



Kenya National Commission on Human Rights

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STATEMENT BY KENYA NATIONAL COMMISSION ON HUMAN RIGHTS ON THE ASSENTING OF THE PREVENTION OF TORTURE ACT BY THE PRESIDENT

The Kenya National Commission on Human Rights welcomes the passage of the Prevention of Torture Bill by the National Assembly on the 6th April 2017.

The Commission further welcomes the President's enactment into law the *Prevention of Torture Act* on 12th April 2017. As a Commission we welcome this move by the President as the Prevention of Torture Bill has been in the legislative process for six years.

The *Prevention of Torture Act* defines and criminalize torture and establishes a legal and institutional framework to support victims of torture.

Torture constitutes the worst form of human rights violations. Article 25(a) of our Constitution, states that "*the right to be free from torture, cruel, inhuman or degrading treatment or punishment cannot be limited* under any circumstances.

Torture continues to be widespread in society and manifests itself through extrajudicial executions, police brutality and harassment by law enforcement officials. Whereas the Constitution guarantees the right to be free from Torture, the Constitution neither defines torture nor does it provide a framework for the reparation to victims of torture. It is important to note that torture has been criminalized in the National Police Service Act, the Kenya Defence Forces Act and the National Intelligence Service Act. This has been a limitation in itself since it only applies to Police, Defence forces and Intelligence Services.

The *Prevention of Torture Act* will therefore seeks to address these gaps by providing a comprehensive definition of torture, criminalising torture and providing a mechanism on reparation for victims of torture and their families.

The Act establishes the Victims Trust Fund that will afford reparations to victims of torture in Kenya. The Fund aim to help victims and their families to rebuild their lives and to seek redress for the human rights violations they have suffered. The Act further provides for protection of vulnerable witnesses during

criminal proceedings. The courts will put in place support structures such as protection covers for such witnesses.

The Act will also provide that a person shall not be expelled, returned or extradited to another country where there is reason to believe that such person is in danger of being subjected to torture or other cruel, inhuman or degrading treatment. A person who is in custody in respect of an offence that is alleged to have been committed under this Act, must be assisted by the detaining authority to communicate with a family member, the nearest representative of the person or State of which he or she is a national.

In the new Act, any information, confession or admission obtained from a person by means of torture or cruel, inhuman or degrading treatment or punishment is inadmissible evidence against that person. A person who knowingly uses information which is obtained through torture or other cruel, inhuman or degrading treatment or punishment commits an offence.

The Kenya National Commission on Human Rights has been given powers to investigate alleged violations under this new Act and will seek appropriate redress on behalf of victims of torture.

The Commission will therefore monitor compliance by the State with Internal Treaty Obligations relating to torture and inhumane treatment. In addition the Commission will have research and advisory mandates to the Government on best practices towards preventing torture.

On behalf of the Commission, I want to assure the public that the Commission will work tirelessly towards seeking redress for victims of torture and ultimately preventing torture in Kenya.

The KNCHR appreciates the efforts of the National Assembly and the President for passing this legislation and further request the two institutions to hasten the passage and enactment of the *National Coroners Service Bill* which will complement the implementation of this new Anti-Torture Act.



Kagwiria Mbogori

Chairperson