

**The Republic of Kenya's
Compliance with International Covenant on Economic, Social and Cultural Rights:
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
Repriev
The Kenya Human Rights Commission
The Cornell Center on the Death Penalty Worldwide
and
The World Coalition Against the Death Penalty

for the 77th Session of the Pre-Sessional Working Group
10–28 February 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 since its founding 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 publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence. 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 (WCADP), an alliance of more than 150 NGOs, bar associations, local authorities, and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. 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's continued use of the death penalty creates significant risk that it will fail to uphold its obligations under the International Covenant on Economic, Social and Cultural Rights, as Kenya's use of the death penalty implicates various cultural, social, and economic rights. This report supplements and updates information that the coauthors provided to the Committee at the List of Issues Prior to Reporting stage.¹
2. Kenya has not carried out any executions since the late 1980s. Furthermore, in October 2016, the Kenyan President commuted all sentences of death in the country to life sentences,² and in July 2023, President Ruto commuted the sentences of all people who had been sentenced to death before November 2022.³ Kenyan courts, however, continue to hand down death sentences.
3. This report recommends that the Committee on Economic, Social and Cultural Rights recommend that Kenya formally abolish the death penalty and commute the sentences of all persons on death row. Kenya should also take active steps to address the intersecting issues of access to justice, discrimination, domestic violence, poverty, and access to healthcare, particularly as they are relevant in capital cases. First, Kenya should take additional steps to ensure that all people charged with capital crimes have access to well-qualified legal counsel with adequate funding for a thorough pre-trial investigation and should increase transparency within the criminal legal system in order to engender trust by the Kenyan people in that system, particularly for people from disadvantaged socio-economic backgrounds. Second, Kenya should ensure that judicial actors have adequate training regarding gender-specific defenses and gender-specific mitigation in capital trials to account for the context of gender-based violence that may lead victims of such violence to commit death-eligible offenses. Third, Kenya should ensure that poverty does not adversely affect the fair trial rights of people charged with capital crimes. Last, Kenya should ensure that people in detention, particularly people under sentence of death, have adequate access to medical and health care.

Kenya fails to uphold its obligations under the International Covenant on Economic, Social and Cultural Rights

4. Kenyan law authorizes the death penalty for several crimes, including murder, 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

¹ The Advocates for Human Rights et al., *Kenya's Compliance with the International Covenant on Economic, Social and Cultural Rights: Suggested List of Issues Prior to Reporting*, Jan. 9, 2023, <https://www.theadvocatesforhumanrights.org/Res/Kenya%20Death%20Penalty%20LOI%20Report%20FINAL.pdf>.

² Reuters Staff, *Kenyan president commutes all death sentences to life in prison*, (Oct. 26, 2016) available at <https://www.reuters.com/article/us-kenya-president/kenyan-president-commutes-all-death-sentences-to-life-in-prison-idUSKCN1201PN>.

³ The Death Penalty Project Annual Report (2023), at 15. Also available online at: <https://deathpenaltyproject.org/wp-content/uploads/2024/03/The-Death-Penalty-Project-Annual-report-2023.pdf>.

death.⁴ Kenya still authorizes the death penalty for crimes that do not meet the threshold of the “most serious crimes.”⁵

5. Since 2021, courts have been handing down death sentences at an increasing rate. Courts handed down 14 death sentences in 2021⁶, 79 in 2022⁷, and 131 in 2023.⁸
6. While death sentences have increased, so have commutations and exonerations.⁹ In 2021, a court exonerated one person on death row.¹⁰ In 2022, 12 commutations and 20 exonerations were granted to people under sentence of death.¹¹ That number further increased in 2023, when courts granted 606 commutations and 5 exonerations to people previously sentenced to death.¹² As mentioned in paragraph 2 above, in July 2023, President Ruto commuted the death sentences of all people who had been sentenced to death before November 2022.¹³
7. Putting the above information in perspective, the Death Penalty Project estimated that as of 2022, there were approximately 600 people on death row. By the end of 2023, that number dropped to approximately 120. As of October 9, 2024, 166 persons (163 men and 3 women) were on death row. This figure may continue to increase. Some of the people who were sentenced to death under the now-unconstitutional mandatory death penalty have been resentenced to death,¹⁴ while thousands more who are serving whole life sentences while awaiting resentencing are at risk of being resentenced to death.¹⁵
8. According to Amnesty International, between August and September 2023, lawmakers in Parliament introduced four bills seeking to abolish or reduce the scope of the death penalty.¹⁶ As of October 10, 2024, those bills are still pending in Parliament.¹⁷

