163 men and 3 women) were on death row. This figure may continue to increase. Some people who were sentenced to the now-unconstitutional mandatory death penalty have been resentenced to death,<sup>8</sup> while thousands more who are serving whole life sentences while awaiting resentencing are at risk of being resentenced to death.<sup>9</sup>

5. The following subsections address each of the Committee's 2022 recommendations concerning the death penalty in turn:

*Expedite Muruatetu implementation* (Concluding Observations para. 34(a))

6. The Committee recommended that Kenya “[e]xpedite the process of amending section 204 of the Penal Code [which provides for a mandatory death penalty for murder] and resentencing eligible death row inmates in accordance with the Supreme Court’s ruling” in *Muruatetu*.<sup>10</sup>
7. In *Muruatetu*, a court had convicted the petitioners of murder and issued the then-mandatory sentence of death. The Supreme Court held that the mandatory death penalty for murder was unconstitutional.<sup>11</sup> The Court found that the mandatory death sentence deprived judges of their right to consider mitigating circumstances and deprived convicted persons of their right to appeal their sentences.<sup>12</sup> The Court further held that the mandatory death sentence was an unfair and unjust procedure for the termination of life.<sup>13</sup> In rendering its decision, the Court concluded that the mandatory death penalty violated a person’s right to dignity, justice, and equality.<sup>14</sup>
8. Following the *Muruatetu* decision, the Court gave public agencies one year to prepare a plan for resentencing hearings for persons sentenced to death for murder.<sup>15</sup> The Court also directed the National Assembly and Senate to draw up amendments to the law to comport with the *Muruatetu* decision.
9. Originally the hope was that *Muruatetu* would lead to a coherent resentencing regime, however resentencing decisions have since been inconsistent and at times unpredictable. The State has not yet established an adequate and consistent resentencing regime taking into account the scale of resentencing decisions needed. This shortcoming impacts resentencing cases at several

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<sup>7</sup> Death Penalty Information Center, *Executions Around the World*, available online at: <https://deathpenaltyinfo.org/policy-issues/international/executions-around-the-world> (last visited Nov. 27, 2024).

<sup>8</sup> Information on file with Reprieve.

<sup>9</sup> The Death Penalty Project, *Pathways to Justice: Implementing a Fair and Effective Remedy following Abolition of the Mandatory Death Penalty in Kenya*, 2019, available at: DPP Kenya Report - Jan19 v2.indd (deathpenaltyproject.org).

<sup>10</sup> Committee Against Torture, *Concluding observations on the third period report of Kenya*, ¶ 34, (May 30, 2022). U.N. Doc. CAT/C/KEN/CO/3.

<sup>11</sup> Jacqueline Mwangi, *Francis Karioko Muruatetu v Republic*, 112 Am. J. Int’l L. 709 (Oct. 2018).

<sup>12</sup> Jacqueline Mwangi, *Francis Karioko Muruatetu v Republic*, 112 Am. J. Int’l L. 709 (Oct. 2018).

<sup>13</sup> Jacqueline Mwangi, *Francis Karioko Muruatetu v Republic*, 112 Am. J. Int’l L. 710 (Oct. 2018).

<sup>14</sup> Lilian Chenwi, *The Downfall of the Mandatory Death Penalty in Kenya*, 63 J. Afr. L. 25, 43-45 (2019); *see also* Andrew Novak, *The Judicial Dialogue in Transnational Human Rights Litigation: Muruatetu & Anor v Republic and the Abolition of the Death Penalty in Kenya*, 18 Hum. Rts. L. Rev. 771, 785-87 (2018).

<sup>15</sup> Carmel Rickard, *Death Penalty Case Re-Visited by Kenya Supreme Court*, African Lii, Jul. 9, 2021, available online at <https://africanlii.org/article/20210709/death-penalty-case-re-visited-kenya-supreme-court> (last visited Nov. 27, 2024).

stages, including the initial fact-finding stage due to missing case records and difficulties retrieving case records in general.

10. Progress on all fronts has been very slow. In the interim, lower courts have been confused as to how to deal with sentencing and have been applying their own interpretations of the decision.<sup>16</sup> In July 2021, the Supreme Court concluded that the National Assembly, Senate, Attorney General, and the Kenya Law Reform Commission had failed to meet the Court's deadline for revisions to the country's death penalty scheme.<sup>17</sup> The Court issued special directions, noting with concern that some magistrates had entertained applications for resentencing in cases where they lacked jurisdiction.<sup>18</sup> The guidelines clarified that *Muruatetu* applied only to murder convictions and that all persons who had been sentenced to death by virtue of the mandatory death penalty for that crime were entitled to resentencing hearings.<sup>19</sup> The Court also clarified that people sentenced to death for other crimes falling under the scope of the mandatory death penalty are ineligible for resentencing under *Muruatetu*.<sup>20</sup>
11. Despite these new judicial guidelines, the sentencing structure in capital cases remains unclear.<sup>21</sup> In 2023, the Judiciary gazetted the amended Sentencing Policy Guidelines, 2023<sup>22</sup> (SPGs). Reprieve contributed to the SPGs by speaking to its experience in resentencing cases. The SPGs include best practices in the approach to the sentencing and resentencing process, including mitigating factors, access to legal representation, missing court records, and a step-by-step guide to determine sentences. The aim is to make sentencing and the resentencing regime more coherent. So far, however, the effort to make the judiciary aware of the SPGs has been limited. Following a meeting with the judiciary in September 2024 on resentencing, the participants agreed that urgent sensitization for all judicial stakeholders was required in order to conduct resentencing uniformly.
12. Shortages in the ranks of legal aid and public defenders, discussed in greater detail in paragraphs 22-26 below, have also influenced the resentencing process, during which most detained persons make their applications on a *pro se* basis or with the help of prison paralegals.<sup>23</sup> Reprieve's research shows that a vast majority of petitioners for resentencing are

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<sup>16</sup> Carmel Rickard, *Death Penalty Case Re-Visited by Kenya Supreme Court*, African Lii, Jul. 9, 2021, available online at <https://africanlii.org/article/20210709/death-penalty-case-re-visited-kenya-supreme-court> (last visited Nov. 27, 2024).

<sup>17</sup> Carmel Rickard, *Death Penalty Case Re-Visited by Kenya Supreme Court*, African Lii, Jul. 9, 2021, available online at <https://africanlii.org/article/20210709/death-penalty-case-re-visited-kenya-supreme-court> (last visited Nov. 27, 2024).

<sup>18</sup> Carmel Rickard, *Death Penalty Case Re-Visited by Kenya Supreme Court*, African Lii, Jul. 9, 2021, available online at <https://africanlii.org/article/20210709/death-penalty-case-re-visited-kenya-supreme-court> (last visited Nov. 27, 2024).

<sup>19</sup> Carmel Rickard, *Death Penalty Case Re-Visited by Kenya Supreme Court*, African Lii, Jul. 9, 2021, available online at <https://africanlii.org/article/20210709/death-penalty-case-re-visited-kenya-supreme-court> (last visited Nov. 27, 2024).

<sup>20</sup> Linda Kitenge, *Why is Kenya's Supreme Court rolling back its opposition to the mandatory death penalty?* Reprieve, Aug. 24, 2021, available online at: <https://reprieve.org/uk/2021/08/24/why-is-kenyas-supreme-court-rolling-back-its-opposition-to-the-mandatory-death-penalty> (last visited Nov. 27, 2024).

