

**The Republic of Kenya
Joint Stakeholder Report for the United Nations Universal Periodic Review:
The Death Penalty**

Submitted by The Advocates for Human Rights,
a nongovernmental organization in special consultative status

The Kenyan Section of the International Commission of Jurists (ICJ Kenya)

Reprieve

and

The World Coalition Against the Death Penalty

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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. 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 Kenyan Section of the International Commission of Jurists (ICJ Kenya) is a non-governmental membership organization consisting of a body of jurists drawn from members of the Bench and Bar in Kenya and the region. It is the only autonomous national section of the International Commission of Jurist based in Geneva. ICJ Kenya has been working in Kenya and around Africa since 1959 and its mission is to promote human rights, justice and democracy in Kenya and around Africa through the application of legal expertise and international best practices. ICJ Kenya is a member of the National Council on the Administration of Justice Criminal Justice Committee which is spearheading criminal reforms in Kenya. Importantly, ICJ Kenya as a committee member engaged in the review of the

National Sentencing Policy.¹ ICJ Kenya is also a member of the World Coalition Against Death Penalty.

Reprieve (ECOSOC Special Consultative Status 2018) is an international legal action charity that provides support to some of the world's most vulnerable people, including people sentenced to death and those victimized by states' abusive counter-terrorism policies. Reprieve is currently working on behalf of more than 70 people facing the death penalty in 16 countries, including Kenya. Reprieve has been working in Kenya since 2019 with the aim to support inmates originally sentenced with their resentencing applications following Muruatetu and to ultimately achieve the abolishment of the death penalty. To further this objective Reprieve combines advocacy efforts and supporting individual and strategic cases with research and capacity building for Kenyan lawyers, judges, probation officers, and others in the criminal justice system.

EXECUTIVE SUMMARY

1. This report addresses Kenya's compliance with its international human rights obligations with respect to the death penalty; arbitrary and unlawful detentions; the prohibition against torture and cruel, inhuman, or degrading treatment; conditions of detention; and administration of justice and fair trial.
2. Kenya has not abolished the death penalty or implemented a formal moratorium on executions, nor has it limited the application of the death penalty to the "most serious crimes." People under sentence of death experience poor detention conditions and are subject to various forms of torture during interrogation and when in prison. Courts often issue death sentences arbitrarily, without due process, and without adherence to formal judicial procedures.
3. This report examines the current state of the death penalty in Kenya and recommends that Kenya abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights. This report further recommends, in the meantime, that Kenya: (1) strengthen the rule of law; (2) enact constitutional and legislative provisions directly pertaining to the death penalty, such as its application to vulnerable groups and limiting the death penalty to the "most serious crimes"; (3) regularly publish data regarding the death penalty and enhance transparency regarding death penalty practices; (4) investigate allegations of ill-treatment by law enforcement and prison staff; (5) improve conditions of detention; (6) ensure the right to nutritious food, safe drinking water, and adequate sanitation in detention; (7) ensure that people in detention have adequate access to medical care and treatment; (8) improve the administration of justice and provide fair trials, including dismissing all evidence obtained through coercion, torture, or ill-treatment; (9) expand Gender Justice Courts (previously called Sexual and Gender-Based Violence Courts); (10) cease the use of torture and cruel, inhuman, or degrading treatment and punishment, including in interrogation and detention; (11) develop practical, scalable, and coherent procedures for resentencing; (12) increase the application of the 2023 Sentencing Policy Guidelines; and (13) amend the Criminal Procedure Code to remove the possibility of detaining people with psycho-social disabilities at the President's pleasure.

I. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Scope of international obligations; Acceptance of international norms

Status of Implementation: Partially Accepted, Not Implemented

4. In its third-cycle UPR, Kenya accepted four of fifteen recommendations regarding ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (OP2) and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).² Kenya agreed to "[c]onsider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights"³ and to consider ratifying the OPCAT.⁴ Kenya noted eleven recommendations that explicitly recommended that Kenya ratify (rather than simply consider ratifying) OP2 and

the OPCAT.⁵ To date, Kenya has not implemented any these recommendations. There is no evidence to suggest it has even given ratification any meaningful consideration.⁶

5. Kenya consistently abstains from UN General Assembly resolutions calling for a moratorium on the death penalty,⁷ including most recently in December 2022.⁸