⁴ Cornell Center on the Death Penalty Worldwide, Kenya,

<https://deathpenaltyworldwide.org/database/#/results/country?id=38> (last visited 6 Dec. 2024).

⁵ Human Rights Committee, General Comment No. 36 (3 Sept. 2019), U.N. Doc. CCPR/C/GC/36, ¶ 35.

⁶ Amnesty International, Death sentences and executions 2021 (2022), at 12. Also available online at: <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

⁷ Amnesty International, Death sentences and executions 2022 (2023), at 12. Also available online at: <https://www.amnesty.org/en/documents/act50/6548/2023/en/>.

⁸ Amnesty International, Death sentences and executions 2023 (2024), at 12. Also available online at: <https://www.amnesty.org/en/documents/act50/7952/2024/en/>.

⁹ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Kenya (20 Mar. 2020), U.N. Doc. A/HRC/44/9, ¶ 142.81 Commute the death sentences of the remaining 810 death-row inmates (Namibia).

¹⁰ Amnesty International, Death sentences and executions 2021 (2022), at 14. Also available online at: <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

¹¹ Amnesty International, Death sentences and executions 2022 (2023), at 35. Also available online at: <https://www.amnesty.org/en/documents/act50/6548/2023/en/>.

¹² Amnesty International, Death sentences and executions 2023 (2024), at 38. Also available online at: <https://www.amnesty.org/en/documents/act50/7952/2024/en/>.

¹³ The Death Penalty Project Annual Report (2023), at 15. Also available online at:

<https://deathpenaltyproject.org/wp-content/uploads/2024/03/The-Death-Penalty-Project-Annual-report-2023.pdf>.

¹⁴ Information on file with Reprieve.

¹⁵ 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).

¹⁶ Amnesty International, 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/>.

¹⁷ Amnesty International, Africa: Countries on the Cusp of Abolition Must Take a Stand Against the Death Penalty, available online at: <https://www.amnesty.org/en/latest/news/2024/10/africa-countries-on-the-cusp-of-abolition-must->

- I. Persons living on death row with more specialized health care needs requiring long-term treatment, such as those with chronic diseases and those with psychosocial impairments and disabilities, may not be able to access the treatment regimens they need (List of Issues paras. 30, 33).**
9. In its List of Issues, the Committee requested information on measures taken to improve “the accessibility, availability and quality of public health services throughout the State party.”¹⁸ Specifically regarding persons deprived of their liberty, the Committee requested “information on the impact of the integrated prevention mechanisms and harm reduction practices and programmes implemented by the State party to prevent new HIV infections.”¹⁹ The Committee also requested “information on the provision of health and medical services, including mental health services, to people detained in correctional facilities, . . . disaggregated by sex, period of incarceration and types of service provided.”²⁰
10. Kenya’s Replies to the List of Issues outline various laws and directives directed toward healthcare, including a presidential directive resulting in the waiver of medical assessments for people with disabilities at certain health centers.²¹ The Replies concede that one challenge affecting the provision of healthcare is that “[t]he government faces resource constraints in effectively monitoring all healthcare providers across the country,” and another is that public and private facilities may use different approaches and standards, impeding monitoring efforts.²² The Replies further assert that “Kenya is working to improve access to quality healthcare services for all citizens,” acknowledging that “challenges remain, particularly in rural areas and for marginalized groups.”²³ They also mention that “Kenya is developing guidelines and support systems for mental healthcare in prisons.”²⁴
11. Specifically regarding provision of healthcare in detention facilities, the Replies simply state without further explanation that “[t]he Prisons Act and international instruments mandate Kenya Prisons Service to provide healthcare services for inmates, including medical, dental, and mental health.”²⁵ The Replies offer no discussion of how the provision of such services works in practice.

take-a-stand-against-the-death-penalty/#:~:text=While%20the%20courts%20in%20Kenya%20continue%20to,death%20penalty%20are%20currently%20pending%20in%20Parliament.

