

SUMMARY REPORT FOR THE UNIVERSAL PERIODIC REVIEW OF KENYA

This report provides updated information and data on the use of the death penalty in Kenya since its last review by the Working Group on the Universal Periodic Review (UPR) in 2020 (3rd cycle), for the country's upcoming review in May 2025 (4th cycle).

FACTS AND FIGURES

- Kenya has observed a de facto moratorium on executions since 1987, which is the date of the last execution in the country.
- However, death sentences continue to be handed down. In 2023, 131 people were sentenced to death.
- There were 120 prisoners on death row at the end of 2023.
- The number of death sentences increased significantly from 79 in 2022 to 131 in 2023.

Recommendations:

- *Formalize the moratorium on executions with a view to abolishing the death penalty.*
- *Continue to publish disaggregated data annually on the use of the death penalty, including the number of people sentenced to death, the number of people on death row and number of death sentences quashed or commuted on appeal and the number of cases in which amnesty or pardon has been granted.*

LEGAL FRAMEWORK

National

- Section 26 of the Kenyan Constitution of 2010 provides that “a person shall not be deprived of life intentionally” but allows for exceptions authorized by the law.
- The Penal Code of 2009 prescribes the death penalty for various offenses, including treason, murder, and aggravated robbery.
- At least 41 provisions in Kenyan law allow for the application of the death penalty.
- In 2017, the Supreme Court of Kenya ruled that the mandatory death penalty was unconstitutional, declaring that Section 204 of the Penal Code violated judicial discretion (*Muruatetu vs Republic of Kenya*).
- In July 2021, the Supreme Court issued the following directions and guidelines stating that the decision in *Muruatetu* was only applicable in respect to sentences of murder under section 203 and 204 of the Penal Code.

Recommendations:

- *Recognize the unconstitutionality of mandatory death penalty, without exception, and make legislative changes to restrict the application of the death penalty exclusively to «most serious crimes» as defined by international standards.*
- *Conduct a comprehensive review of the legislative provisions allowing for capital punishment, with the aim of significantly reducing the number of offenses punishable by death.*
- *Consider the abolition of the death penalty.*

International

- Kenya is a party to the International covenant on civil and political rights (ICCPR), which restricts the use of the death penalty, but national laws conflict with these international obligations. Kenya has also ratified the International convention on the rights of the child.
- The State has not ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) nor the Second Optional Protocol to the International Covenant on Civil and Political Rights (OP2).
- Since 2007, Kenya has consistently abstained from voting the UN General Assembly resolution calling for a universal moratorium on the use of the death penalty.
- During its last UPR cycle (2020), Kenya supported 10 out of 25 recommendations related to the death penalty, mainly dealing with the ratification of the Second Optional Protocol to the ICCPR (OP2), the commutation of death sentences and the implementation of further steps towards abolition.

Recommendations:

- **Ratify and implement the OP2 and the OPCAT.**
- **Align national laws with Kenya's obligations under the ICCPR.**
- **Reconsider Kenya's position on the UN General Assembly resolution calling for a universal moratorium on the use of the death penalty, with a view to supporting this resolution in future votes.**

THE USE OF THE DEATH PENALTY IN KENYA

- Death row prisoners face challenging conditions, including overcrowding, limited access to basic services, and psychological distress. Water shortages in prisons prevent prisoners from maintaining personal hygiene and contribute to the spread of diseases while access to healthcare is limited. Many prisoners sleep in single file due to the lack of beds and space.
- The President of the Republic of Kenya has the power to grant pardons or commute sentences under the Constitution.
- In July 2023, President William Ruto commuted the sentences of all those sentenced to death as of November 2022 to life in prison.

Recommendations:

- **Commute all death sentences to terms of imprisonment, including sentences handed down for offenses that do meet the "most serious crime" threshold of the international standards.**
- **Improve conditions of detention for prisoners on death row, ensuring access to basic services and humane treatment.**
- **Ensure that those facing the death penalty are informed of their right to seek clemency.**

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