<sup>21</sup> Amnesty International, *Kenya: No crime justifies the death sentence*, Jul. 19, 2018, available online at: <https://www.amnesty.org/en/latest/news/2018/07/kenya-no-crime-justifies-the-death-sentence> (last accessed Nov. 27, 2024).

<sup>22</sup> National Council on the Administration of Justice, *Sentencing Policy Guidelines, 2023I*, available at: [UPDATED-SENTENCING-POLICY-GUIDELINES-2023.pdf](https://www.judiciary.go.ke/UPDATED-SENTENCING-POLICY-GUIDELINES-2023.pdf) (judiciary.go.ke).

<sup>23</sup> Information on file with Reprieve.

self-represented, with the majority lacking resources to afford private legal counsel, thereby exacerbating the burdens and obstacles that people from disadvantaged socio-economic backgrounds face. As a consequence, their legal submissions are of lower quality and do not effectively present mitigating factors. These petitioners ultimately receive substantially harsher sentences than would be expected had they presented the full complement of available mitigation. Lack of representation also burdens judges, because without complete, detailed information, they are unable to properly assess the circumstances of the offense and of the offender, as required. Lack of representation also impedes the creation of detailed, progressive jurisprudence that ought to result from resentencing hearings and that could bolster the discretionary sentencing regime.

*Eliminate the mandatory death penalty for crimes other than murder* (Concluding Observations para. 34(a))

13. The Committee further recommended that Kenya extend the prohibition against the mandatory imposition of the death penalty to all crimes.<sup>24</sup>
14. Authorities have made no efforts to prohibit the mandatory imposition of the death penalty for crimes other than murder. Moreover, the law authorizes the death penalty for several crimes that do not meet the “most serious” threshold, including administering an oath purporting to bind a person to commit a capital offense, robbery and attempted robbery with violence (not resulting in death), treason, and several military offenses not resulting in death.<sup>25</sup>
15. The Attorney General’s task force recommendations in the wake of *Muruatetu* stated that the law should reserve the death penalty “for the rarest of rare cases involving intentional and aggravated acts of killing.”<sup>26</sup> Nonetheless, as discussed in the preceding paragraph, the law authorizes the death penalty for crimes that do not involve an intentional killing by the person who is eligible for the death penalty.

*Formalize a moratorium and move toward abolition* (Concluding Observations para. 34(b))

16. The Committee recommended that Kenya “[c]onsider the possibility of reviewing its policy with a view to abolishing the death penalty in law or taking affirmative steps to formalize the moratorium on the death penalty.”<sup>27</sup>
17. In a positive development, lawmakers are currently considering four pieces of legislation to abolish the death penalty.<sup>28</sup> The first, the Preservation of Public Security (Amendment) Bill,

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<sup>24</sup> Committee Against Torture, *Concluding observations on the third period report of Kenya*, ¶ 34, (May 30, 2022). U.N. Doc. CAT/C/KEN/CO/3.

<sup>25</sup> Cornell Center on the Death Penalty Worldwide, Kenya, available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38> (last visited Nov. 27, 2024).

<sup>26</sup> Amnesty International, *Kenya: No crime justifies the death sentence*, Jul. 19, 2018, available online at <https://www.amnesty.org/en/latest/news/2018/07/kenya-no-crime-justifies-the-death-sentence> (last visited Nov. 27, 2024).

<sup>27</sup> Committee Against Torture, *Concluding observations on the third periodic report of Kenya*, (May 30, 2022), U.N. Doc. CAT/C/KEN/CO/3, ¶ 34(b).

<sup>28</sup> International Commission of Jurists, Kenyan Section, *The Death Penalty Protects No One. Abolish it Now*, available online at <https://icj-kenya.org/news/the-death-penalty-protects-no-one-abolish-it-now/#:~:text=The%20proposed%20law%20seeks%20to,substituting%20it%20with%20life%20imprisonment> (published Oct. 18, 2024); see also Amnesty International, *Africa: Countries on the cusp of abolition must take a stand against the death penalty*, Oct. 10, 2024, available online at <https://www.amnesty.org/en/latest/news/2024/10/africa-countries-on-the-cusp-of-abolition-must-take-a-stand-against-the-death-penalty/> (published Nov. 27, 2024).

2023, introduced in August 2023, would abolish the death penalty for any offenses related “to the preservation for public security.”<sup>29</sup> The Legal Aid (Amendment) Bill, 2023, introduced in September 2023, would, if enacted, delete references to the death penalty in the Legal Aid Act (No. 6 of 2016).<sup>30</sup> A third bill, introduced in September 2023, seeks to amend the Prisons Act, CAP 90 Laws of Kenya, to abolish the death penalty and the manner of its performance.<sup>31</sup> Fourth, the Penal Code (Amendment) Bill, 2023, introduced in September, seeks to amend the Penal Code, Cap 63 Laws of Kenya, to abolish the death penalty.<sup>32</sup> The Kenyan Parliament has not yet passed any of these bills.<sup>33</sup> Each bill received a first reading in 2023, but the National Assembly has no further progress on any of them since that time.<sup>34</sup>

18. An additional positive development derives from a 2023 appellate court ruling that indeterminate life sentences are unconstitutional, amounting to degrading and inhuman punishment.<sup>35</sup>

19. In December 2024, Kenya for the first time voted in favor of the UN General Assembly resolution calling for a moratorium on the use of the death penalty.<sup>36</sup>

*Strengthen legal safeguards and ensure access to free legal aid* (Concluding Observations para. 34(c))

20. The Committee recommended that Kenya take “immediate steps to strengthen legal safeguards and ensure access to free legal aid.”<sup>37</sup>

21. Although Article 48 of the Constitution guarantees access to justice as a basic human right,<sup>38</sup> systemic problems with the criminal legal system hinder access to justice in capital cases. As

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<sup>29</sup> Amnesty International, Kenya, *Urge Members of Parliament to Fully Abolish the Death Penalty*, available online at: <https://www.amnestykenya.org/petition/urge-members-of-parliament-to-fully-abolish-the-death-penalty> (last visited Nov. 27, 2024).

<sup>30</sup> Amnesty International, Kenya, *Urge Members of Parliament to Fully Abolish the Death Penalty*, available online at: <https://www.amnestykenya.org/petition/urge-members-of-parliament-to-fully-abolish-the-death-penalty> (last visited Nov. 27, 2024).

<sup>31</sup> Amnesty International, Kenya, *Urge Members of Parliament to Fully Abolish the Death Penalty*, available online at: <https://www.amnestykenya.org/petition/urge-members-of-parliament-to-fully-abolish-the-death-penalty> (last visited Nov. 27, 2024).

<sup>32</sup> Amnesty International, Kenya, *Urge Members of Parliament to Fully Abolish the Death Penalty*, available online at: <https://www.amnestykenya.org/petition/urge-members-of-parliament-to-fully-abolish-the-death-penalty> (last visited Nov. 27, 2024).

<sup>33</sup> Amnesty International, Kenya, *Urge Members of Parliament to Fully Abolish the Death Penalty*, available online at: <https://www.amnestykenya.org/petition/urge-members-of-parliament-to-fully-abolish-the-death-penalty> (last visited Nov. 27, 2024).

<sup>34</sup> See National Assembly, *Thirteenth Parliament—Third Session: Bills Tracker 2024* (Nov. 21, 2024) (listing the status for National Assembly bills 48, 53, 54, and 55).

<sup>35</sup> *Manyeso v Republic*, [2023] KECA 827 (KLR), available online at: <https://kenyalaw.org/caselaw/cases/view/262617>.