Death penalty

Status of Implementation: Partially Accepted, Partially Implemented

6. In its third-cycle UPR, Kenya accepted nine of fifteen recommendations relating to the death penalty, including commuting the death sentences of the remaining people on death row, finalizing implementation of a previous Supreme Court ruling that the mandatory death penalty is unconstitutional, and taking measures to abolish the death penalty.⁹ Kenya noted recommendations to establish a formal moratorium on or abolish the death penalty.¹⁰
7. 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 death.¹¹ Hence, Kenya still authorizes the death penalty for crimes that do not meet the threshold of the “most serious crimes.”¹² Kenya prohibits the death penalty for juvenile offenders and pregnant persons.¹³
8. In *Muruatetu & another v. Republic [2017] KESC 2 (KLR)*¹⁴ (*Muruatetu*), the Supreme Court abolished the mandatory death penalty for murder.¹⁵ In *Muruatetu* the lower court had convicted the petitioners of murder and issued the then-mandatory sentence of death.¹⁶ The Court held that the mandatory death penalty for murder convictions was unconstitutional, as it deprived judges of their right to consider mitigating circumstances and deprived convicted persons of their right to appeal their sentences.¹⁷ The Court further held that the mandatory death sentence was an unfair and unjust procedure for the termination of life¹⁸ and concluded that the mandatory death penalty violated a person’s right to dignity, justice, and equality.¹⁹
9. *Muruatetu* led to the creation in 2018 of the taskforce on the review of the mandatory nature of the death penalty. The taskforce recommended: (1) Resentencing of certain categories of persons: all persons who were on death row at the time of the decision, all persons whose death sentences had been commuted to life imprisonment, and any persons sentenced to death after *Muruatetu* but without compliance with the Court’s declaration and who have exhausted all appeals. (2) Proposition of a new category of offenses punishable by life imprisonment, including “aggravated” murders with no possibility of parole, and “second degree,” “simple,” and “manslaughter” offenses that would be eligible for parole after 20 years, 25 years, and two-thirds of the sentence respectively.
10. Despite the taskforce’s efforts, authorities have failed to implement most of the recommendations. In 2022, the Committee Against Torture lauded Kenya for declaring the mandatory nature of the death penalty unconstitutional but raised concerns about the retention of the death penalty. The delegation responded that the death sentence is still legal under Kenyan law and its abolition can be achieved only through the decision of the people by plebiscite. Two years on, the government has yet to initiate a plebiscite.²⁰

11. In response to the “avalanche of applications for re-sentencing” after *Muruatetu* relating to death sentences handed down under other mandatory provisions in the law, on July 6, 2021, the Supreme Court issued directions in *Muruatetu & another v. Republic [2021] KESC 31 (KLR)*²¹ (*Muruatetu II*), clarifying that *Muruatetu* applies to mandatory sentences for murder only and not to other crimes with mandatory death sentences, such as treason, robbery with violence, and attempted robbery.²² Consequently, since *Muruatetu II*, lower courts trying cases in which people are charged with robbery with violence and attempted robbery have been more likely to impose the mandatory death penalty.²³
12. 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 stages, including the initial fact-finding stage due to missing case records and difficulties retrieving case records in general.
13. In certain instances, courts have issued decisions departing from the mandatory death penalty and imposing fixed sentences. Some progressive courts have expanded the application of *Muruatetu*. The Court of Appeal in *William Okungu Kittiny v. Republic [2018] eKLR*²⁴ held that the findings in *Muruatetu* apply to Sections 296(2) and 297(2) of the Penal Code. Hence, the death sentence under Section 296(2) and 297(2) is a discretionary maximum punishment.
14. In 2023, the Judiciary gazetted the amended Sentencing Policy Guidelines, 2023²⁵ (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.
15. Although no known executions have occurred in Kenya since 1987,²⁶ courts have increasingly handed down death sentences year after year from 2021 to 2023. Courts handed down 14 death sentences in 2021,²⁷ 79 in 2022,²⁸ and 131 in 2023.²⁹ As of October 9, 2024, 166 persons (163 men and 3 women) were on death row.
16. While death sentences have increased, so have commutations and exonerations.³⁰ In 2021, a court exonerated one person on death row.³¹ In 2022, 12 commutations and 20 exonerations were granted to people under sentence of death.³² That number further increased in 2023, when courts granted 606 commutations and 5 exonerations to people previously sentenced to death.³³
17. Putting the above information in perspective, the Death Penalty Project estimated that as of 2022, there were approximately 600 people held on death row.³⁴ By the end of 2023, however, approximately 120 people were under sentence of death.³⁵ And as mentioned in paragraph 15 above, there are now 166 persons on death row. This figure may continue to increase; thousands of people who were sentenced to the now-unconstitutional mandatory

death penalty who are serving whole life sentences while awaiting resentencing are at risk of being resentenced to death.³⁶

18. 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.³⁷ As of August 15, 2024, none of these bills has made it to committee.³⁸

