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Human Rights Committee**Concluding observations on the fourth periodic report of Kenya***

1. The Human Rights Committee considered the fourth periodic report of Kenya (CCPR/C/KEN/4) at its 3763rd, 3764th, and 3765th meetings (see CCPR/C/SR. 3763, 3764 and 3765), held on 9, 10 and 11 March 2021 virtually for the first time, due to the coronavirus disease (COVID-19) pandemic. On 26 March 2021, the Committee adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Kenya and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation. The Committee thanks them for their commitment to engagement with the Treaty Bodies during the COVID-19 pandemic and for providing information on the measures taken during the reporting period to implement the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/KEN/RQ/4) to the list of issues (CCPR/C/KEN/Q/4) and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative, institutional and policy measures taken by the State party:

(a) The enactment of anti-corruption legislation, including the Anti Money Laundering Regulations 2013 and the Bribery Act No.47 of 2016;

(b) The enactment of the Registration of Persons (Amendment) Bill, 2019, which provides for the legal recognition of intersex persons;

(c) Progress in appointing women to positions within the civil service, judiciary and commissions;

(d) The enactment of the Domestic Violence Act of 2015;

(e) The appointment of special prosecutors and the establishment of Victim's Platforms to address violence against women;

(f) The development of the National Climate Change Action Plan (NCCAP) 2018-2022 to guide Kenya's climate change actions, including the reduction of greenhouse gas emissions;

* Adopted by the Committee at its 131st session (1 – 26 March 2021).

- (g) The enactment of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act No. 56 of 2012;
- (h) The enactment of the Land Law Amendment Act No. 28 of 2016.

C. Principal matters of concern and recommendations

Domestic implementation and dissemination of the Covenant

4. The Committee welcomes the State party's efforts to harmonize domestic legal provisions with the Covenant and other international standards. It however notes, with concern, a lack of information about how affected stakeholders can meaningfully participate in this process of harmonization. Whilst noting that the Covenant and other international legal provisions have direct applicability in domestic law following ratification, the Committee is also concerned that the Constitution and its interpretation are not in full conformity with the Covenant. The Committee is concerned that the State party has not yet ratified the first Optional Protocol to the Covenant. The Committee commends the work of the Kenyan National Commission on Human Rights but is concerned by reports that the organization's Commissioner positions have been vacant for a year, despite provisions in Section 9 of the Kenya National Commission on Human Rights Act No. 9 of 2002 mandating the President to convene a selection panel within 14 days of such roles becoming vacant. (art. 2).

5. The State party should:

(a) **Continue evaluating and revising, where necessary, domestic legal provisions, including the Constitution, to ensure harmonization with the rights guaranteed in the Covenant and ensure that domestic laws are interpreted and applied in conformity with its provisions;**

(b) **Ensure the full and meaningful participation of a broad range of stakeholders in this process of harmonization;**

(c) **Intensify its efforts to raise awareness of the Covenant among members of the general public, civil society representatives, public officials, police officers, lawyers, judges and prosecutors;**

(d) **Expedite the process of ratification of the first Optional Protocol to the Covenant, which establishes an individual complaint mechanism;**

(e) **Accelerate the process of appointing new commissioners to the Kenyan National Commission on Human Rights.**

Corruption

6. The Committee notes the development of draft legislation, including the Anti-Corruption Laws (Amendment) Bill 2021 and the Whistleblower Protection Bill 2021 but is concerned about the lack of information about when the draft provisions will likely be enacted into law and about the low overall number of convictions for corruption. It also notes, with concern, the lack of information provided about the steps taken to limit the access of state officials implicated in corruption to public office, in line with the judgement of the High Court in the case of Moses Kasaine Lenokuhal v Director of Public Prosecutions (arts 2 and 25).

7. **The State party should continue and strengthen its efforts, including through international cooperation and effective implementation of legislation and preventive measures, to combat corruption and promote good governance, transparency and accountability. It should also expedite the passing into law of pending anti-corruption and whistleblower protection legislation and intensify its efforts to ensure effective implementation of all relevant legal standards. The State party should step up efforts to investigate and prosecute corruption and, if a person is convicted, apply penalties commensurate with the seriousness of the offense and ensure asset recovery, where appropriate. The State party should also take concrete measures to place proportionate**

limits on the access of state officials implicit in corruption to public office in accordance with international standards.

