



# International Covenant on Civil and Political Rights

Distr.: General  
1 July 2020

Original: English  
English, French and Spanish only

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## Human Rights Committee

### List of issues in relation to the fourth periodic report of Kenya\*

#### General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

1. Please provide information on any significant developments in the legal and institutional framework within which human rights are promoted and protected at the national level that have taken place since the previous periodic report. Please include information on: (a) the extent to which provisions of the Covenant have been applied by domestic courts; (b) measures adopted to disseminate the Covenant among judges, lawyers, parliamentarians, prosecutors and other government officials; and (c) the status of the harmonization of all sources of law in the country in line with the human rights provisions in the Covenant.

#### Specific information on the implementation of articles 1 to 27 of the Covenant, including with regard to additional previous recommendations

##### Anti-corruption measures (arts. 2 and 25)

2. Please respond to reports of corruption within national and county government bodies in Kenya and provide information about efforts to address such phenomena, including details about the work of the Multi-Agency Team, the Ethics and Anti-Corruption Commission and the Office of the Director of Public Prosecutions. Please detail the additional anti-corruption measures set out in the Proceeds of Crime and Anti-Money Laundering Act 2009, and provide information about the number of investigations, prosecutions and convictions for corruption under this and other relevant legislation.

##### The fight against impunity and past human rights violations (arts. 2, 6, 7 and 14)

3. Please provide information about what steps the State party has taken to guarantee effective remedies for human rights violations and to address impunity, including, in particular, information about: (a) efforts to encourage the use of non-judicial dispute mechanisms, including the Task Force on Informal Justice Systems and the Alternative Justice Policy, and their compatibility with provisions in the Covenant, which include guarantees of access to judicial and other official mechanisms; (b) progress in implementing the recommendations of the Truth, Justice and Reconciliation Commission on redress for gross human rights violations that occurred between 1963 and 2008,

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\* Adopted by the Committee at its 128th session (2–27 March 2020).



including the status of the K Sh 10 billion restorative justice fund, set up by the President, and the degree to which it has been utilized to provide redress to victims of human rights violations, bearing in mind the Committee's previous recommendation in this regard; (c) the mechanisms that are in place to provide remedies for violence occurring in the context of elections held after 2008; and (d) measures taken to implement effectively the Victims Protection Act 2014, including the status of the Victim Protection Trust Fund.

#### **Non-discrimination (arts. 2 and 26)**

4. Please indicate which legislative and other measures have been taken to combat discriminatory laws and social practices based on sex, sexual orientation, gender identity, religion, disability, albinism, socioeconomic status, HIV/AIDS status, ethnic affiliation and political affiliation. Please include information about steps taken to develop comprehensive anti-discrimination legislation.

5. In light of the previous recommendations of the Committee (CCPR/C/KEN/CO/3, para. 8; and CCPR/CO/83/KEN, para. 27), please report on measures taken to decriminalize sexual relations between consenting adults of the same sex. In this regard, please include information on the 2019 High Court ruling on petition No. 150 of 2016, which upheld sections 162 and 165 of the Penal Code criminalizing sexual relations between consenting adults of the same sex. Please also elaborate on measures taken by the State party (a) to protect lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals against harassment, discrimination and violence perpetrated by both State officials and private individuals, including discrimination against them in relation to housing, the provision of goods and services, education and health care, and in the form of extortion and arbitrary arrest and detention by law enforcement officials, and of barriers to access to justice; and (b) to raise awareness about the principles of universality of human rights and of non-discrimination among the population at large.

#### **Gender equality (arts. 3 and 26)**

6. In light of the Committee's previous recommendation (CCPR/C/KEN/CO/3, para. 6), please report on measures taken to facilitate and improve women's participation in the public and private sectors, including information about: (a) the implementation of the amendments made in 2011 to the Political Parties Act and to the corresponding codes of conduct; (b) steps taken to strengthen efforts to increase the participation of women in the public sector, including the implementation of constitutional provisions prohibiting more than two thirds of any elected body being of the same gender; (c) measures in place to protect women seeking elected office against violence, especially during rallies and elections; and (d) initiatives to increase women's representation in the private sector, including any relevant disaggregated data.