<sup>36</sup> International Commission Against the Death Penalty, UNGA Moratorium Resolution (voting records), <https://icomdp.org/unga/> (last visited Jan. 10, 2025); *Two thirds of the United Nations General Assembly vote in favor of the 10th resolution for a moratorium on the death penalty*, World Coalition Against the Death Penalty, 20 Dec. 2024, <https://worldcoalition.org/2024/12/20/two-thirds-of-the-united-nations-general-assembly-vote-in-favor-of-the-10th-resolution-for-a-moratorium-on-the-death-penalty/>,

<sup>37</sup> Committee Against Torture, *Concluding observations on the third period report of Kenya*, ¶ 34(c), (May 30, 2022). U.N. Doc. CAT/C/KEN/CO/3.

<sup>38</sup> Kenyan Law Reform Commission, *Constitution of Kenya*, available online at: <https://www.klrc.go.ke/index.php/constitution-of-kenya>.

a threshold matter, while the law provides defendants a right to receive prompt and detailed information on charges against them, authorities do not always provide that information.<sup>39</sup>

22. Kenya has no government-sponsored public defender service with sufficient resources to meet demand.<sup>40</sup> Legal aid organization Kituo Cha Sheria (Kituo) reports that “thousands of inmates cannot afford legal representation and are unable to defend themselves in court. They languish in prisons operating at over 200% capacity, and wait 3–8 years for their cases to reach court. Many are even wrongfully accused or detained. This lack of affordable legal representation creates justice systems that deny a fair hearing and imprison people unnecessarily for years due to unresolved cases.”<sup>41</sup> Consequently, most people go to trial without representation.
23. Civil society organizations are working to increase access to informal legal education. For example, Kituo’s Prison Paralegal program gives prison warders and detained persons “continuous training and practical exposure to criminal law and procedure, court systems, prosecution and the role of prosecutors, self-representation in criminal matters and paralegalism. As a result, the trained inmates and warders have offered free legal aid services to other inmates. Thus far, more than 10,000 inmates have been released resulting in decongestion of correctional facilities nationwide. Other benefits accruing from the prison justice centres extend beyond individual cases to include general communal and societal benefits such as speedy processing of cases; fair and impartial trials; and the reduction of prison populations while ensuring that justice is fair and accessible.”<sup>42</sup>
24. Authorities have updated the 2017 National Legal Aid Action Plan (2017-2022) to improve legal aid. Recognizing that while the Legal Aid Act, enacted in 2016, was a bold step establishing a national legal aid scheme, civil society organizations observe that “Kenya is yet to achieve the benefits of the Act.”<sup>43</sup> Notably, lawmakers have failed to allocate sufficient budgetary resources to realize the full benefits of the Act in the form of the Legal Aid Fund. Instead, authorities rely on development partners with limited resources and scope to improve access to legal services. And, while Kenya has digitized its court system in 13 of 47 counties, vulnerable populations face hurdles in accessing digital court services.<sup>44</sup>
25. People charged with capital crimes also face many barriers to realizing their right to a fair trial. In a systematic study of people sentenced to death across Kenya, the Death Penalty Project (DPP) found that “53% were not given the right to communicate with a lawyer, 50% had felt compelled to make a confession or to give evidence that could be used against them, 49% were not afforded the right to remain silent, almost 50% were subject to either psychological or

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<sup>39</sup> U.S. Department of State Country Report, *Kenya 2023 Human Rights Report*, sec. 1, subp. E, available online at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/kenya/>.

<sup>40</sup> U.S. Department of State Country Report, *Kenya 2023 Human Rights Report*, sec. 1, subp. E, available online at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/kenya/>.

<sup>41</sup> Kituo Cha Sheria Legal Advice Centre, *Kituo’s access to justice project in prison communities in Kenya*, available online at: <https://kituochasheria.or.ke/kutuos-access-to-justice-project-in-prison-communities-in-kenya> (last accessed Dec. 6, 2024).

<sup>42</sup> Kituo Cha Sheria Legal Advice Centre, *Kituo’s access to justice project in prison communities in Kenya*, available online at: <https://kituochasheria.or.ke/kutuos-access-to-justice-project-in-prison-communities-in-kenya> (last accessed Dec. 6, 2024).

<sup>43</sup> Kenya’s Open Government Partnership (OGP), 5th National Action Plan 2023-2027, available online at: [https://drive.google.com/file/d/1i-9eoZOBJF-bIE\\_vp03h-KpckGRpiDj5/view?pli=1](https://drive.google.com/file/d/1i-9eoZOBJF-bIE_vp03h-KpckGRpiDj5/view?pli=1).

<sup>44</sup> Kenya’s Open Government Partnership (OGP), 5th National Action Plan 2023-2027, available online at: [https://drive.google.com/file/d/1i-9eoZOBJF-bIE\\_vp03h-KpckGRpiDj5/view?pli=1](https://drive.google.com/file/d/1i-9eoZOBJF-bIE_vp03h-KpckGRpiDj5/view?pli=1).



physical abuse, 27% were denied an interpreter, 24% were denied legal assistance, and 43% did not understand what was happening at trial.”<sup>45</sup>

26. Low pay for capital defense attorneys and a large backlog of cases cause delays in justice.<sup>46</sup> In 2022, Kenya amended the Judicature Act to increase the cap on the number of Court of Appeal judges from 30 to 70.<sup>47</sup> But in June 2024, the Judiciary announced that it would not recruit additional appellate judges and would freeze *all* employment due to the “budget rationalization pronounced by the National Treasury and Planning.”<sup>48</sup> These staffing bottlenecks contribute to case backlogs. Furthermore, courts appoint attorneys only after any investigation is complete and the defendant has entered a plea.<sup>49</sup> This timing limits defendants’ ability to participate in the critical pre-trial preparations stage of the case.<sup>50</sup> Defense attorneys therefore also have a limited ability to conduct any independent investigation before trial.<sup>51</sup>
27. Investigations are often not of high quality.<sup>52</sup> Because the criminal legal system has not invested in modern forensic labs, prosecutors often rely on outdated evidence, increasing the risk of wrongful convictions.<sup>53</sup> Forensic tests are often unreliable also because of tampering, contamination, and poor conservation of evidence.<sup>54</sup> Defense counsel have limited or no access to government-held evidence before trial, and they are barred from entering into evidence photographs other than those taken by official police photographers.<sup>55</sup>
28. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) reports that “[m]any women have been convicted and sentenced to death in unfair trials that have often failed to follow due process or consider mitigating factors such as long-term abuse.”<sup>56</sup> As one ICJ Kenya expert put it, “women accused of offences attracting the death sentence suffer

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<sup>45</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row* (2022), at 9. Also available online at: <https://deathpenaltyproject.org/knowledge/living-with-a-death-sentence-in-kenya-2022/>.

<sup>46</sup> Cornell Center on the Death Penalty Worldwide, *Republic of Kenya*. Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38> (last visited 13 Sept. 2024).

<sup>47</sup> Kenya National Commission on Human Rights, *The State of Human Rights in Kenya: Assessing the Progress Made and Areas of Concern July 2023 – November 2024*, available at: <https://www.knchr.org/Publications/General>.

<sup>48</sup> Kenya National Commission on Human Rights, *The State of Human Rights in Kenya: Assessing the Progress Made and Areas of Concern July 2023 – November 2024*, available at: <https://www.knchr.org/Publications/General>.

<sup>49</sup> Cornell Center on the Death Penalty Worldwide, *Republic of Kenya*. Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38> (last visited 13 Sept. 2024).

<sup>50</sup> Cornell Center on the Death Penalty Worldwide, *Republic of Kenya*. Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38> (last visited 13 Sept. 2024).