Prohibition of torture and cruel, inhuman or degrading treatment

Status of Implementation: Accepted, Not Implemented

19. In its third-cycle UPR, Kenya supported seven recommendations to step up accountability for torture by security forces and to improve torture-prevention measures.³⁹
20. Article 25(a) of the Constitution provides protection against torture,⁴⁰ and Article 29 states that every person “has the right to freedom and security of the person, which includes the right not to be – ... (c) subjected to any form of violence from either public or private sources; (d) subjected to torture in any manner, whether physical or psychological; (e) subjected to corporal punishment; or (f) treated or punished in a cruel, inhuman or degrading manner.”⁴¹
21. In practice, however, police use torture and violence during interrogations and against people in pre-trial detention and people in prison, including people on death row.⁴²
22. In April 2017, Kenya issued the Prevention of Torture Act in accordance with the Convention against Torture.⁴³ Yet Kenya has not operationalized this act, as described further below. As a result, perpetrators of torture often act with impunity. According to recent reports, cases of torture have increased by 296% over the years of 2021-2023.⁴⁴
23. Human rights NGOs in Kenya receive hundreds of reports that security forces have engaged in torture and other inhuman or degrading treatment.⁴⁵ An NGO called the Independent Medico-Legal Unit documented 419 cases of torture between January and September of 2023 alone. NGOs working in Kenya noted that police commonly engage in physical battery, bondage in painful positions, and electric shock as their preferred torture methods.⁴⁶
24. The Missing Voices Coalition, of which ICJ Kenya is a member, documented 118 cases of police killings and 10 enforced disappearances in its 2023 Annual Report.⁴⁷
25. In January and February 2022, a team of 11 researchers from the Kenya National Commission on Human Rights interviewed 671 people who were under sentence of death in 12 prisons across Kenya.⁴⁸ This research revealed that between 40% and 47% of interviewees had experienced psychological abuse, including verbal abuse (40%), threats (46%), and psychological torture (47%).⁴⁹ Large numbers of people on death row also reported denial of sustenance (21%) and adequate rest (35%), as well as being interrogated while physically restrained (61%).⁵⁰ More than a quarter of the people interviewed were not allowed to see their family while awaiting trial.⁵¹

Conditions of detention

Status of Implementation: Not Applicable

26. In its third-cycle UPR, Kenya did not receive any recommendations specific to detention conditions. But detention conditions remain problematic, particularly for people under sentence of death.
27. People under sentence of death live separately from other people in prison.⁵² Nonetheless, they still face the range of issues that plague the general prison population such as overcrowding, unhygienic conditions, abuse, and torture.⁵³
28. Human rights organizations report prison overcrowding, food and water shortages, inhumane sanitary conditions, and lack of medical care.⁵⁴ As of December 2023, the prison population was estimated at 60,000 people, exceeding the intended capacity of 34,000 people.⁵⁵ This overcrowding has contributed to disease outbreaks such as tuberculosis.⁵⁶
29. In 2022, the Death Penalty Project reported that 67% of people under sentence of death said that their health had suffered since they had been incarcerated⁵⁷; 65% of these people also reported their mental health had suffered since being incarcerated⁵⁸; 35% said that they did not have nourishing food in prison; and 31% said they did not have access to medical care.⁵⁹
30. Beyond generally poor detention conditions, people under sentence of death who are not exonerated or granted commutations can spend decades on death row.⁶⁰ This elongated waiting period contributes to the “death row phenomenon” or “death row syndrome” and engenders additional psychological hardship.⁶¹
31. According to a groundbreaking report by the Kenyan Section of the International Commission of Jurists (ICJ Kenya), 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.”⁶² 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.”⁶³ Moreover, sensationalized media attention targeting women in conflict with the law can result in stigma and isolation, particularly for women under sentence of death.⁶⁴ This coverage can contribute to “anxiety, depression, and a diminished sense of self-worth,” all of which can “dramatically impeded[e] their ability to cope with the challenges of incarceration and legal proceedings.”⁶⁵
32. 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.”⁶⁶ The ICJ Kenya report confirms that family members of women under sentence of death “are also stigmatized by society.”⁶⁷

Gender-based violence; Discrimination against women

Status of Implementation: Accepted, Partially Implemented

33. In its third-cycle UPR, Kenya accepted four recommendations to address discrimination against women, including directives to create specialized courts for gender-based violence (GBV) cases and to ensure overarching justice, protection, support, and remedies for survivors.⁶⁸
34. Since 2020, Kenya has established twelve Gender Justice Courts that use trauma-informed practices,⁶⁹ and landmark rulings such as the 2021 *State v. Truphena Ndonga Aswani*⁷⁰ (*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.⁷¹
35. According to ICJ Kenya, high rates of sexual and GBV mean that there is a pressing need to fast-track expansion of these courts.⁷² 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 of discrimination before the crime was committed.”⁷³ While the Gender Justice Courts are operating, there are 45 stations for the High Court of Kenya where cases are heard.⁷⁴ Hence there is a pressing need to ensure that all Kenyans have access to Gender Justice Courts.
36. 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.⁷⁵ According to ICJ Kenya, three women currently remain on death row.⁷⁶ Kenya does not publish comprehensive information about people under sentence of death or their alleged crimes.
37. In 2024, ICJ Kenya published a groundbreaking report on women under sentence of death.⁷⁷ 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.”⁷⁸
38. According to ICJ Kenya, the *Truphena* case marks “some progress in recognizing [GBV] as a relevant factor in mitigating sentences.”⁷⁹ The Court’s reasoning in *Truphena* can lead to “a formula of sorts . . . to be applied to similar instances.”⁸⁰ 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].”⁸¹ 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 sentencing.”⁸² ICJ Kenya’s research, in conjunction with the *Truphena* judgment itself, suggest 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.”⁸³ 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.”⁸⁴