The fight against impunity and past human rights violations

8. The Committee is concerned by the limited progress made in providing full redress for the gross human rights violations that occurred between 1963 and 2008. It is also concerned that Public Finance Management (Reparations for Historical Injustices Fund) Regulations 2017 designed to operationalize the Restorative Justice Fund, remain at the consultative stage, and therefore victims cannot yet access reparations. It also notes, with concern, a lack of information about how the Government will ensure the implementation of all the recommendations of the Truth, Justice and Reconciliation Commission. The Committee is also concerned, particularly in light of the elections scheduled for 2022, that limited progress has been made in ensuring access to justice and remedies, including guarantee of non-repetition, for victims of violence in the context of 2017 elections and that the regulations to govern the Victim Protection Fund await Parliamentary approval and therefore victims cannot yet access reparations. The Committee is further concerned about the lack of information about the number of prosecutions and punishments of perpetrators of post-election violence, as well as efforts to enact systemic reform to relevant law enforcement agencies (arts. 2, 6, 7 and 14).

9. The State party should:

(a) Intensify efforts to ensure the full and effective implementation of all the recommendations of the Truth, Justice and Reconciliation Commission, including expediting the process of making the Restorative Justice Fund fully operational and adopting the Commission's report by Parliament;

(b) Step up efforts to provide access to remedies for victims of post-election violence in 2017, including accelerating the process of operationalizing the Victim Protection Fund;

(c) Take concrete steps, ahead of the 2022 elections, to address impunity for violence that occurred in 2017, including the prosecution and punishment of all perpetrators, particularly police and security officers, and systemic reform to all relevant law enforcement agencies.

Non-discrimination

10. The Committee is concerned about the lack of comprehensive anti-discrimination legislation, in line with Article 27 of the Constitution and the provisions of the Covenant, and whether this could impede access to remedies for victims of discrimination. The Committee also notes, with concern, a lack of information from the State party about the steps taken to address stigma and discriminatory attitudes towards multiple groups and promote sensitivity and respect for diversity among the general public (arts. 2 and 26).

11. The State party should:

(a) Adopt comprehensive legislation prohibiting discrimination, including multiple, direct and indirect discrimination, in all spheres, in both the public and the private sectors, on all the grounds prohibited under the Covenant, including sex, sexual orientation, gender identity, religion, disability, albinism, socio-economic status, HIV/AIDS status, ethnic and political affiliation or other status;

(b) Guarantee effective remedies for victims of discrimination in judicial and administrative proceedings;

(c) Take concrete steps, such as comprehensive awareness-raising campaigns and sensitization activities, to address stigma and discriminatory attitudes and promote sensitivity and respect for diversity among the general public.

Sexual orientation, gender identity and intersexuality

12. The Committee is concerned about:

(a) Sections 162 and 165 of the Penal Code criminalising same sex relations and the High Court ruling in 2019 that these provisions are constitutional;

(b) The State party reporting that this prohibition is based upon same sex relations being unacceptable to Kenyan culture and values but not providing information about any measures taken to address discriminatory attitudes and stigma among the general public;

(c) Reports of lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals experiencing harassment, discrimination and violence, including violations perpetrated by law enforcement officers and vigilante groups, and facing barriers to access justice and remedies;

(d) Incidences of children being expelled from schools on the basis of actual or suspected sexual orientation and/or gender identity;

(e) Cases of non-urgent, irreversible surgical procedures, infanticide and abandonment among intersex children (arts. 2, 6, 7, 17 and 26).

13. The State party should take appropriate steps to:

(a) Amend all relevant laws, including sections 162 and 165 of the Penal Code, to decriminalize consensual sexual relations between adults of the same sex;

(b) Address discriminatory attitudes and stigma towards LGBTI amongst the general public, including through comprehensive awareness-raising and sensitization activities;

(c) Intensify its efforts to eradicate all forms of discrimination, harassment, discrimination and violence on the basis of sexual orientation and gender identity and provide access to justice and remedies for victims;

(d) Take immediate action to address the expulsion of children from schools on the basis of their actual or suspected sexual orientation and/or gender identity;

(e) Strengthen measures to end the performance of irreversible medical acts, especially surgical operations, on intersex children who are not yet capable of giving their full, free and informed consent, except in cases where such interventions are absolutely necessary for medical reasons. Access to effective remedies for victims of such interventions should also be ensured.