<sup>51</sup> Cornell Center on the Death Penalty Worldwide, *Republic of Kenya*. Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38> (last visited 13 Sept. 2024).

<sup>52</sup> Cornell Center on the Death Penalty Worldwide, *Republic of Kenya*. Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38> (last visited 13 Sept. 2024).

<sup>53</sup> Cornell Center on the Death Penalty Worldwide, *Republic of Kenya*. Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38> (last visited 13 Sept. 2024).

<sup>54</sup> Cornell Center on the Death Penalty Worldwide, *Republic of Kenya*. Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38> (last visited 13 Sept. 2024).

<sup>55</sup> Cornell Center on the Death Penalty Worldwide, *Republic of Kenya*. Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38> (last visited 13 Sept. 2024).

<sup>56</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 42, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

intersectional discrimination from the point of arrest to conviction and sentencing.”<sup>57</sup> Criminal legal systems that sentence women to death “are also making women pay the price for authorities’ failures to address diverse forms of discrimination.”<sup>58</sup>

29. Through interviews with women on death row, ICJ Kenya discovered an instance in which one woman “did not get access to full legal representation throughout [her] trial.”<sup>59</sup> The absence of legal representation enhances the likelihood that women in conflict with the law will experience biased treatment and that such treatment will go unaddressed.<sup>60</sup>
30. Regarding women at risk of being sentenced to death, ICJ Kenya recognizes that “[t]he establishment of public defender programs is essential to guarantee access to legal representation for indigent defendants, especially women who find themselves in dire circumstances facing the death penalty.”<sup>61</sup> Recognizing that such legal professionals may be scarce in some parts of the country, ICJ Kenya endorses “innovative approaches involving legally trained non-lawyers, such as paralegals or law students, [to] assist in providing legal aid. This approach ensures that legal assistance is extended to women who do not have access to legal representation, thus reducing their vulnerability within the legal system.”<sup>62</sup> ICJ Kenya also recognizes the importance of “[g]ender-sensitive legal training [to] challeng[e] stereotypes and biases within the legal system,” so as to “actively work[] to eliminate victim-blaming and ensure that women are treated with the respect and dignity they deserve” and to “empower[] legal professionals to navigate these complex cases with empathy and fairness, recognizing these women’s unique challenges.”<sup>63</sup>

*Provide disaggregated data* (Concluding Observations para. 34(d))

31. The Committee recommended that in its next periodic report, Kenya should provide “information on the precise number of death sentences passed, the courts responsible and the crimes for which those sentences were handed down.”<sup>64</sup>

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<sup>57</sup> International Commission of Jurists Kenyan Section, *Damaris Kemunto: Crucial Mission to Eradicate Death Penalty* (2024). Also available online at: <https://icj-kenya.org/news/beyond-the-gavel-young-lawyers-crucial-mission-to-eradicate-the-death-penalty/>.

<sup>58</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 42, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>59</sup> International Commission of Jurists Kenyan Section, *Damaris Kemunto: Crucial Mission to Eradicate Death Penalty* (2024). Also available online at: <https://icj-kenya.org/news/beyond-the-gavel-young-lawyers-crucial-mission-to-eradicate-the-death-penalty/>.

<sup>60</sup> International Commission of Jurists Kenyan Section, *Damaris Kemunto: Crucial Mission to Eradicate Death Penalty* (2024). Also available online at: <https://icj-kenya.org/news/beyond-the-gavel-young-lawyers-crucial-mission-to-eradicate-the-death-penalty/>.

<sup>61</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 33, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>62</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 34, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>63</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 34, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>64</sup> Committee Against Torture, *Concluding observations on the third periodic report of Kenya*, (May 30, 2022), U.N. Doc. CAT/C/KEN/CO/3, ¶ 34(d).

## II. People suspected of committing capital crimes are at risk of torture during interrogations (Concluding Observations para. 10(b)).

32. The Committee recommended that Kenya “ensure that all fundamental legal safeguards against torture are guaranteed in practice for all detained persons from the outset of their deprivation of liberty, including . . . [the right] [t]o be assisted by a lawyer, including during the interrogation stage.”<sup>65</sup>
33. The Cornell Center on the Death Penalty Worldwide reports that, “despite the Constitution’s protection against torture[,] [i]n practice, police use torture and violence during interrogations and against pre-trial detainees and prisoners. Human rights organizations and the media have reported cases of torture and indiscriminate police violence committed with impunity.”<sup>66</sup> The 2023 U.S. State Department Country Report notes that “[p]olice and prison officials reportedly used torture and violence during interrogations and to punish pretrial detainees and convicted prisoners. According to human rights NGOs, physical battery, bondage in painful positions, and electric shock were the most common methods used by police.”<sup>67</sup>
34. The 2022 DPP study referenced in paragraph 25 above found that up to 47% of surveyed people who had been sentenced to death experienced psychological abuse during the interrogation stage of their detention.<sup>68</sup> Such abuse included verbal abuse, threats, and psychological torture.<sup>69</sup> Authorities denied 21% of respondents sustenance and denied 35% of respondents adequate rest.<sup>70</sup> 61% said that officers physically restrained them during interrogation.<sup>71</sup> 37% reported physical abuse during the interrogation stage, and 23% reported being denied medical attention.<sup>72</sup> Such treatment during the interrogation stage of the case increases the risk of false confessions and unreliable testimony.<sup>73</sup>

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<sup>65</sup> Committee Against Torture, *Concluding observations on the third period report of Kenya*, ¶ 10(b), (May 30, 2022). U.N. Doc. CAT/C/KEN/CO/3.

<sup>66</sup> Cornell Center on the Death Penalty Worldwide, Kenya, available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38> (last visited Nov. 27, 2024).

<sup>67</sup> United States Department of State Country Report, *2023 Country Reports on Human Rights Practices: Kenya*, sec. 1, subp. C, available online at: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kenya/>.

<sup>68</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row*, available online at: <https://deathpenaltyproject.org/wp-content/uploads/2022/12/Living-with-a-Death-Sentence-in-Kenya-Prisoners-Experiences-of-Crime-Punishment-and-Death-Row.pdf>.

<sup>69</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row*, available online at: <https://deathpenaltyproject.org/wp-content/uploads/2022/12/Living-with-a-Death-Sentence-in-Kenya-Prisoners-Experiences-of-Crime-Punishment-and-Death-Row.pdf>.

<sup>70</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row*, available online at: <https://deathpenaltyproject.org/wp-content/uploads/2022/12/Living-with-a-Death-Sentence-in-Kenya-Prisoners-Experiences-of-Crime-Punishment-and-Death-Row.pdf>.

<sup>71</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row*, available online at: <https://deathpenaltyproject.org/wp-content/uploads/2022/12/Living-with-a-Death-Sentence-in-Kenya-Prisoners-Experiences-of-Crime-Punishment-and-Death-Row.pdf>.

<sup>72</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row*, Dec. 2022, available online at: <https://deathpenaltyproject.org/wp-content/uploads/2022/12/Living-with-a-Death-Sentence-in-Kenya-Prisoners-Experiences-of-Crime-Punishment-and-Death-Row.pdf>.

<sup>73</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row*, Dec. 2022, available online at: <https://deathpenaltyproject.org/wp-content/uploads/2022/12/Living-with-a-Death-Sentence-in-Kenya-Prisoners-Experiences-of-Crime-Punishment-and-Death-Row.pdf>.