¹⁸ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the sixth periodic report of Kenya*, UN Doc. E/C.12/KEN/Q/6 (28 Mar. 2023), ¶ 30.

¹⁹ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the sixth periodic report of Kenya*, UN Doc. E/C.12/KEN/Q/6 (28 Mar. 2023), ¶ 33.

²⁰ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the sixth periodic report of Kenya*, UN Doc. E/C.12/KEN/Q/6 (28 Mar. 2023), ¶ 33.

²¹ Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, UN Doc. E/C.12/KEN/RQ/6 (June 11, 2024), ¶¶ 78-79.

²² Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, UN Doc. E/C.12/KEN/RQ/6 (June 11, 2024), ¶ 83.

²³ Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, UN Doc. E/C.12/KEN/RQ/6 (June 11, 2024), ¶ 89.

²⁴ Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, UN Doc. E/C.12/KEN/RQ/6 (June 11, 2024), ¶ 89.

²⁵ Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, UN Doc. E/C.12/KEN/RQ/6 (June 11, 2024), ¶ 89.

12. As discussed in greater detail in the coauthors' report at the List of Issues stage,²⁶ Kenyan penal institutions fail to provide accessible and quality medical health services. At times, security concerns interfere with individuals' right to access healthcare.²⁷
13. Kenya's laws provide that all people in prison, including people on death row, are entitled to healthcare, but the Kenyan Ministry of Health is not required by law to provide said healthcare.²⁸ Instead, the Kenya Prisons Service is responsible for providing healthcare services to people deprived of their liberty.²⁹ The prison system has to juggle the interests of security and the wellbeing of people in prison, while at the same time being subject to tight budgets and limited resources.
14. These constraints impede prison authorities from providing necessary support and accommodations to people with psychosocial impairments and disabilities.³⁰ The most recent estimates suggest that many people on death row—roughly 65%—experienced psychosocial impairments or disabilities prior to their incarceration. For many, failure to provide accommodations for those conditions was a catalyst for the crimes for which they were sentenced to death.³¹ People in prison, especially people on death row who are isolated from the general population, are also highly susceptible to developing psycho-social impairments and disabilities due to their imprisonment.
15. Within the prison system, persons with psychosocial impairments and disabilities face compounded issues, especially persons on death row who already receive disparate treatment. Persons with psychosocial impairments and disabilities who are in prison are often isolated from the general prison population.³² Persons on death row are typically already isolated, but receive the same freedoms, such as recreational time, that people within the general prison population also receive. But people who have psychosocial impairments or disabilities often face further isolation—prison authorities often deny them the opportunity to leave their cells and keep them in lock-down to keep them docile, to prevent them from bothering other people, and to make them easier to control.³³
16. These extreme forms of isolation are particularly acute for persons on death row. Kenya as a nation has a very limited number of practicing psychiatrists to serve the entire nation—roughly

²⁶ The Advocates for Human Rights et al., *Kenya's Compliance with the International Covenant on Economic, Social and Cultural Rights: Suggested List of Issues Prior to Reporting*, Jan. 9, 2023, ¶¶ 22-27, <https://www.theadvocatesforhumanrights.org/Res/Kenya%20Death%20Penalty%20LOI%20Report%20FINAL.pdf>.

²⁷ The Advocates for Human Rights et al., *Kenya's Compliance with the International Covenant on Economic, Social and Cultural Rights: Suggested List of Issues Prior to Reporting*, Jan. 9, 2023, ¶ 26, <https://www.theadvocatesforhumanrights.org/Res/Kenya%20Death%20Penalty%20LOI%20Report%20FINAL.pdf>.