#### **Counter-terrorism measures (arts. 2, 4, 7, 9 and 14)**

7. In light of the Committee's previous recommendation on anti-terror legislation (CCPR/CO/KEN/CO/3, para. 14), please provide information about: (a) the compatibility of the Prevention of Terrorism Act, of 2012, with the rights under the Covenant, including the Act's broad definition of terrorism, the enablement of the interception of communications by State officials, provisions that allow the blacklisting of organizations and associated restrictions on their assets and activities without due process, and the use of provisions to obstruct media freedoms; (b) how the Security Laws (Amendment) Act, of 2014, broadened State powers in relation to anti-terror operations, and the status of the review of this legislation, following the 2016 rulings by the Kenyan High Court on the unconstitutionality of certain sections; and (c) reports of arbitrary arrest, harassment, extortion, ill-treatment, forcible relocation and expulsion of members of the Kenyan Somali community, carried out by State officials in the course of anti-terror operations.

#### **Violence against women, including domestic violence (arts. 2, 3, 6, 7, 24 and 26)**

8. In light of the Committee's previous recommendation (CCPR/CO/KEN/CO/3, para. 15), please detail efforts that have been made to effectively address harmful practices impacting women and children, which are often rooted in traditional beliefs. Please include

information about the implementation of the Prohibition of Female Genital Mutilation Act 2011, including the implementation of the National Policy on the Eradication of Female Genital Mutilation. In this regard, please provide information on: (a) the number of investigations, prosecutions and convictions, including for cross-border violations of the national prohibitions on female genital mutilation; (b) steps taken by the State party to address other harmful practices, such as “wife inheritance” and “ritual cleansing”; (c) measures taken to ensure the effective implementation of the criminalization of child marriage under the Children’s Act, of 2001, and the Marriage Act 2014, and to address the root causes of this phenomenon; and (d) protective measures, such as safe houses and shelters, which are in place for women and girls who have been victims of or are vulnerable to violence.

9. Please provide an update on measures to tackle gender-based violence against women, including the investigation, prosecution and conviction of perpetrators and remedies provided to victims. Please provide information on: (a) when the policy on the uniform treatment of all sexual offences envisaged under section 46 of the Sexual Offences Act will be finalized and implemented; (b) the number of investigations, prosecutions and convictions under the Domestic Violence Act, of 2015; (c) reports of women being subjected to gang rape during the 2017 elections, including by State security forces, and a subsequent lack of access to justice; and (d) reports that women and girls with albinism have been subjected to sexual violence.

**Voluntary termination of pregnancy and sexual and reproductive rights (arts. 6 and 17)**

10. In view of the high incidence of maternal deaths as a result of unsafe abortions, please describe measures taken by the State party to guarantee safe, legal and effective access to abortion. Please clarify the legal status of abortion in situations where the life or health of a woman is in danger, following the amendments made in 2010 to the Constitution, and provide information about whether all relevant sources of law have been harmonized in this regard. Please provide information about the status of the “standards and guidelines for reducing morbidity and mortality for unsafe abortion in Kenya”, following the High Court ruling on their reinstatement. Please also indicate whether the State party intends to undertake additional legal reform to further widen access to safe and legal voluntary terminations of pregnancy, in particular where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or where the pregnancy is not viable (see the Committee’s general comment No. 36 (2018) on the right to life, para. 8).

**Right to life (art. 6)**

11. Following the ruling by the Supreme Court of Kenya in December 2017 on the unconstitutionality of the mandatory nature of the death penalty for murder under section 204 of the Penal Code, please provide information on the process of resentencing eligible offenders. Please indicate how many individuals are on death row in Kenya today, and include details about the work of the Task Force on the Implementation of the Supreme Court Ruling on the Death Penalty, appointed by the Attorney General, including on its work on the rehearing and resentencing of cases of such detainees. Please also indicate whether there are any plans to fully abolish the death penalty and accede to the Second Optional Protocol to the Covenant, in accordance with paragraph 50 of the Committee’s general comment No. 36.