35. Victims of police abuse can file complaints, and the Independent Policing Oversight Authority (IPOA) has investigated allegations of murder, torture, rape, and serious injury.<sup>74</sup> But “NGOs reported police used disciplinary transfers of officers to hide their identities and frustrate investigations into their alleged crimes.”<sup>75</sup>

### **III. Women in conflict with the law, particularly survivors of gender-based violence, face discrimination within the criminal legal system, placing them at risk of being sentenced to death (Concluding Observations para. 38(a)-(b))**

36. The Committee in 2022 expressed concern about high levels of domestic violence, victim underreporting, poor enforcement of the Protection against Domestic Violence Act, and lack of criminalization of marital rape.<sup>76</sup> The Committee recommended that Kenya ensure that authorities thoroughly investigate all cases of gender-based violence, holding perpetrators accountable and providing victims or their families with redress.<sup>77</sup> The Committee also recommended “strict enforcement of the Protection against Domestic Violence Act,” and amendment of the Criminal Code and/or Sexual Offences Act to criminalize marital rape.<sup>78</sup>
37. Since 2020, Kenya has established twelve Gender Justice Courts that use trauma-informed practices,<sup>79</sup> and landmark rulings such as the 2021 *State v. Truphena Ndonga Aswani*<sup>80</sup> (*Truphena*) have provided frameworks for the interpretation of female death penalty cases in the context of GBV. *Truphena* directed judges to consider the importance of mitigating factors prior to sentencing, including factors related to GBV.<sup>81</sup>
38. According to ICJ Kenya, high rates of sexual and GBV mean that there is a pressing need to fast-track expansion of these courts.<sup>82</sup> As ICJ Kenya notes, “[i]n many cases of women who were sentenced to death, there was a lack of adequate protection against [GBV] and other forms

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<sup>74</sup> United States Department of State Country Report, *2023 Country Reports on Human Rights Practices: Kenya*, sec. 5, available online at: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kenya/>.

<sup>75</sup> United States Department of State Country Report, *2023 Country Reports on Human Rights Practices: Kenya*, sec. 1, subp. C, available online at: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kenya/>.

<sup>76</sup> Committee Against Torture, *Concluding observations on the third periodic report of Kenya*, (May 30, 2022), U.N. Doc. CAT/C/KEN/CO/3, ¶ 37).

<sup>77</sup> Committee Against Torture, *Concluding observations on the third periodic report of Kenya*, (May 30, 2022), U.N. Doc. CAT/C/KEN/CO/3, ¶ 38(a).

<sup>78</sup> Committee Against Torture, *Concluding observations on the third periodic report of Kenya*, (May 30, 2022), U.N. Doc. CAT/C/KEN/CO/3, ¶ 38(b).

<sup>79</sup> The Judiciary of the Republic of Kenya, *A Blueprint for Social Transformation through Access to Justice 2023-2033: A People-Centred Justice Approach* (2023), at 18. Also available online at: <https://judiciary.go.ke/wp-content/uploads/2023/11/STAJ-Blueprint-1.pdf>.

<sup>80</sup> *State v Truphena Ndonga Aswani* [2021] eKLR.

<sup>81</sup> *State v Truphena Ndonga Aswani* [2021] eKLR; The Judiciary of the Republic of Kenya, *A Blueprint for Social Transformation through Access to Justice 2023-2033: A People-Centred Justice Approach* (2023), at 18. Also available online at: <https://judiciary.go.ke/wp-content/uploads/2023/11/STAJ-Blueprint-1.pdf>; see also International Commission of Jurists Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 18. Also available online at: [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/).

<sup>82</sup> International Commission of Jurists Kenyan Section, *Kenya Must Scale Up Establishment of SGBV Courts* (2024). Also available online at: <https://icj-kenya.org/news/kenya-must-scale-up-establishment-of-sgbv-courts/>.

of discrimination before the crime was committed.”<sup>83</sup> While the Gender Justice Courts are operating, there are 45 stations for the High Court of Kenya where cases are heard.<sup>84</sup> Hence there is a pressing need to ensure that all Kenyans have access to Gender Justice Courts.

39. In 2022, 22 women were under sentence of death, but courts commuted hundreds of sentences in 2023, including most or all of the sentences of these women.<sup>85</sup> According to ICJ Kenya, three women currently remain on death row.<sup>86</sup> Authorities do not publish comprehensive information about people under sentence of death or their alleged crimes.
40. In 2024, ICJ Kenya published a groundbreaking report on women under sentence of death.<sup>87</sup> The report recognizes that “[a] substantial portion of women currently on death row in Kenya have been convicted within the context of [GBV]. Despite the gathering and presenting evidence in Court during trial, courts often do not consistently consider these factors as mitigating circumstances during sentencing.”<sup>88</sup>
41. According to ICJ Kenya, the *Truphena* case marks “some progress in recognizing [GBV] as a relevant factor in mitigating sentences.”<sup>89</sup> The Court’s reasoning in *Truphena* can lead to “a formula of sorts . . . to be applied to similar instances.”<sup>90</sup> Indeed, paragraph 23.8 of the Sentencing Policy Guidelines lists mitigating circumstances that may warrant a more lenient sentence, and among those circumstances includes “commission of a crime in response to [GBV].”<sup>91</sup> Nonetheless, gender biases have a “pervasive influence” in the implementation of the death penalty, and even though “most women sentenced to death are victims of sexual and [GBV],” that history often “does not become a sufficient mitigating factor during

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<sup>83</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 47, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>84</sup> International Commission of Jurists – Kenya, *Kenya Must Scale Up Establishment of SGBV Courts* (2024). Also available online at: <https://icj-kenya.org/news/kenya-must-scale-up-establishment-of-sgbv-courts/>; see also Judicial Service Commission, *JSC commences interviews for Judges of the High Court* (2024). Also available online at: <https://www.jsc.go.ke/index.php/jsc-commences-interviews-for-judges-of-the-high-court/>.

<sup>85</sup> World Coalition Against the Death Penalty, *ICJ Kenya Makes Gender Discrimination in Capital Punishment Visible* (2024). Also available online at: <https://worldcoalition.org/2024/03/08/icj-kenya-makes-gender-discrimination-in-capital-punishment-visible/>.

<sup>86</sup> World Coalition Against the Death Penalty, *ICJ Kenya Makes Gender Discrimination in Capital Punishment Visible* (2024). Also available online at: <https://worldcoalition.org/2024/03/08/icj-kenya-makes-gender-discrimination-in-capital-punishment-visible/>.

<sup>87</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>88</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 13, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>89</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 13, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>90</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 32, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>91</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 40, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

sentencing.”<sup>92</sup> ICJ Kenya’s research, in conjunction with the *Truphena* judgment itself, suggests that GBV is often normalized, especially among the poorer population, which makes up the majority of women on death row. Survivors of GBV often find it difficult to speak to the full extent of the severity of their experiences out of fear of being called a liar or being perceived as a “bad woman.”<sup>93</sup> According to ICJ Kenya’s report, “the judicial system has often ignored the extensive trauma that the GBV victims have endured throughout their lives and its effects on their legal and moral culpability,” and therefore courts often disregard as mitigating factors “the circumstances leading to the women committing offences attracting the death sentence.”<sup>94</sup>

42. Lawyers can also play a role. ICJ Kenya reports that defense lawyers often do not present GBV as a mitigating factor or fail to accurately present the severity of their clients’ experiences,<sup>95</sup> even though the resulting trauma strongly influences the woman’s mental health, therefore potentially contributing to the circumstances of the offense committed.<sup>96</sup> At the same time, prosecutors use gender stereotypes to discredit women’s accounts of the GBV they experienced.<sup>97</sup> ICJ Kenya further reports that the court system may be “overwhelmed” with a backlog of GBV cases.<sup>98</sup>
43. ICJ Kenya explains the role of the media in reinforcing and replicating gender stereotypes, observing that “when women commit crimes, particularly violent crimes, the media depicts them as ‘doubly deviant’ because they have both broken the law as well as violated cultural expectations of femininity. To reconcile the conventional perception of a woman as non-violent and the commission of a capital offence by a woman, the media patholog[izes] the woman.”<sup>99</sup>
44. These perceptions infiltrate the judicial process. ICJ Kenya explains that “[t]he media and, subsequently, court actors easily masculinise women who do not conform to traditional notions of femininity, the result of which makes their death sentence more agreeable to sentencing

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<sup>92</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 16, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>93</sup> World Coalition Against the Death Penalty, *Reflecting on the links between the death penalty and gender-based violence*, 25 November 2022, available at: <https://icj-kenya.org/news/reflecting-on-the-links-between-the-death-penalty-and-gender-based-violence/>; *State v Truphena Ndonga Aswani* [2012] eKLR.