²⁸ John Muchangi, *State Promises Action to Help Mentally Sick Prisoners*, THE STAR (July, 5, 2024) <https://www.the-star.co.ke/news/2024-07-05-state-promises-action-to-help-mentally-sick-prisoners>.

²⁹ John Muchangi, *State Promises Action to Help Mentally Sick Prisoners*, THE STAR (July, 5, 2024) <https://www.the-star.co.ke/news/2024-07-05-state-promises-action-to-help-mentally-sick-prisoners>.

³⁰ John Muchangi, *State Promises Action to Help Mentally Sick Prisoners*, THE STAR (July, 5, 2024) <https://www.the-star.co.ke/news/2024-07-05-state-promises-action-to-help-mentally-sick-prisoners>.

³¹ John Muchangi, *State Promises Action to Help Mentally Sick Prisoners*, THE STAR (July, 5, 2024) <https://www.the-star.co.ke/news/2024-07-05-state-promises-action-to-help-mentally-sick-prisoners>.

³² *Kenya: Left Behind*, PRISON INSIDER (July 24, 2023) <https://www.prison-insider.com/en/articles/kenya-left-behind>.

³³ *Kenya: Left Behind*, PRISON INSIDER (July 24, 2023) <https://www.prison-insider.com/en/articles/kenya-left-behind>.

125 in total—most of whom are in private practice.³⁴ It is unclear how many psychiatrists work for the government or for the benefit of the prison system, but the ratio of psychiatrists to Kenyan citizens, about 1 doctor per 416,000 citizens, suggests that it is very unlikely psychiatric professionals provide care to persons in prison who need their help.³⁵

17. There is limited information available on the eligibility criteria for the option of serving a sentence in a “mental health rehabilitation center,” but very few people in prison are able to take advantage of this type of accommodation.³⁶ It is also unclear whether people on death row or people serving life sentences are eligible to participate in these programs.
18. Moreover, outside of regular healthcare needs such as treatment for routine illnesses and injuries, people in prison are not spared from more devastating illnesses like cancer, diabetes, or other chronic ailments that require long-term treatment. There is minimal information available regarding long-term treatment solutions for people in prison living with chronic diseases such as cancer, diabetes, heart disease, incurable diseases such as hepatitis, HIV/AIDS, or other common and acute and highly infectious illnesses such as tuberculosis, cholera, and dysentery.
19. Researchers have carried out some specific studies, including one in 2024 regarding management of diabetes within the prison system, but the data do not capture the prison system at large.³⁷ The results of a study published in 2024 suggest that many prisons lack adequate professionals in prison clinics to provide diagnosis, education, and treatment services. Persons in prison who do not receive adequate instruction on the necessity of following treatment regimens often do not adhere to their treatment plans and therefore are not able to fully treat their diabetes symptoms.³⁸ People who do receive sufficient education on treatment plans are generally more likely to adhere to their treatment regimens if they can afford their medication.³⁹ But a person’s potential to follow a treatment plan in prison does not depend only on that person’s access to information about their disease.⁴⁰ Individuals who received

³⁴ Kenya: *Left Behind*, PRISON INSIDER (July 24, 2023) <https://www.prison-insider.com/en/articles/kenya-left-behind>.

³⁵ Kenya National Bureau of Statistics, KENYA POPULATION AND HOUSING CENSUS, <https://www.knbs.or.ke/wp-content/uploads/2023/09/2019-Kenya-population-and-Housing-Census-Summary-Report-on-Kenya-Population-Projections.pdf> (estimating that Kenya’s population in the year 2024 is roughly 52,000,000 persons).

³⁶ John Muchangi, *State Promises Action to Help Mentally Sick Prisoners*, THE STAR (July, 5, 2024) <https://www.the-star.co.ke/news/2024-07-05-state-promises-action-to-help-mentally-sick-prisoners>.