Gender equality

14. The Committee remains concerned that constitutional provisions requiring not more than two thirds of elective and appointive positions to be persons of the same gender have not been implemented. It notes, with concern, that women's representation in both the National Assembly and Senate remains below one third and that multiple attempts to ensure the implementation of the constitutional provisions have not been effective. The Committee is also concerned by reports of violence and harassment among women seeking elective office and the chilling effect such practices could have. It is further concerned by reports that the COVID-19 pandemic has negatively impacted women's overall participation in the workforce and regrets the lack of information provided on this issue (arts. 3 and 26).

15. The State party should intensify efforts to implement constitutional provisions requiring not more than two thirds of elective and appointive positions to be persons of the same gender. It should strengthen measures to address and prevent violence and harassment amongst women seeking elective office, including the prosecution of such crimes. The State party should also ensure that the specific needs of women are included in efforts to mitigate and recover from the economic effects of the COVID-19 pandemic.

Counter-terrorism measures

16. Whilst acknowledging the terrorist threat faced by the State party, the Committee remains concerned that the legal framework governing counter-terrorism efforts does not clearly set out that human rights must be respected in the fight against terrorism. The Committee is concerned that the Prevention of Terrorism Act No.30 of 2012 contains a definition of terrorism, which is vague, overly broad and has been used to oppress those

critical of the Government. The Committee welcomes efforts by the State party to amend the sections of the Security Laws (Amendment) Act No. 19 of 2014 deemed by the High Court judgement to be unconstitutional but notes, with concern, the lack of information about when such changes will likely take effect. The Committee is also concerned by reports of arbitrary arrests, harassment, extortion, forcible relocation, extrajudicial killings, *refoulement* and enforced disappearances being perpetrated by State officials in the context of counter-terrorism operations (arts. 2, 4, 7, 9 and 14).

17. The State party should undergo a process of legal review and reform to ensure respect for human rights in the fight against terrorism, including revision of the definition of terrorism in the Prevention of Terrorism Act No. 30 of 2012 and expediting the process of amending the Security Laws (Amendment) Act No. 19 of 2014 in line with the judgement of the High Court. It should also take steps to ensure counter-terrorism legislation is not used to limit any rights enshrined in the Covenant, including to life, liberty, *non-refoulement* and security of person.

Violence against women

18. The Committee is concerned about:

(a) Continuing female genital mutilation and a reported increase in cases during the COVID-19 pandemic;

(b) Reports of other harmful traditional practices in the State party, including wife inheritance, ritual cleansing and child marriage;

(c) Sexual offenses, including gang rape, being perpetrated against women in the 2017 election, and a lack of access to protection and remedies among victims;

(d) High levels of domestic violence, which have significantly increased during the COVID-19 pandemic, as well as weaknesses in the legal and institutional response, including weak implementation of the Protection against Domestic Violence Act of 2015, and a failure to criminalize marital rape;

(e) Safe spaces for women who have been subjected to violence not being available to women in all of the State party's territory;

(f) The lack of information about minority women, including those with albinism, and their experiences of violence (arts. 2, 3, 6, 7, 24 and 26).

19. **The State party should:**

(a) **Continue and expand its efforts to prevent and address female genital mutilation, including through prosecution and punishment, awareness raising, sensitization, cross-border cooperation and data collection;**

(b) **Take concrete steps to eradicate other harmful traditional practices, including wife inheritance, ritual cleansing and child marriage;**

(c) **Take all necessary measures to provide effective remedies, [to women who were victims of violence, including sexual violence, in the period surrounding the 2017 elections and to punish such acts of violence;**

(d) **Strengthen its institutional and legal frameworks to address domestic violence, including the criminalisation of marital rape, targeted measures to protect women from violence during the COVID-19 pandemic and the full and effective implementation of the Protection against Domestic Violence Act of 2015;**