39. 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,⁸⁵ even though the resulting trauma strongly influences the woman’s mental health, therefore potentially contributing to the circumstances of the offense committed.⁸⁶ At the same time, prosecutors use gender stereotypes to discredit women’s accounts of the GBV they experienced.⁸⁷ ICJ Kenya further reports that the convention court system may be “overwhelmed” with a backlog of GBV cases.⁸⁸
40. 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.”⁸⁹
41. 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 judges, as well as the public at large.”⁹⁰ 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.⁹¹ 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.⁹² “[S]entencing women to death who transgress traditional notions of femininity serves to reinforce gender norms as well as legitimize their capital punishment.”⁹³ 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.”⁹⁴
42. 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.”⁹⁵ 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.”⁹⁶

Persons with disabilities

Status of Implementation: Accepted, Partially Implemented

43. In its third-cycle UPR Kenya received numerous recommendations related to people with disabilities. Kenya accepted five recommendations to consider ratifying the Optional

Protocol to the Convention on the Rights of Persons with Disabilities (OPCRPD), one to complete the process of ratifying the Protocol of the African Charter on Human Rights and Peoples' Rights on the Rights of Disabilities (the Protocol) and one recommendation to finalise the adoption process of the draft bills on mental health and persons with disabilities.

44. Kenya ratified the Protocol in 2021⁹⁷ and gazetted the Persons with Disabilities Bill, 2023 in February 2023,⁹⁸ and the Senate passed the Mental Health (Amendment) Bill, 2020 in September 2021.⁹⁹ Kenya has not ratified the OPCRPD.¹⁰⁰ While these actions demonstrate Kenya's willingness to recognize the rights of people with disabilities, there is further progress to be made when it comes to the rights of people in detention with psycho-social disabilities and other conditions, as described further below.
45. Under the Criminal Procedure Code, individuals held at the President's pleasure face incarceration for an indeterminate, potentially lifetime, sentence. The Criminal Procedure Code has therefore acted as a vehicle to institutionalise people with psycho-social disabilities, in contravention of the Convention on the Rights of Persons with Disabilities, which Kenya ratified in 2008.
46. Courts have nonetheless made significant progress in recognising and challenging the impact of the Criminal Procedure Code on the rights of persons with psycho-social disabilities. In *Kimaru & 17 others v. Attorney General & another*, Justice Mrima declared that the detainment of people with psycho-social disabilities at the President's pleasure is unconstitutional in that it violates the concept of separation of powers and independence of the judiciary.¹⁰¹ He further held that people with psycho-social disabilities detained at the President's pleasure ought to be brought before the courts that committed them to make appropriate orders and directions. *Philip Kemboi Bor v. The Honorable Attorney General & Anor* upheld this principle, stating that a review of the conviction of "guilty but insane" was to be replaced with a finding of "not guilty for reason of insanity."¹⁰² The court ordered the Attorney General to initiate the process of amending section 166 of the Criminal Procedure Code.

Administration of justice and fair trial

Status of Implementation: Accepted, Partially Implemented

47. In its third-cycle UPR, Kenya accepted two recommendations involving justice and fair trials, specifically enacting reforms to enhance the judicial system and increase accessibility to justice.¹⁰³
48. While the Constitution provides for due process rights, authorities do not consistently respect these rights, particularly in capital cases.¹⁰⁴ In a systematic study of people sentenced to death across Kenya, the Death Penalty Project 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 physical abuse, 27% were denied an interpreter, 24% were denied legal assistance, and 43% did not understand what was happening at trial."¹⁰⁵
49. Another study found that while the judiciary generally conducted free and fair trials, authorities did not always provide defendants with their right to receive prompt and

detailed information on the charges against them.¹⁰⁶ This study also concluded that courts tried most defendants without representation because they could not afford legal counsel.¹⁰⁷ A lack of government-sponsored public defenders contributed to this dearth of representation.¹⁰⁸

50. This shortage has also influenced the resentencing process, during which the majority of applications have been made by detained persons themselves or with the help of prison paralegals.¹⁰⁹ Based on information collected by Reprieve, a vast majority of petitioners for resentencing are 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, and ultimately they 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.
51. Low pay for capital defenders and a large backlog of cases cause delays in justice.¹¹⁰ Furthermore, courts appoint attorneys only after any investigation is complete and the defendant has entered a plea.¹¹¹ This timing limits defendants' ability to participate in the critical pre-trial preparations stage of the case.¹¹² Defense attorneys therefore also have a limited ability to conduct any independent investigation.¹¹³
52. Investigations are often not of high quality.¹¹⁴ Because the criminal legal system has not invested in modern forensic labs, prosecutors often rely on outdated evidence, increasing the risk of wrongful convictions.¹¹⁵ Forensic tests are often unreliable also because of tampering, contamination, and poor conservation of evidence.¹¹⁶ Defense counsel has 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.¹¹⁷
53. 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."¹¹⁸ As one ICJ Kenya expert put it, "women accused of offences attracting the death sentence suffer intersectional discrimination from the point of arrest to conviction and sentencing."¹¹⁹ Criminal legal systems that sentence women to death "are also making women pay the price for authorities' failures to address diverse forms of discrimination."¹²⁰
54. 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."¹²¹ The absence of legal representation enhances the likelihood of that women in conflict with the law will experience biased treatment.¹²²
55. 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."¹²³ 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.”¹²⁴ 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.”¹²⁵

56. Individuals living in poverty also face issues in accessing bail. Despite a right to bail being incorporated into the Constitution under Article 49(1)(h), as well as under the Criminal Procedure Code (s.123), it is often impossible for people who live in poverty to obtain bail.¹²⁶ Denial of bail in this context violates the right to equal protection before the law.