12. Please provide information about measures taken by the State party to address enforced disappearances, extrajudicial killings and other practices related to the unlawful use of force by State and non-State actors, including during the 2017 general election period and its aftermath. In this regard, bearing in mind the Committee’s previous recommendation (CCPR/C/KEN/CO/3, para. 11), please provide information about: (a) reports of enforced disappearances and extrajudicial killings, including of human rights defenders, by State officials; (b) the legal standard applied in the State party for appropriate uses of force and of firearms by law enforcement officials, including the Kenya Wildlife Service, and the source of that standard in domestic law; (c) steps that the State party has

taken to ensure that such standards are respected by law enforcement and security personnel in practice; (d) the investigation and prosecution of alleged disappearances and killings by police and security forces, including the status of the criminal trials of police officers for the killings of Willie Kimani, Josphat Mwenda and Joseph Muiruri, as well as the killing of Evans Njoroge, and the number and the outcomes of the cases addressed by the Independent Policing Oversight Authority.

13. Please provide information about efforts to prevent and mitigate the effects of climate change and environmental degradation in Kenya, including on the right to life (see the Committee's general comment No. 36, para. 62). Please include information about: (a) environmental regulation frameworks, including the implementation of the Environmental Management and Coordination Act and the work of the National Environmental Management Authority; (b) the extent to which the land management framework, including the Community Land Act and the National Land Commission, provide environmental protections and promote sustainability; and (c) efforts to reduce carbon emissions, including investment in sustainable energy sources.

**Prohibition of torture and other cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty (arts. 7 and 10)**

14. Please describe efforts that have been made to expand protections against torture and ill-treatment, particularly in the context of security operations and other counter-terrorism measures, including through the effective investigation of alleged violations. In this regard, bearing in mind the Committee's previous recommendation (CCPR/C/KEN/CO/3, para. 16), please include information about: (a) measures taken to develop and effectively implement the Prevention of Torture Act 2017 and the National Coroners Act 2017; (b) the number and nature of allegations of torture received within the reporting period, as well as the volume of corresponding investigations, prosecutions and convictions; (c) reparations made to the victims of torture and other degrading treatment, including under the Victim Protection Act, 2014; and (d) whether the State party intends to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

15. Please provide additional information about measures that have been taken to reduce overcrowding in prisons, in line with the Committee's previous concluding observations (CCPR/C/KEN/CO/3, para. 16), and their efficacy to date, including alternatives to detention, the use of bond and bail provisions and release of prisoners.

**Liberty and security of person (art. 9)**

16. Please respond to reports of the use of arbitrary arrest and detention, including in the context of the 2017 general election and against human rights defenders. In this regard, please provide information about procedural safeguards in place to prevent arbitrary detention and to investigate such complaints, including data about the number of investigations, prosecutions and convictions for such practices.

**Elimination of slavery, servitude and trafficking in persons (arts. 2, 6, 7, 8, 24 and 26)**

17. Please describe efforts made to address all forms of exploitation, including the implementation of the Committee's previous recommendation (CCPR/C/KEN/CO/3, para. 17) to strengthen efforts to eradicate trafficking in persons for labour. Please include detailed information on the numbers of cases, including those involving engaging children in the worst forms of labour, involving the trafficking of persons, including children, with albinism for body parts, and involving the trafficking of the body parts of persons with albinism and the trafficking of women, including those in refugee camps. Please provide information about whether efforts are being undertaken both to increase identification of perpetrators and to improve the rate of prosecutions and convictions, under the Counter-Trafficking in Persons Act, of 2010, and other relevant legislation. Please also discuss measures taken to provide effective remedies and psychosocial support to victims of all forms of exploitation.

**Treatment of aliens, including refugees, asylum seekers and migrants, and population displacement (arts. 2, 6, 7, 9, 13 and 26)**

18. Please report on the protections in place for non-citizens in the State party, including refugees, asylum seekers and migrants. Please include information about: (a) the status of the Refugees Bill of 2019 and whether this will repeal encampment provisions in the Refugees Act of 2006, which restrict refugees' and asylum seekers' right to freedom of movement; (b) whether the bill contains provisions that could lead to violations of the principle of non-refoulement of those alleged to be in "breach or likely to be in breach of public order or contrary to public morality"; (c) efforts to provide protections to all refugees and asylum seekers, including LGBTI individuals, in camps such as the Kakuma Refugee Camp and Kalobeyei Integrated Settlement; (d) reports of individuals, including refugees and asylum seekers, being detained solely on the basis of unauthorized access to the State party's territory; and (e) reports of xenophobia and repressive policies against undocumented migrants, including house raids following the introduction of a hotline for citizens to report such individuals.