³⁷ Evabeatrice Njoka et. al, *Predictors of Non-Adherence to Type II Diabetes Management Among Adult Inmates in Machakos County Prisons, Kenya*, Journal of Medical and Biomedical Laboratory Sciences Research, Vol. 4, No. 1 (2024), <https://jmbldr.com/index.php/JMBLSR/article/view/20>.

³⁸ Evabeatrice Njoka et. al, *Predictors of Non-Adherence to Type II Diabetes Management Among Adult Inmates in Machakos County Prisons, Kenya*, Journal of Medical and Biomedical Laboratory Sciences Research, Vol. 4, No. 1 (2024), <https://jmbldr.com/index.php/JMBLSR/article/view/20>.

³⁹ Evabeatrice Njoka et. al, *Predictors of Non-Adherence to Type II Diabetes Management Among Adult Inmates in Machakos County Prisons, Kenya*, Journal of Medical and Biomedical Laboratory Sciences Research, Vol. 4, No. 1 (2024), <https://jmbldr.com/index.php/JMBLSR/article/view/20>.

⁴⁰ Evabeatrice Njoka et. al, *Predictors of Non-Adherence to Type II Diabetes Management Among Adult Inmates in Machakos County Prisons, Kenya*, Journal of Medical and Biomedical Laboratory Sciences Research, Vol. 4, No. 1 (2024), <https://jmbldr.com/index.php/JMBLSR/article/view/20>.

proper education but did not have a favorable experience with the medical staff providing those instructions are less likely to adhere to the treatment plan.⁴¹

20. Not every prison in Kenya has its own medical clinic. People in prison who are ill have to make special requests to be brought to a medical provider for treatment, if possible, or have to suffer unless and until some form of relief is provided.
21. Travelling or pop-up medical camps can offer some relief. Non-governmental organizations typically run these medical camps that visit individual prisons.⁴² These camps, however, do not offer permanent healthcare solutions. Doctors working in the camps concede that even though they may diagnose an illness and prescribe a treatment plan, they know many patients will not be able to follow that plan due to limited resources.⁴³ Therefore, doctors are reticent even to prescribe treatment plans if they know the resources to follow through with the treatment do not exist. Such reticence may be heightened for patients under sentence of death.
22. Indeed, for many people in prison, medical camps are the only medical services they receive.⁴⁴ Sometimes, individuals can go a decade between medical evaluations—and those medical evaluations occur only because the medical camps bring the doctors to the prisons.⁴⁵ Without regular treatment, from a medical camp or otherwise, persons on death row may never receive the adequate medical treatment they need.

II. Women who have experienced domestic violence are more likely to be sentenced to death, particularly when they kill their abusers, and conditions on death row for women can be “unbearable” (List of Issues paras. 10, 14(d), 25).

23. The Committee in its List of Issues requested information about “measures taken to adopt a comprehensive anti-discrimination law prohibiting direct, indirect and multiple forms of discrimination on all grounds.”⁴⁶ The Committee also requested information about “gender representation in selected high-level positions in . . . the judiciary . . . over the last five years.”⁴⁷

⁴¹ Evabeatrice Njoka et. al, *Predictors of Non-Adherence to Type II Diabetes Management Among Adult Inmates in Machakos County Prisons, Kenya*, Journal of Medical and Biomedical Laboratory Sciences Research, Vol. 4, No. 1 (2024), <https://jmblsr.com/index.php/JMBLSR/article/view/20>.

⁴² Nelly Bosire, *Guest Commentary: Prison Medical Camps*, THE NATION (Aug. 7, 2017, updated June 29, 2020), <https://nation.africa/kenya/healthy-nation/-guest-commentary-prison-medical-camps-435080#>; Omeriye Foundation, *Serving Hope, Healing Lives at Nakuru GK Prison*, (June 10, 2023), <https://omeriyefoundation.org/nakuru-gk-prison>.