II. RECOMMENDATIONS

57. This stakeholder report suggests 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.
- Ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.
- In the interim:
 - Adopt a *de jure* moratorium on executions.
 - Amend the law to limit the death penalty to the “most serious” crimes, as specified under Article 6(2) of the ICCPR.
 - Amend the law to ensure that no crime is subject to a mandatory death penalty and that courts may always consider evidence in mitigation to warrant a penalty other than death.
 - On at least an annual basis, publish comprehensive data on all people under sentence of death over the reporting period, disaggregated by sex, age, nationality, ethnicity, crime of conviction, relationship to any victim or codefendants, age of any dependent children, and status of any appeals or requests for pardon/commutation.
 - In collaboration with civil society, take steps to provide heightened fair trial and due process safeguards in capital cases involving women defendants, including by providing them with access to effective legal representation with experience in capital cases and with training on gender-sensitive defense strategies.
 - Codify gender-specific defenses and mitigation in capital cases, encompassing women’s experiences of trauma, poverty, and GBV.

- Ensure that all judicial officers responsible for sentencing in capital cases receive comprehensive training on gender-based discrimination, GBV, and tactics of coercive control that may lead to women committing death-eligible offenses.
 - Ensure that any person detained on suspicion of committing a capital crime has access to counsel, including a public defender or legal aid, if eligible, prior to any interrogation.
 - Step up funding for defense attorneys to conduct investigations in capital cases, including to gather mitigation evidence for sentencing.
 - Provide financial and logistical support for dependent children of women under sentence of death to visit their mothers.
- Develop a practical, scalable, and coherent resentencing regime:
 - Adopt an expansive interpretation of *Muruatetu*, abolishing the mandatory death penalty for all crimes.
 - Establish a coherent resentencing regime applying to all offenders sentenced to the mandatory death penalty, allowing such offenders to apply for resentencing at any time in a manner which is accessible and fair, requiring courts to consider mitigating factors as set out in *Muruatetu II* and the SPGs.
 - Ensure that, where a case file is missing or incomplete, the court must maintain a record of efforts made to trace the missing contents of the file, and the absence of such a record does not deprive the person of an opportunity for resentencing.
- Establish and implement a practical plan to make the judiciary aware of the SPGs and substantially increase the application of the SPGs in sentencing and resentencing decisions.
- Amend the Criminal Procedure Code to remove the possibility of people with psycho-social disabilities or related conditions being detained at the President's pleasure and effectively coordinate bringing people with psycho-social disabilities or related conditions detained at the President's pleasure back to court for resentencing and reassessment of hospital psychiatric reports where necessary.
- Prohibit courts from considering as evidence any statements obtained through coercion, torture, or ill-treatment, except when offered to prove the crime of torture, and require judges to order the prompt, independent, and effective investigation of any such allegations raised by the defense.
- Establish and fully fund a public defender program, prioritizing during roll-out people charged with capital crimes.
- Establish a standardized court system that applies across all provinces of Kenya, with clear, speedy, and predictable judicial processes.

- In collaboration with civil society, expand legal aid programs through training of paralegals and law students to assist people in conflict with the law who do not have access to counsel.
- Expand Gender Justice Courts to ensure at least one such court exists in every county.
- In collaboration with civil society, institute mandatory gender-sensitive training for judges and prosecutors to challenge stereotypes and biases in the criminal legal system.
- Dedicate additional funding to improving the quality of forensic labs and seek technical assistance to improve training for the handling and analysis of physical evidence.
- Align detention conditions 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.
- Ensure that all prison authorities adopt gender-sensitive policies in relation to women's detention, based on the Bangkok Rules and the Nelson Mandela Rules, ensuring women's safety and security pre-trial, during admission to any detention facility, and while incarcerated, including by expanding the employment of female staff in detention facilities for women.
- Support civil society efforts to sensitize the media regarding coverage of capital cases, particularly when women are in conflict with the law.
- Enact a law on enforced disappearances or amend existing legislation to criminalize enforced disappearances. The law should include recourse and reparations for victims and their families.
- Ratify the International Convention on Enforced Disappearance.
- Ensure full implementation of the National Coroners Service Act 2017, the Prevention of Torture Act 2017, and the Victim Protection Act 2014.