(e) **Ensure that safe spaces are available to women who have been victims of violence in all parts of the State party's territory, including rural areas;**

(f) **Collect data on minority women subjected to violence in order to effectively target measures to ensure their protection.**

Voluntary termination of pregnancy and sexual and reproductive rights

20. The Committee is concerned that whilst Article 26 of the Constitution allows for voluntary termination of pregnancy in limited circumstances, articles 158-160, 228 and 240 of the Penal Code criminalise acts relating to the provision of abortion services. The Committee is also concerned by the Government's withdrawal in 2013 of the Standards and Guidelines for reducing morbidity and mortality for unsafe abortion and their failure to reinstate them following the High Court ruling in 2019 finding their removal to be unconstitutional. It is similarly concerned by the withdrawal of the National Guidelines on Management of Sexual Violence 2017 and the lack of clear policies and guidelines on access to termination of pregnancy in cases of sexual violence. The Committee also notes, with concern, that Parliamentary attempts to enact the Reproductive Health Bill 2019 have been unsuccessful (arts. 6 and 17).

21. Bearing in mind paragraph 8 of its general comment no. 36 (CCPR/C/GC/36) on the right to life, the State party should take steps to ensure clear and harmonized laws, policies and guidelines to govern access to safe and legal termination of pregnancy, as permitted under Article 26 of the Constitution, including in cases of pregnancy resulting from sexual violence. This should include expeditiously enacting the Reproductive Health Bill 2019, repealing articles of the Penal Code criminalising abortion and reinstating both the Standards and Guidelines for reducing morbidity and mortality for unsafe abortion in Kenya and the National Guidelines on Management of Sexual Violence. It should also consider widening access to safe and legal termination of pregnancy.

Death penalty

22. Whilst welcoming the steps taken by the State party to implement the judgement in the 2017 Francis Murutetu & another –v- Republic of Kenya Supreme Court case, which found that the mandatory use of the death penalty for murder, as outlined in Section 204 of the Penal Code, to be unconstitutional, it is concerned at the lack of information about when the process of legal reform to enact this judgement and the resentencing of eligible death row inmates will likely conclude. The Committee is concerned that the State party has yet to take concrete steps to implement the recommendation of the Task Force on the Implementation of the Supreme Court Ruling on the Death Penalty to abolish the death penalty, as well as to accede to the Second Optional Protocol to the Covenant aiming to the abolition of the death penalty (art. 6).

23. The State party should expedite the process of amending the national legal framework in accordance with the Supreme Court's findings in the 2017 Francis Murutetu & another –v- Republic of Kenya case. It should also take concrete steps toward the total de jure abolition of the death penalty and should consider acceding to the Second Optional Protocol to the Covenant aiming to the abolition of the death penalty.

Enforced disappearances, extrajudicial killings and other practices related to the unlawful use of force by State and non-State actors

24. The Committee remains concerned about enforced disappearances, extrajudicial killings and other incidences of unlawful use of force. It is particularly concerned about:

(a) Cases of enforced disappearances, extrajudicial killings and the lethal use of force in the period surrounding the 2017 elections and the lack of evidence of the convictions and punishments of perpetrators, the majority of which are reported to be law enforcement officials;

(b) The legal framework not defining all forms of enforced disappearance as criminal offenses;

(c) The excessive use of force by law enforcement officers, including in informal urban settlements and in the context of the enforcement of measures designed to control the COVID-19 pandemic.

25. **The State party should:**

(a) **Step up efforts to ensure timely investigations, prosecutions and punishments of all reported cases of enforced disappearances, extrajudicial killings and other unlawful uses of force, including cases relating to violence in the context of the 2017 elections;**

(b) **Revise the legal framework to ensure that all forms of enforced disappearances are clearly defined in criminal law with associated penalties that are proportionate to the severity of the offense;**

(c) **Ensure that the training of police officers is extended to all relevant state officers, including those in the Kenya Police Service and the Kenya Wildlife Service, and draw upon relevant national and international standards, including the Sixth Schedule of the National Police Service Act No. 11 of 2011, the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169), the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).**

Climate change and environmental degradation

26. The Committee welcomes the measures taken to date by the State party to adapt and mitigate the effects of climate change, including the development of the National Climate Change Action Plan (NCCAP) 2018-2022 and welcomes constitutional provisions mandating public participation in environmental management. It is however concerned by reports that such provisions have not been consistently implemented to ensure the effective, meaningful and informed participation of the population, including indigenous peoples, in projects that affect sustainable development and resilience to climate change (arts. 6 and 25).