⁴³ Nelly Bosire, *Guest Commentary: Prison Medical Camps*, THE NATION (Aug. 7, 2017, updated June 29, 2020), <https://nation.africa/kenya/healthy-nation/-guest-commentary-prison-medical-camps-435080#>; Omeriye Foundation, *Serving Hope, Healing Lives at Nakuru GK Prison*, (June 10, 2023), <https://omeriyefoundation.org/nakuru-gk-prison>.

⁴⁴ Daniel Chege et. al, *The Plight of Sick Prisoners in Desperate Need of Medical Care to End Their Agony*, THE STANDARD, (2023), <https://www.standardmedia.co.ke/counties/article/2001475028/plight-of-sick-prisoners-in-desperate-need-of-medical-care-to-end-their-agony>.

⁴⁵ Daniel Chege et. al, *The Plight of Sick Prisoners in Desperate Need of Medical Care to End Their Agony*, THE STANDARD, (2023), <https://www.standardmedia.co.ke/counties/article/2001475028/plight-of-sick-prisoners-in-desperate-need-of-medical-care-to-end-their-agony>.

⁴⁶ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the sixth periodic report of Kenya*, UN Doc. E/C.12/KEN/Q/6 (28 Mar. 2023), ¶ 10.

⁴⁷ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the sixth periodic report of Kenya*, UN Doc. E/C.12/KEN/Q/6 (28 Mar. 2023), ¶ 14(d).

The Committee also requested information on measures taken to enact various laws relating to children and domestic violence.⁴⁸

24. Kenya's Replies state that Kenyan law prohibits discrimination based on a variety of characteristics and point to specific laws to address discrimination in employment and in the context of internally displaced people.⁴⁹ The Replies also state that Kenya's judiciary "receive continuous training to effectively uphold the Constitution and resolve dispute."⁵⁰ The Replies further note that the new Children's Act raises the age of criminal responsibility.⁵¹ The Replies state that the Protection against Domestic Violence Act and Rules (2022) "emphasize prevention, intervention, and support for victims. They allow victims to apply for protection orders and ensure early detection/prevention of violence."⁵²
25. As discussed in greater detail in the coauthors' report at the List of Issues stage,⁵³ women who have experienced gender-based violence are over-represented in the profile of women sentenced to death in Kenya, and a large proportion of women under sentence of death were convicted of murder in the context of gender-based violence. Moreover, "stereotypes and prejudices about gender roles," such as "stereotypes that women are more emotional and less credible as witnesses," can have negative effects on women in conflict with the law.⁵⁴
26. Sentencing guidelines now support that "[c]ommission of a crime in response to gender-based violence" is a mitigating circumstance which "warrant[s] a more lenient penalty than would be ordinarily imposed in [its] absence,"⁵⁵ but it is not clear what training and guidance judicial actors receive to ensure consideration of this guideline.
27. Conditions for women once on death row are described as "unbearable," with women living in isolation, under "constant and maximum surveillance."⁵⁶ By contrast, if sentenced to life imprisonment, they "can have access to rehabilitation programs without restrictions[and] are

⁴⁸ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the sixth periodic report of Kenya*, UN Doc. E/C.12/KEN/Q/6 (28 Mar. 2023), ¶ 25.

⁴⁹ Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, UN Doc. E/C.12/KEN/RQ/6 (June 11, 2024), ¶ 31.

⁵⁰ Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, UN Doc. E/C.12/KEN/RQ/6 (June 11, 2024), ¶ 5.

⁵¹ Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, UN Doc. E/C.12/KEN/RQ/6 (June 11, 2024), ¶ 8.

⁵² Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, UN Doc. E/C.12/KEN/RQ/6 (June 11, 2024), ¶ 59.

⁵³ The Advocates for Human Rights et al., *Kenya's Compliance with the International Covenant on Economic, Social and Cultural Rights: Suggested List of Issues Prior to Reporting*, Jan. 9, 2023, ¶¶ 11-16, <https://www.theadvocatesforhumanrights.org/Res/Kenya%20Death%20Penalty%20LOI%20Report%20FINAL.pdf>.