¹ National Council on the Administration of Justice, *Sentencing Policy Guidelines 2023*, <https://www.ncaj.go.ke/wp-content/uploads/download-manager-files/UPDATED-SENTENCING-POLICY-GUIDELINES-2023.pdf>.

² Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kenya* (20 Mar. 2020), U.N. Doc. A/HRC/44/9, ¶ 142.12 Consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Namibia); ¶ 142.18 Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Ghana); ¶ 142.19 Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ensure that full and impartial investigations are conducted into all allegations of enforced disappearances, extrajudicial executions, torture and arbitrary detention (Italy); ¶ 142.20 Consider acceding to and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Uruguay); ¶ 143.5 Consider taking the necessary steps to introduce a de jure moratorium on capital executions with a view to fully abolishing the death penalty, including by ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Italy); ¶ 144.15 Ratify the Optional Protocol to the Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (Chile); ¶ 144.17 Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Honduras) (Denmark); ¶ 144.2 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Honduras); ¶ 144.3 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro); ¶ 144.4 Sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Uruguay); ¶ 144.5 Fully abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Spain); ¶ 144.42 Establish a formal moratorium on the death penalty and commute all existing death sentences with a view to ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Australia); ¶ 144.46 Giving continuity to recent progress in this field, abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Portugal); ¶ 144.47 Fully abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Iceland); ¶ 144.6 Formalize its moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (New Zealand).

³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kenya* (20 Mar. 2020), U.N. Doc. A/HRC/44/9, ¶ 142.12 Consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Namibia); ¶ 142.18 Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Ghana); ¶ 142.19 Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ensure that full and impartial investigations are conducted into all allegations of enforced disappearances, extrajudicial executions, torture and arbitrary detention (Italy); ¶ 142.20 Consider acceding to and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Uruguay); ¶ 143.5 Consider taking the necessary steps to introduce a de jure moratorium on capital executions with a view to fully abolishing the death penalty, including by ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Italy); ¶ 144.15 Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (Chile); ¶ 144.17 Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Honduras) (Denmark); ¶ 144.2 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Honduras); ¶ 144.3 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro); ¶ 144.4 Sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Uruguay); ¶ 144.5 Fully abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Spain); ¶ 144.42 Establish a formal moratorium on the death penalty and commute all existing death sentences with a view to ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Australia); ¶ 144.46 Giving continuity to recent progress in this field, abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Portugal); ¶ 144.47 Fully abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Iceland); ¶ 144.6 Formalize its moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (New Zealand).

⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kenya* (20 Mar. 2020), U.N. Doc. A/HRC/44/9, ¶ 142.12 Consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Namibia); ¶ 142.18 Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Ghana); ¶ 142.19 Consider ratifying the Optional Protocol to the Convention against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment and ensure that full and impartial investigations are conducted into all allegations of enforced disappearances, extrajudicial executions, torture and arbitrary detention (Italy); ¶ 142.20 Consider acceding to and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Uruguay); ¶ 143.5 Consider taking the necessary steps to introduce a de jure moratorium on capital executions with a view to fully abolishing the death penalty, including by ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Italy); ¶ 144.15 Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (Chile); ¶ 144.17 Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Honduras) (Denmark); ¶ 144.2 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Honduras); ¶ 144.3 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro); ¶ 144.4 Sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Uruguay); ¶ 144.5 Fully abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Spain); ¶ 144.42 Establish a formal moratorium on the death penalty and commute all existing death sentences with a view to ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Australia); ¶ 144.46 Giving continuity to recent progress in this field, abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Portugal); ¶ 144.47 Fully abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Iceland); ¶ 144.6 Formalize its moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (New Zealand).

⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kenya* (20 Mar. 2020), U.N. Doc. A/HRC/44/9, ¶ 142.12 Consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Namibia); ¶ 142.18 Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Ghana); ¶ 142.19 Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ensure that full and impartial investigations are conducted into all allegations of enforced disappearances, extrajudicial executions, torture and arbitrary detention (Italy); ¶ 142.20 Consider acceding to and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Uruguay); ¶ 143.5 Consider taking the necessary steps to introduce a de jure moratorium on capital executions with a view to fully abolishing the death penalty, including by ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Italy); ¶ 144.15 Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (Chile); ¶ 144.17 Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Honduras) (Denmark); ¶ 144.2 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Honduras); ¶ 144.3 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro); ¶ 144.4 Sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Uruguay); ¶ 144.5 Fully abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Spain); ¶ 144.42 Establish a formal moratorium on the death penalty and commute all existing death sentences with a view to ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Australia); ¶ 144.46 Giving continuity to recent progress in this field, abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Portugal); ¶ 144.47 Fully abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Iceland); ¶ 144.6 Formalize its moratorium on executions and ratify the Second

Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (New Zealand).

⁶ World Coalition Against the Death Penalty, *Kenya: Abolitionist in practice* (2023). Also available online at: <https://worldcoalition.org/pays/kenya/>.

⁷ Cornell Center on the Death Penalty Worldwide, *Republic of Kenya* (2019). Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38>.