27. **The State party should continue and expand its efforts to develop its resilience to climate change through adaptation and mitigation measures. All projects that affect sustainable development and resilience to climate change should be developed with the meaningful and informed participation of the affected population, including indigenous peoples. In that regard, the Committee draws the State party's attention to paragraph 62 of its general comment No. 36 (2018) on the right to life.**

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty

28. The Committee is concerned about reports of torture and ill treatment, including in the context of policing activities and places of detention, as well as the low number of convictions and punishments for such crimes. It notes the enactment of the Prevention of Torture Act No. 17 of 2014 but is concerned that the State party has not effectively implemented this legislation thereby preventing victims from accessing rehabilitation services. In addition, it regrets that the State party has not yet taken steps to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (arts. 7 and 10).

29. **The State party should step up efforts to effectively implement the Prevention of Torture Act No.17 of 2014, including ensuring that victims can access rehabilitation services and intensify efforts to ensure investigations, prosecutions, convictions and punishments for torture and ill treatment, including in cases where State officials are implicated. It should also strengthen training of judges, prosecutors, lawyers and law enforcement officials and consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

Prison conditions

30. The Committee welcomes measures taken by the State party to address overcrowding in prisons, including Community Service Orders, the use of bail and bond, the reviewing and revision of sentences and the release of prisoners due to the COVID-19 pandemic. It is however concerned by continuing reports of overcrowding in the State party's detention facilities.

31. **The State party should continue and intensify its efforts to improve conditions and reduce overcrowding in places of deprivation of liberty, particularly by increasing the use of alternatives to detention, and ensure that conditions in places of detention are fully in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).**

Liberty and security of person

32. The Committee is concerned by reports of the use of arbitrary arrest and detention, including amongst human rights defenders, journalists, civil society representatives and LGBTI individuals. It is also concerned about the compatibility of provisions in the Prevention of Terrorism Act No. 30 of 2021 that allows suspects to be held in pre-trial detention for up to 90 days with article 50 of the Constitution and the provisions of the Covenant. It welcomes efforts made by the State party to provide comprehensive training to officers but regrets the lack of information provided about the number of investigations, convictions and punishments undertaken following complaints of arbitrary arrest and detention, as well as measures to ensure the promotion of civic space where individuals can meaningfully exercise and promote human rights in a safe environment (art. 9).

33. **The State party should continue and strengthen efforts to reform the police force and provide training to judges, prosecutors, lawyers and relevant officers on national provisions and international human rights standards on liberty and security of person. They should amend the Prevention of Terrorism Act No. 30 of 2012 to bring provisions on pre-trial detention in line with article 50 of the Constitution and the provisions of the Covenant. The State party should also step up efforts to impartially investigate complaints of arbitrary arrest and detention and punish such acts, as well as take additional measures to promote civic space, including operationalizing the Public Benefits Organisation Act, no. 18 of 2013, and adopting the model Human Rights Defenders Protection Policy developed by the Kenya National Commission on Human Rights.**

Elimination of slavery, servitude and trafficking in persons

34. The Committee is concerned about:

(a) Inadequate implementation of the Counter-Trafficking in Persons Act No. 8 of 2010, including a failure to fully operationalize the National Referral Mechanism and the Victim Assistance Fund;

(b) The low rate of convictions for trafficking in persons and child trafficking and the lack of information about remedies and psychosocial support provided to victims;

(c) Reports of persons with albinism being trafficking for the use of their body parts;

(d) Kenyan nationals, predominantly women, being coerced by employment agencies to work under exploitative conditions abroad (arts. 2, 6, 7, 8, 24 and 26).