<sup>94</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 30, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>95</sup> International Section of Jurists Kenyan Section, *Ensure Fairness During Trial of GBV Victims Accused of Murder*, 11 October, available at: <https://icj-kenya.org/news/ensure-fairness-during-trial-of-gbv-victims-accused-of-murder/>.

<sup>96</sup> *R. v. Lavallee*, [1990] 1 SCR 852, available at <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/599/index.do>.

<sup>97</sup> International Section of Jurists Kenyan Section, *Ensure Fairness During Trial of GBV Victims Accused of Murder*, 11 October, available at: <https://icj-kenya.org/news/ensure-fairness-during-trial-of-gbv-victims-accused-of-murder/>.

<sup>98</sup> International Commission of Jurists Kenyan Section, *Kenya Must Scale Up Establishment of SGBV Courts* (2024). Also available online at: <https://icj-kenya.org/news/kenya-must-scale-up-establishment-of-sgbv-courts/>.

<sup>99</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 23, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

judges, as well as the public at large.”<sup>100</sup> ICJ Kenya notes that women who commit crimes are “doubly deviant”: they are on trial both for their criminal offenses and for their perceived crime against femininity.<sup>101</sup> The ICJ Kenya report references high-profile cases in which the Kenyan media, and subsequently prosecutors, demonized women to build up public support for their death sentences.<sup>102</sup> “[S]entencing women to death who transgress traditional notions of femininity serves to reinforce gender norms as well as legitimize their capital punishment.”<sup>103</sup> Research by the Cornell Center on the Death Penalty Worldwide shows that women are more likely to receive a death sentence when the adjudicating authority perceives that they are violating entrenched gender norms, being cast as the “female fatale” or the “witch.” Women are often put on trial not only for acts they performed but also for allegedly being “a bad wife, a bad mother, and a bad woman.”<sup>104</sup>

45. The ICJ Kenya report further notes that in cases receiving a large amount of media attention, there is a likelihood that the media will sway public opinion and consequentially influence legal proceedings. Scholars have further remarked that when a case receives mass media coverage, there is a tendency of judges to sentence more “punitively thus undermining the principles of fair and impartial justice.”<sup>105</sup> Moreover, women sentenced to death who are subsequently exonerated or whose sentences are commuted can experience severe stigma upon release, and public perceptions can “create barriers to employment, housing, and community acceptance,” making “it a challenge for these women to rebuild their lives post-release.”<sup>106</sup>
46. Paragraphs 28 through 30 above provide further details about fair trial concerns for women in conflict with the law who face capital charges.

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<sup>100</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 24, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>101</sup> International Commission of Jurists Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 23. Also available online at: [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/).

<sup>102</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 24, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>103</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 26, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>104</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Sept. 2018, at 4, available at: <https://www.deathpenaltyworldwide.org/wpcontent/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>105</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 26, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>106</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 27, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

#### **IV. Kenya engages in *refoulement* to countries where returnees are at risk of being tortured or sentenced to death (Concluding Observations para. 26(a)).**

47. The Committee in 2022 recommended that Kenya “strictly uphold” the principle of non-refoulement in both law and practice.<sup>107</sup>
48. Kenya maintains that it has a legal framework that forbids extradition to countries where a person may be subjected to torture, including the Refugee Act, Counter-Trafficking in Persons Act, and the Prevention of Torture Act.<sup>108</sup>
49. Nonetheless, Amnesty International reported in November of 2024 that there is “a growing and worrying trend of transnational repression” in Kenya, including authorities’ possible involvement in several recent abductions and repatriations.<sup>109</sup> For example, in February of 2023, M.A.B., a South Sudanese political dissident, faced abduction and repatriation to South Sudan.<sup>110</sup> Further, in May of 2024, Kenyan authorities are suspected of abducting and extraditing Rwandan human rights activist, Y.A.G..<sup>111</sup> Soon after, in July 2024, thirty-six members of the Forum for Democratic Change, a Ugandan opposition party, were arrested and deported to Uganda, where they face terrorism charges.<sup>112</sup> This pattern of conduct continued throughout 2024, when on October 18, seven Turkish asylum seekers were abducted, with fear of refoulement.<sup>113</sup> It was later reported that authorities repatriated four of the Turkish nationals.<sup>114</sup> More recently, a Ugandan opposition leader named K.B. was abducted in Kenya, repatriated to Uganda, and subsequently arraigned in a Ugandan military court.<sup>115</sup>

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<sup>107</sup> Committee Against Torture, *Concluding observations on the third periodic report of Kenya*, (May 30, 2022), U.N. Doc. CAT/C/KEN/CO/3, ¶ 26(a).

<sup>108</sup> Committee Against Torture, *Third periodic report submitted by Kenya under article 19 of the Convention pursuant to the optional reporting procedure, due in 2017*, (Dec. 26 2018), U.N. Doc. CAT/C/KEN/3, pp. 52-57.

<sup>109</sup> Amnesty International, *Uganda: Opposition politician’s abduction in Kenya continues “a growing and worrying trend of transnational repression*, Nov. 20, 2024, available online at: <https://www.amnesty.org/en/latest/news/2024/11/ugandas-opposition-politicians-abduction-in-kenya-continues-a-growing-and-worrying-trend-of-transnational-repression/> (last accessed Nov. 27, 2024).

<sup>110</sup> Amnesty International, *South Sudan: Authorities must clarify fate and whereabouts of detained critic*, Feb. 25, 2023, available online at: <https://www.amnesty.org/en/latest/news/2023/02/south-sudan-authorities-must-clarify-fate-and-whereabouts-of-detained-critic/> (last accessed Nov. 27, 2024).

<sup>111</sup> United Nations Human Rights Office of the High Commissioner, *Kenya and Rwanda must provide information about disappeared human rights defender: Special Rapporteur*, Jul. 11, 2024, available online at: <https://www.ohchr.org/en/press-releases/2024/07/kenya-and-rwanda-must-provide-information-about-disappeared-human-rights> (last accessed Nov. 27, 2024).

<sup>112</sup> Amnesty International, *Uganda: Opposition politician’s abduction in Kenya continues “a growing and worrying trend of transnational repression”*, Nov. 20, 2024, available online at: <https://www.amnesty.org/en/latest/news/2024/11/ugandas-opposition-politicians-abduction-in-kenya-continues-a-growing-and-worrying-trend-of-transnational-repression/> (last accessed Nov. 27, 2024).