⁵⁴ *Death Penalty for Kenyan Women who Kill Men in Self-Defense*, Koha, available at <https://www.koha.net/en/bote/denim-me-vdekje-per-kenianet-qe-vrasin-burrat-ne-vetembrojtje> (last visited 06 December 2024).

⁵⁵ Republic of Kenya, the Judiciary, *Sentencing Policy Guidelines*, available at https://kenyalaw.org/kl/fileadmin/pdfdownloads/Sentencing_Policy_Guidelines_Booklet.pdf.

⁵⁶ *Death Penalty for Kenyan Women who Kill Men in Self-Defense*, Koha, available at <https://www.koha.net/en/bote/denim-me-vdekje-per-kenianet-qe-vrasin-burrat-ne-vetembrojtje> (last visited 06 December 2024).

moved from the isolated cells to the general wards of the prison, where they can socialize with other prisoners.”⁵⁷

28. In addition, women on death row who are mothers are allowed “to take their children to prison until they are 4 years old,” making the situation more of a nightmare,”⁵⁸ as mothers are faced with a choice between being separated from their young children or “expos[ing them] to toxic language, aggressive behavior and fights among the imprisoned women.”⁵⁹ In prison, children are often lacking in “early learning and stimulation,” “spaces for play,” “properly trained caregivers,” and “age specific diet[s].”⁶⁰ Once they age out of the policy, they go to live with relatives or in an orphanage, with some mothers losing contact with their children.⁶¹

V. Poverty has a major influence on whether a person receives the death penalty, and the majority of Kenyans on death row come from impoverished backgrounds and lack access to education (List of Issues paras. 9(a)-(b), 26).

29. In its List of Issues, the Committee requested information about the proportion of people in Kenya living below the poverty line and about levels of inequality.⁶² The Committee also requested “information on the tangible impact of the measures taken to combat poverty and extreme poverty.”⁶³
30. The Replies state that the national poverty rate has fluctuated from 33% to 45% in recent years⁶⁴ and concede that, “[d]espite progress, inequalities persist.”⁶⁵
31. As discussed in greater detail in the coauthors’ report at the List of Issues stage,⁶⁶ in practice the death penalty is reserved for people from disadvantaged socioeconomic backgrounds, and

⁵⁷ *Death Penalty for Kenyan Women who Kill Men in Self-Defense*, Koha, available at <https://www.koha.net/en/bote/denim-me-vdekje-per-kenianet-qe-vrasin-burrat-ne-vetembrojtje> (last visited 06 December 2024).

⁵⁸ *Death Penalty for Kenyan Women who Kill Men in Self-Defense*, Koha, available at <https://www.koha.net/en/bote/denim-me-vdekje-per-kenianet-qe-vrasin-burrat-ne-vetembrojtje> (last visited 06 December 2024).

⁵⁹ Mumbi Muguongo, *Children in Prison with Their Mothers – Not Their Crime Yet Their Sentence*, The Standard, available at <https://www.standardmedia.co.ke/evewoman/readers-lounge/article/2001415940/children-in-prison-with-their-mothers-not-their-crime-yet-their-sentence> (last visited 06 December 2024).

⁶⁰ Mumbi Muguongo, *Children in Prison with Their Mothers – Not Their Crime Yet Their Sentence*, The Standard, available at <https://www.standardmedia.co.ke/evewoman/readers-lounge/article/2001415940/children-in-prison-with-their-mothers-not-their-crime-yet-their-sentence> (last visited 06 December 2024).

⁶¹ *Death Penalty for Kenyan Women who Kill Men in Self-Defense*, Koha, available at <https://www.koha.net/en/bote/denim-me-vdekje-per-kenianet-qe-vrasin-burrat-ne-vetembrojtje> (last visited 06 December 2024).

⁶² Committee on Economic, Social and Cultural Rights, *List of issues in relation to the sixth periodic report of Kenya*, UN Doc. E/C.12/KEN/Q/6 (28 Mar. 2023), ¶ 9(a)-(b).