⁸ Amnesty International, *Death Sentences and executions 2022* (2023), at 43-44. Also available online at: <https://www.amnesty.org/en/documents/act50/6548/2023/en/>; G.A. Res. 77/222 (15 Dec. 2022); <https://documents.un.org/doc/undoc/gen/n22/764/50/pdf/n2276450.pdf>.

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); ¶ 142.82 Finalize the implementation of the national court ruling declaring the death sentence to be unconstitutional (Angola); ¶ 142.83 Adopt additional measures aiming at the abolition of the death penalty, so as to comply with the decision of the Supreme Court that the death penalty is unconstitutional (Brazil); ¶ 142.84 Continue taking steps to abolish the death penalty (Georgia); ¶ 142.85 Reconsider taking further steps to abolish the death penalty (Mozambique); ¶ 142.86 Continue the steps necessary for the abolition of the death penalty (Romania); ¶ 142.87 Consider further limitations on the use of the death penalty with a view to imposing a de facto moratorium on its use and aiming at its total abolition (Rwanda); ¶ 142.88 Accelerate progress towards abolishing the death penalty (South Africa); ¶ 142.89 Take the necessary measures to abolish the death penalty for all crimes (Switzerland).

¹⁰ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kenya* (20 Mar. 2020), U.N. Doc. A/HRC/44/9, ¶ 144.42 Establish a formal moratorium on the death penalty and commute all existing death sentences with a view to ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Australia); ¶ 144.43 Abolish the death penalty (Cabo Verde) (Slovenia) (Togo); ¶ 144.44 Abolish the death penalty completely, in law and in practice (Fiji); ¶ 144.45 Formally abolish the death penalty for all crimes (France).

¹¹ Cornell Center on the Death Penalty Worldwide, Kenya, <https://deathpenaltyworldwide.org/database/#/results/country?id=38> (last visited 16 Sept. 2024).

¹² Human Rights Committee, General Comment No. 36 (3 Sept. 2019), U.N. Doc. CCPR/C/GC/36, ¶ 35.

¹³ Children Act 2022, Section 6(2) and 238; Penal Code of Kenya Section 211.

¹⁴ *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment).

¹⁵ *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment).

¹⁶ *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment).

¹⁷ *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment).

¹⁸ *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment); Jacquelene Mwangi, *Francis Karioko Muruatetu v. Republic*, 112 AM. J. INT'L L. 710 (Oct. 2018).

¹⁹ *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment); Jacquelene Mwangi, *Francis Karioko Muruatetu v. Republic*, 112 AM. J. INT'L L. 710 (Oct. 2018).

²⁰ Joanne Mutonga, *The Case of Francis Muruatetu Versus the Republic of Kenya*, ICJ Kenya, 10 Oct. 2021, <https://icj-kenya.org/news/the-case-of-francis-murutatetu-versus-the-republic-of-kenya/> <Accessed 03 October 2024>.

²¹ *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Directions).

²² Amnesty International, *Death sentences and executions 2021* (2022), at 56. Also available online at: <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