<sup>113</sup> Amnesty International, *Statement on the Abduction and Disappearance of Seven Turkish Asylum Seekers for Immediate Release*, Oct. 19, 2024, available online at: <https://www.amnestykenya.org/statement-on-the-abduction-and-disappearance-of-seven-turkish-asylum-seekers-for-immediate-release> (last accessed Nov. 27, 2024).

<sup>114</sup> British Broadcasting Corporation, *UN ‘deeply concerned’ Kenya returned Turkish refugees*, Oct. 21, 2024, available online at: <https://www.bbc.com/news/articles/cvgwg5n0y0lo> (last accessed Nov. 27, 2024).

<sup>115</sup> Amnesty International, *Uganda: Opposition politician charged after abduction*, Nov. 28, 2024, available online at: <https://amnesty.ca/urgent-actions/uganda-opposition-politician-charged-after-abduction> (last accessed Nov. 27, 2024).



**V. People under sentence of death face conditions of detention amounting to torture or cruel, inhuman, or degrading treatment or punishment (Concluding Observations paras. 18, 34(c)).**

50. The Committee in 2022 recommended that Kenya “[e]nsure that conditions of detention for condemned prisoners do not constitute cruel, inhuman or degrading punishment or treatment.”<sup>116</sup> The Committee also made more general recommendations “to intensify . . . efforts to bring conditions of detention into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), including by amending the Prisons Act, chapter 90, and the Borstal Institutions Act, chapter 92.”<sup>117</sup> The Committee also made more specific recommendations to reduce overcrowding in prisons, to improve prison infrastructure, and to ensure that people deprived of their liberty receive proper medical and health care.<sup>118</sup>
51. People under sentence of death live separately from other people in prison.<sup>119</sup> Kenya holds people under sentence of death in maximum-security prisons such as Kamiti, Naivasha, Kingongo, Kibos, Manyani, Kodiaga, Shimo Law Tewa, and Lang’ata prisons.<sup>120</sup>
52. The 2022 DPP study reported that 67% of people under sentence of death said that their health had suffered since they had been incarcerated,<sup>121</sup> 65% of these people also reported their mental health had suffered since being incarcerated,<sup>122</sup> 35% said that they did not have nourishing food in prison, and 31% said they did not have access to medical care.<sup>123</sup>
53. Beyond generally poor detention conditions, people under sentence of death who are not exonerated or granted commutations can spend decades on death row.<sup>124</sup> This protracted waiting period contributes to the “death row phenomenon” or “death row syndrome” and engenders additional psychological hardship.<sup>125</sup> DPP observes that people “on death row are

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<sup>116</sup> Committee Against Torture, *Concluding observations on the third periodic report of Kenya*, (May 30, 2022), U.N. Doc. CAT/C/KEN/CO/3, ¶ 34(c).

<sup>117</sup> Committee Against Torture, *Concluding observations on the third periodic report of Kenya*, (May 30, 2022), U.N. Doc. CAT/C/KEN/CO/3, ¶ 18.

<sup>118</sup> Committee Against Torture, *Concluding observations on the third periodic report of Kenya*, (May 30, 2022), U.N. Doc. CAT/C/KEN/CO/3, ¶ 18(a)-(b).

<sup>119</sup> Cornell Center on the Death Penalty Worldwide, *Republic of Kenya* (2019). Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38>.

<sup>120</sup> Cornell Center on the Death Penalty Worldwide, *Kenya*, available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38> (last visited Nov. 27, 2024).

<sup>121</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row* (2022), at 54. Also available online at: <https://deathpenaltyproject.org/knowledge/living-with-a-death-sentence-in-kenya-2022/>.

<sup>122</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row* (2022), at 54. Also available online at: <https://deathpenaltyproject.org/knowledge/living-with-a-death-sentence-in-kenya-2022/>.

<sup>123</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row* (2022), at 56. Also available online at: <https://deathpenaltyproject.org/knowledge/living-with-a-death-sentence-in-kenya-2022/>.

<sup>124</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row* (2022), at 53. Also available online at: <https://deathpenaltyproject.org/knowledge/living-with-a-death-sentence-in-kenya-2022/>.

<sup>125</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row* (2022), at 53. Also available online at: <https://deathpenaltyproject.org/knowledge/living-with-a-death-sentence-in-kenya-2022/>.

not only ‘long-term’ prisoners in jurisdictions where death sentences are imposed but not executed, but suffer additional trauma associated with the perpetual possibility of execution.”<sup>126</sup>

54. People under sentence of death face the range of issues that plague the general prison population such as overcrowding, unhygienic conditions, abuse, and torture.<sup>127</sup> According to the 2023 U.S. State Department Country Report, “[h]uman rights organizations reported prison, detention center, and police station conditions were sometimes harsh and life threatening due to gross overcrowding, food and water shortages, and inadequate sanitary conditions and medical care.”<sup>128</sup> As of December 2023, Kenya’s prison population—including pretrial detainees—stood at 60,000 people, while the country had a prison capacity of only 34,000.<sup>129</sup> The U.S. State Department further reported that, while people imprisoned in Kenya receive three meals per day, meal portions are inadequate.<sup>130</sup> People in prison generally spend most of their time indoors in inadequately lit and poorly ventilated cellblocks.<sup>131</sup> The prison commissioner reported the prison system faced serious health problems due to communicable diseases such as tuberculosis.<sup>132</sup> Access to drinking water has been an issue at some prisons.<sup>133</sup>
55. The Kenya National Commission on Human Rights has reported improved access to prisons and other detention facilities, enabling improvements in the Commission’s ability to monitor living conditions.<sup>134</sup> As an initial sign of progress in improving detention conditions, in August 2024, the State Department for Correctional Services announced the launch of an initiative to decongest correction facilities.<sup>135</sup> This two-pronged approach will first focus on the bail and bond conditions

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<sup>126</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row*, p. 53, available online at: <https://deathpenaltyproject.org/wp-content/uploads/2022/12/Living-with-a-Death-Sentence-in-Kenya-Prisoners-Experiences-of-Crime-Punishment-and-Death-Row.pdf>.

<sup>127</sup> Cornell Center on the Death Penalty Worldwide, *Republic of Kenya* (2019). Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38>.

<sup>128</sup> United States Department of State Country Report, *2023 Country Reports on Human Rights Practices: Kenya*, sec. 1, subp. C, available online at: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kenya/>.

<sup>129</sup> United States Department of State Country Report, *2023 Country Reports on Human Rights Practices: Kenya*, sec. 1, subp. C, available online at: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kenya/>.

<sup>130</sup> United States Department of State Country Report, *2023 Country Reports on Human Rights Practices: Kenya*, sec. 1, subp. C, available online at: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kenya/>.

<sup>131</sup> United States Department of State Country Report, *2023 Country Reports on Human Rights Practices: Kenya*, sec. 1, subp. C, available online at: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kenya/>.

<sup>132</sup> United States Department of State Country Report, *2023 Country Reports on Human Rights Practices: Kenya*, sec. 1, subp. C, available online at: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kenya/>.

<sup>133</sup> United States Department of State Country Report, *2023 Country Reports on Human Rights Practices: Kenya*, sec. 1, subp. C, available online at: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kenya/>.

<sup>134</sup> United States Department of State Country Report, *2023 Country Reports on Human Rights Practices: Kenya*, sec. 1, subp. C, available online at: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kenya/>.