⁶³ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the sixth periodic report of Kenya*, UN Doc. E/C.12/KEN/Q/6 (28 Mar. 2023), ¶ 26.

⁶⁴ Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, UN Doc. E/C.12/KEN/RQ/6 (June 11, 2024), ¶ 62.

⁶⁵ Committee on Economic, Social and Cultural Rights, *Replies of Kenya to the list of issues in relation to its sixth periodic report*, UN Doc. E/C.12/KEN/RQ/6 (June 11, 2024), ¶ 78.

⁶⁶ The Advocates for Human Rights et al., *Kenya’s Compliance with the International Covenant on Economic, Social and Cultural Rights: Suggested List of Issues Prior to Reporting*, Jan. 9, 2023, ¶¶ 17-21, <https://www.theadvocatesforhumanrights.org/Res/Kenya%20Death%20Penalty%20LOI%20Report%20FINAL.pdf>.

people living in poverty who have had limited access to education are vastly overrepresented on Kenya's death row.⁶⁷

VI. Suggested recommendations for the Government of Kenya

32. The coauthors of this report suggest the following recommendations for the Government of Kenya:

- Abolish the death penalty and replace it with penalties that are fair, proportionate, and consistent with international human rights standards.
- In the interim, institute a formal moratorium on executions.
- Adopt an action-plan to provide support and accommodations to people with psychosocial impairments and disabilities in the prison system and to destigmatize such impairments and disabilities, and ensure that no person is deprived of access to prison facilities or recreational opportunities due to any psychosocial impairment or disability.
- Clarify the eligibility criteria for the program allowing people to serve their prison sentences in a “mental health rehabilitation center,” ensuring that people are not deemed ineligible due to a death sentence, and publicize those criteria to potentially eligible persons and their representatives.
- Ensure that people with common chronic illnesses who are incarcerated, including people under sentence of death, receive care and treatment regimens that are the same as regimens available to people in the community.
- Ensure that no person who is deprived of liberty must pay for necessary medical treatment.
- Step up funding to expand access to medical camps at the county, regional, and/or national level for all persons deprived of liberty, including people on death row, so they can receive the medical care they need.
- On an annual basis, publish comprehensive data about the number of people charged with capital crimes, sentenced to death, or under sentence of death, disaggregated by sex/gender, age, race/tribe, nationality, crime of conviction, date of conviction, relationship to any victim or codefendant, number and age of any minor children, status of any appeals or petitions for clemency, current sentence, and current location.
- In collaboration with civil society, provide training to prosecutors, defense attorneys, and judicial actors involved with the sentencing process to ensure understanding of sentencing guidelines identifying as a mitigating circumstance “[c]ommission of a crime in response to gender-based violence” as warranting “a more lenient penalty than would be ordinarily imposed in [its] absence.”⁶⁸

⁶⁷ The Advocates for Human Rights et al., *Kenya's Compliance with the International Covenant on Economic, Social and Cultural Rights: Suggested List of Issues Prior to Reporting*, Jan. 9, 2023, ¶¶ 19-20, <https://www.theadvocatesforhumanrights.org/Res/Kenya%20Death%20Penalty%20LOI%20Report%20FINAL.pdf>.

⁶⁸ Republic of Kenya, the Judiciary, *Sentencing Policy Guidelines*, available at https://kenyalaw.org/kl/fileadmin/pdfdownloads/Sentencing_Policy_Guidelines_Booklet.pdf.

- Collaborate with authorities responsible for women's prisons to ensure the safety, privacy, and health of women who are in detention, including access to adequate toilets and sanitation and menstrual products.
- In addressing access to healthcare for people deprived of their liberty, ensure that all women deprived of their liberty, including women under sentence of death, have timely and adequate access to general and female-specific healthcare and counseling, informed by the Bangkok Rules and the Nelson Mandela Rules.
- Ensure that children who are in detention with their mothers receive adequate pediatric care and education.