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- ²³ Faculty of Law Blogs / University of Oxford, *DPRU Q&As: Chris Kerkering, Katiba Institute, Kenya* (2024). Also available online at: <https://blogs.law.ox.ac.uk/death-penalty-research-unit-blog/blog-post/2024/04/dpru-qas-chris-kerkering-katiba-institute-kenya#:~:text=In%202021%2C%20the%20Supreme%20Court,impose%20the%20mandatory%20death%20penalty.>
- ²⁴ 2 William Okungu Kittiny v Republic (Criminal Appeal 56 of 2013) [2018] KECA 851 (KLR) (8 February 2018) (Judgment) <https://new.kenyalaw.org/akn/ke/judgment/keca/2018/851/eng@2018-02-08>.
- ²⁵ 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).
- ²⁶ Amnesty International, *Death sentences and executions 2023* (2024), at 37. Also available online at: <https://www.amnesty.org/en/documents/act50/7952/2024/en/>.
- ²⁷ Amnesty International, *Death sentences and executions 2021* (2022), at 12. Also available online at: <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.
- ²⁸ Amnesty International, *Death sentences and executions 2022* (2023), at 12. Also available online at: <https://www.amnesty.org/en/documents/act50/6548/2023/en/>.
- ²⁹ Amnesty International, *Death sentences and executions 2023* (2024), at 12. Also available online at: <https://www.amnesty.org/en/documents/act50/7952/2024/en/>.
- ³⁰ 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).
- ³¹ Amnesty International, *Death sentences and executions 2021* (2022), at 14. Also available online at: <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.
- ³² Amnesty International, *Death sentences and executions 2022* (2023), at 35. Also available online at: <https://www.amnesty.org/en/documents/act50/6548/2023/en/>.
- ³³ Amnesty International, *Death sentences and executions 2023* (2024), at 38. Also available online at: <https://www.amnesty.org/en/documents/act50/7952/2024/en/>.
- ³⁴ The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners' Experiences of Crime, Punishment and Death Row* (2022), at 8. Also 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 Amnesty International, *Death sentences and executions 2023* (2024), at 35. Also available online at: <https://www.amnesty.org/en/documents/act50/7952/2024/en/>.
- ³⁶ 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](https://www.deathpenaltyproject.org/wp-content/uploads/2019/01/DPP-Kenya-Report-Jan19-v2.indd) (deathpenaltyproject.org).
- ³⁷ Amnesty International, *Death sentences and executions 2023* (2024), at 37. Also available online at: <https://www.amnesty.org/en/documents/act50/7952/2024/en/>.
- ³⁸ Kenya Law, *Bills Tracker 2024* (2024), at 18-19. Also available online at: <http://www.parliament.go.ke/sites/default/files/2024-08/BILLS%20TRACKER%20AS%20AT%20THURSDAY%2C%2015TH%20AUGUST%202024.pdf>.
- ³⁹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kenya* (20 Mar. 2020), U.N. Doc. A/HRC/44/9, ¶ 142.140 Strengthen oversight of the State security forces and properly investigate the allegations against the State security forces of torture, extrajudicial killings and arbitrary detention (Czechia); *id.* .138 Take preventive measures and ensure comprehensive investigations into all allegations of torture, ill-treatment and extrajudicial killings by security forces and strictly hold perpetrators accountable (Austria); *id.* .137 Conduct independent and impartial investigations into reports of the unlawful use of force and extrajudicial killings by police and security forces and fully implement the National Coroners Service Act and the Prevention of Torture Act (Australia); *id.* .94 Continue efforts to prevent the act of torture and bring perpetrators to justice as well as setting up measures to fully implement the prevention of acts of torture in the country (Ghana); *id.* .93 Fully implement the Prevention of Torture Act, including victims' access to rehabilitation (Germany); *id.* .92 Continue efforts to combat torture by effectively implementing throughout the country the torture prevention law adopted in 2017 (France); *id.* .91 Prevent torture and impunity through the full implementation of the National Coroners Service Act (2017) and the Prevention of Torture Act (2017), including an evaluation tool to monitor progress (Canada); *id.* .55 Strengthen

training and awareness programmes for State officials in the field of human rights for the effective implementation of the law on prevention of torture (Dominican Republic).

⁴⁰ CONSTITUTION art. 25(a) (2022) (Kenya), available online at: <https://kenyalaw.org/kl/fileadmin/pdfdownloads/TheConstitutionOfKenya.pdf>.

⁴¹ CONSTITUTION art. 29 (2022) (Kenya), available online at: <https://kenyalaw.org/kl/fileadmin/pdfdownloads/TheConstitutionOfKenya.pdf>.

⁴² The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners' Experiences of Crime, Punishment and Death Row* (2022), at 17. Also 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>.

⁴³ International Humanitarian Law Databases. *The Prevention of Torture Act, 2017* (2017). Also available online at: <https://ihl-databases.icrc.org/en/national-practice/prevention-torture-act-2017>.

⁴⁴ The World Organization Against Torture, *Kenya: enforced disappearances and extrajudicial killings must stop now* (28 June 2024). Also available online at: <https://www.omct.org/en/resources/statements/kenya-enforced-disappearances-and-extrajudicial-killings-must-stop-now>.

⁴⁵ Confidential 2023 source on file with The Advocates for Human Rights at 5.

⁴⁶ Confidential 2023 source on file with The Advocates for Human Rights at 5.

⁴⁷ Missing Voices, *End Police Impunity: 2023 Annual Report* (2024),

<https://www.missingvoices.or.ke/sites/default/files/2024-04/Missing%20Voices%202023%20Annual%20Report.pdf>.

⁴⁸ The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners' Experiences of Crime, Punishment and Death Row* (2022), at 17. Also 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>.

⁴⁹ The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners' Experiences of Crime, Punishment and Death Row* (2022), at 49. Also 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>.

⁵⁰ The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners' Experiences of Crime, Punishment and Death Row* (2022), at 49. Also 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>.

⁵¹ The Death Penalty Project, *Living With a Death Sentence in Kenya: Prisoners' Experiences of Crime, Punishment and Death Row* (2022), at 49. Also 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>.

⁵² Cornell Center on the Death Penalty Worldwide, *Republic of Kenya* (2019). Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38>.

⁵³ Cornell Center on the Death Penalty Worldwide, *Republic of Kenya* (2019). Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=38>.

⁵⁴ Confidential 2023 source on file with The Advocates for Human Rights at 5.

⁵⁵ Confidential 2023 source on file with The Advocates for Human Rights at 5.

⁵⁶ Confidential 2023 source on file with The Advocates for Human Rights at 5.

⁵⁷ 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/>.

⁵⁸ 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/>.

⁵⁹ 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/>.

⁶⁰ 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/>.

⁶¹ 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/>.

⁶² 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/ (last visited Sept. 22, 2024).

⁶³ 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/ (last visited Sept. 22, 2024).

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⁶⁵ 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/ (last visited Sept. 22, 2024).

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