<sup>135</sup> State Department for Correctional Services, *Initiative to Decongest Kenya’s Prisons Launched*, Aug. 13, 2024, available online at: <https://correctional.go.ke/initiative-decongest-kenyas-prisons-launched> (last accessed Dec. 1, 2024).

of unconvicted persons and then focus on reviewing the sentences of people who have been convicted.<sup>136</sup>

56. People sentenced to death often face social isolation, starting during the interrogation stage, where 28% of the people DPP surveyed reported being unable to see their families.<sup>137</sup> This trend continues throughout incarceration, with 40% reporting receiving visitors only once every six months to a year.<sup>138</sup> The social isolation can be exacerbated by a lack of work opportunities for people under sentence of death. For example, only 48% of people currently on death row take advantage of work opportunities, while 75% of people serving a life sentence take advantage of such opportunities.<sup>139</sup> Furthermore, while former Vice President Moody Awori proposed allowing conjugal visits, authorities have not implemented such measures.<sup>140</sup>
57. According to a groundbreaking ICJ Kenya report, women on death row are often isolated from other people in detention, “and many families abandon them, leaving them feeling rejected by both the system and their loved ones.”<sup>141</sup> The report explains that for women “on death row who are mothers, the experience is particularly challenging. These women often battle with psychological and emotional distress, fearing for their children’s well-being and the uncertainty of their future. The strain of facing death row intensifies the mental health challenges they experience, impacting their ability to cope and be present, even within the constraints of a correctional facility.”<sup>142</sup> Moreover, sensationalized media attention targeting women in conflict with the law can result in stigma and isolation, particularly for women under sentence of death.<sup>143</sup> This coverage can contribute to “anxiety, depression, and a diminished

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<sup>136</sup> State Department for Correctional Services, *Initiative to Decongest Kenya’s Prisons Launched*, Aug. 13, 2024, available online at: <https://correctional.go.ke/initiative-decongest-kenyas-prisons-launched> (last accessed Dec. 1, 2024).

<sup>137</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row*, Dec. 2022, p. 49, available online at: <https://deathpenaltyproject.org/wp-content/uploads/2022/12/Living-with-a-Death-Sentence-in-Kenya-Prisoners-Experiences-of-Crime-Punishment-and-Death-Row.pdf>.

<sup>138</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row*, Dec. 2022, p. 56, available online at: <https://deathpenaltyproject.org/wp-content/uploads/2022/12/Living-with-a-Death-Sentence-in-Kenya-Prisoners-Experiences-of-Crime-Punishment-and-Death-Row.pdf>.

<sup>139</sup> The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row*, Dec. 2022, p. 58, available online at: <https://deathpenaltyproject.org/wp-content/uploads/2022/12/Living-with-a-Death-Sentence-in-Kenya-Prisoners-Experiences-of-Crime-Punishment-and-Death-Row.pdf>.

<sup>140</sup> The Nairobi Law Monthly, *Prisoners to earn salaries, pay taxes in proposed reforms*, Jun. 18, 2024, available online at: <https://nairobi.lawmonthly.com/prisoners-to-earn-salaries-pay-tax> (last accessed Dec. 1, 2024).

<sup>141</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 11, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>142</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 12, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>143</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 26, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

sense of self-worth,” all of which can “dramatically impeded[e] their ability to cope with the challenges of incarceration and legal proceedings.”<sup>144</sup>

58. For children of women under sentence of death, “[a]ccessing a parent on death row is challenging, involving intensive security procedures and limited or no physical contact. Visits may require travelling long distances, and contact options like phone calls may be restricted or forbidden.”<sup>145</sup> The ICJ Kenya report confirms that family members of women under sentence of death “are also stigmatized by society.”<sup>146</sup>

## VI. Suggested questions

59. The coauthors of this report offer the following suggested questions and requests for information for Kenya:

- Outline the progress authorities have made in implementing the Committee’s 2022 recommendations concerning the death penalty.
- Provide gender-disaggregated data about all persons eligible for resentencing under *Muruatetu*, including date of original conviction, date of resentencing hearing, court responsible for resentencing, whether the petitioner was represented by legal counsel during resentencing, whether the petitioner received any funding to conduct an investigation to support the presentation of mitigating evidence, current sentence and date of issuance, sex/gender of petitioner, relationship to any codefendants or victims, and current location. Please describe how the State Party collaborates with civil society organizations to ensure that all persons eligible for resentencing are able to compile and present evidence in mitigation.
- What procedures are in place to ensure that, if a case file is missing or incomplete, the court maintains a record of efforts made to trace the missing contents of the file, and to ensure that the absence of such a record does not deprive the person of an opportunity for resentencing?
- Provide an update on the amended Sentencing Policy Guidelines, efforts to make the judiciary aware of the SPGs, and initiatives to substantially increase courts’ application of the SPGs in sentencing and resentencing decisions.
- Provide comprehensive data on all people under sentence of death at any time during the reporting period, disaggregated by sex/gender, age, nationality, ethnicity, sentencing court, crime of conviction, relationship to any victim or codefendants, age of any dependent children, and status of any appeals or requests for pardon/commutation.

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<sup>144</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 27, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>145</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 12, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

<sup>146</sup> International Commission of Jurists—Kenyan Section, *Women and the Death Penalty in Kenya: Essays on the Gendered Perspective of the Death Penalty* (2024), at 26, available at [https://icj-kenya.org/news/sdm\\_downloads/women-and-the-death-penalty-in-kenya/](https://icj-kenya.org/news/sdm_downloads/women-and-the-death-penalty-in-kenya/) (last visited Sept. 22, 2024).

- What is the status of proposed legislation that would abolish the death penalty? Are there any legislative efforts to ensure, in the interim, that no crime is subject to the mandatory death penalty and that courts may always consider evidence in mitigation to warrant a penalty other than death?
- What mechanism is available to a person who alleges torture or other ill-treatment during the investigation phase of a criminal proceeding, including when such treatment allegedly resulted in a coerced statement that prosecutors seek to admit at trial?
- What safeguards are in place to ensure that all persons charged with capital crimes have access to counsel from the time of any interrogation through trial and any appellate and resentencing proceedings?
- Describe the training provided to sentencing judges, prosecutors, and defense counsel involved in capital cases regarding gender-based discrimination, gender-based violence, and tactics of coercive control that may lead to women committing death-eligible offenses.
- How does the State Party ensure that women charged with capital crimes receive effective legal representation by attorneys with experience in capital cases and with training on gender-sensitive defense strategies?
- What funding and other support does the State Party allocate to court-appointed or legal aid defense attorneys representing people charged with capital crimes to conduct an investigation prior to trial, including to gather mitigation evidence for sentencing?
- What financial and logistical support does the State Party provide to the dependent children of women under sentence of death to visit their mothers?
- Please explain what steps the State Party is taking to codify gender-specific defenses and mitigation in capital cases, encompassing women's experiences of trauma, poverty, and gender-based violence.
- Please respond to allegations of Kenyan authorities' involvement in the repatriation of a South Sudanese political dissident in February 2023, a Rwandan human rights activist in May 2024, a Ugandan opposition leader in November 2024, several Turkish asylum-seekers in October 2024, and over thirty members of the Ugandan Forum for Democratic Change in July 2024. Please describe the procedural rights afforded to each affected person prior to repatriation. What assurances have authorities received from the receiving countries that the individuals will not be subjected to torture or sentenced to death upon return?
- What initiatives are underway to expand Gender Justice Courts to ensure that at least one such court exists in every county?
- How do authorities collaborate with prison administrators to ensure that detention conditions align with the Nelson Mandela Rules and the Bangkok Rules, in particular by ensuring access to nutritious food, safe and clean water, adequate

hygiene, and adequate medical care, and eliminating torture and ill-treatment of persons in detention?