19. Please provide recent information about efforts to expedite durable solutions for persons displaced by environmental disasters and persons displaced by internal conflict, in light of the Committee's previous recommendation in this regard (CCPR/C/KEN/CO/3, para. 20).

**Forced eviction (arts. 7, 12, 17, 26 and 27)**

20. Please provide detailed information about the State party's implementation of the Committee's previous recommendation on protections to ensure the rights of persons impacted by forced evictions (CCPR/C/KEN/CO/3, para. 21). In this regard, please respond to multiple reports of forced evictions, including those affecting indigenous peoples, most recently in July 2018, and provide information on any investigations into these events and how the Government will address the issue of resettlement and compensation for victims.

**Freedom of expression (arts. 19 and 20)**

21. Please report on efforts by the State party to fully uphold freedom of expression. Please provide information about: (a) implementation of the 2017 High Court judgments ruling that sections 132 and 194 of the Penal Code were unconstitutional; (b) application of section 181 of the Penal Code, including the extent to which such provisions have been used in relation to LGBTI-related online content; (c) the compatibility of the Computer Misuse and Cybercrimes Act, of 2018, with the Covenant; and (d) reports of repression of the cultural expressions of LGBTI persons.

22. Please respond to reports of State interference with press freedom. Please include information about: (a) allegations of intimidation and harassment of journalists and media employees to prevent coverage of the opposition party, particularly during the 2017 elections, and to maximize coverage of the ruling party, as well as incidents of violence against journalists; (b) criminal penalties that can be applied to journalists and media outlets under the 2013 Media Council Act and the 2013 Kenya Information and Communications (Amendment) Act; and (c) government compliance with judicial rulings on freedom of expression, including the ruling of Milimani High Court on 1 February 2018 on the restoration of television broadcasts, as well as rulings that parts of the Media Council Act and the Kenya Information and Communications (Amendment) Act are unconstitutional.

**Freedom of assembly (arts. 19 and 21)**

23. Please discuss the efforts by Kenya to promote and protect the right to freedom of assembly. Please include information on: (a) the compatibility of the 1950 Public Order Act with the Covenant and reports that it has been used to curtail legitimate expressions of freedom of assembly; (b) allegations of human rights defenders being arrested for exercising their right to freedom of assembly; (c) the compatibility of provisions in the draft 2019 Public Order Act Amendment Bill that seek to apply individual criminal and civil liability for harms and losses sustained during assemblies with provisions under the

Covenant; and (d) reports of the disproportionate and unlawful use of force to disperse assemblies, including in the context of the 2017 general election.

**Rights of the child (arts. 23, 24 and 26)**

24. Please provide information about efforts to implement the Committee's previous recommendations on reform of the age of criminal responsibility, in line with the Covenant, and reform of the juvenile justice system (CCPR/C/KEN/CO/3, para. 22). Please include an update on the review of the Children's Act and on the work of the National Council on the Administration of Justice on this issue.

**Participation in public affairs (arts. 7, 14, 25 and 26)**

25. Please indicate what measures have been taken to guarantee free and transparent elections, and comment on the efficacy of the Independent Electoral and Boundaries Commission in supervising the 2017 electoral process. In relation to the 2017 election and post-election period, please provide information about reports of: (a) excessive use of force by the police, including against unarmed persons and those who did not pose a direct threat to life; (b) violence, including sexual violence, based on political affiliation, ethnicity and gender; (c) reports of the harassment and suppression of civil society organizations working on promoting democracy and good governance.

**Indigenous peoples (arts. 2, 25, 26 and 27)**

26. Please discuss the protections in place to ensure the rights of indigenous persons in Kenya. In this regard, please provide information about: (a) whether there are any plans to develop dedicated legislation to protect the rights of indigenous persons; (b) steps taken to address exclusion and discrimination against indigenous women; and (c) legal and policy provisions to ensure the land rights of indigenous persons, including meaningful, prior and informed consultation about projects affecting their traditional lands and territories.

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