35. **The State party should:**

(a) **Intensify efforts to fully implement the Counter-Trafficking in Persons Act No. 8 of 2010, including ensuring the full operationalization of the National Referral Mechanism and its Victim Assistance Fund;**

(b) **Step up investigations, prosecutions, convictions and punishments of those responsible for trafficking-related crimes;**

(c) **Continue efforts to train state officials on countering human trafficking and expand training to all relevant state officials, including judges, prosecutors, law enforcement officers and immigration agents, as well as lawyers;**

(d) **Include targeted measures to protect persons from albinism from trafficking;**

(e) **Strengthen efforts to screen and monitor the activities of employment agencies and protect Kenyan nationals working abroad.**

Treatment of aliens, including refugees, asylum seekers and migrants

36. The Committee is concerned about:

(a) The Refugee Bill 2019 not yet having been enacted into law, despite the legislative amendment process starting in 2011 and the urgent need to replace provisions in the Refugees Act No. 13 of 2006, particularly encampment provisions that oblige all refugees and asylum-seekers in Kenya to reside in refugee camps and seek authorisation to leave;

(b) Clause 19 (2) of the Refugee Bill 2019, which allows for broad exceptions to the principle of *non-refoulement* on the basis of public morality;

(c) The inclusion of prisons, police stations and remand homes in the Bill's definition of refugee transit centres;

(d) Clause 23 (5) of the Bill, which compels all those who have filed an asylum claim to abide by all laws in Kenya and allows for the cancellation of asylum applications and removal from the State party's territory of individuals who violate laws. The Committee is particularly concerned that LGBTI refugees and asylum seekers could be subjected to *refoulement* on the de-facto basis of their sexual orientation, given the continued illegality of same-sex relations;

(e) The detention of non-citizens solely for irregular entry into the country;

(f) Continued high levels of statelessness, including among children (arts. 2, 6, 7, 9, 13 and 26).

37. **The State party should:**

(a) **Strictly uphold the principle of *non-refoulement* in both law and practice;**

(b) **Amend the Refugee Bill 2019, including provisions that include prisons, police stations and remand homes in the definition of transit centres, clauses 19 (2) and 23 (5), to ensure its full compatibility with the Covenant;**

(c) **Pass an amended version of the Refugee Bill into law and effectively implement its provisions without delay;**

(e) **Stop the practice of detaining non-citizens solely for irregular entry into the country;**

(f) **Take concrete steps to reduce statelessness, and in particular prevent statelessness of children.**

Internally displaced persons

38. The Committee is concerned about the slow progress in finding durable solutions for internally displaced persons, including those displaced by environmental disasters and internal conflict. It is also concerned that adequate funding has not been dedicated to the operationalization of the National Consultative Coordination Committee for Internally Displaced Persons (art. 12).

39. **The State party should intensify its efforts to expedite durable solutions for internally displaced persons in accordance with relevant international standards, including the Covenant and the UN Guiding Principles on Internal Displacement. The State party should also operationalize the National Consultative Coordination Committee as a matter of priority.**

Forced evictions

40. The Committee is concerned about continued reports of forced, and sometimes violent, evictions, including amongst indigenous populations in forest areas, such as the Embobut and Mau forests. The Committee is concerned that such evictions have been undertaken without full regard for due process requirements, such as adequate notice and prior and meaningful consultation with those affected in direct contravention of section 152 (G) of the Land Law Amendment Act No. 26 2016, the moratorium declared during the COVID-19 pandemic and judicial decisions. It is also concerned by insufficient access to

justice and remedies, including the provision of compensation and resettlement amongst all those affected following failure to enact the Evictions and Resettlement Bill 2012. The Committee also notes, with concern, the lack of information on investigations, prosecutions, convictions and punishments of those who violate legal standards during evictions, including in cases where such violence has led to the death of affected individuals (arts. 6, 7, 12, 17, 26 and 27).

41. **The State party should ensure that all evictions are carried out in accordance with national and international standards, including by:**

(a) **Putting in place a sustainable system of equitable land tenure to prevent forced evictions;**

(b) **When there is no alternative to force evictions, taking all necessary measures to effectively implement the Land Law Amendment Act No. 26 of 2016 and consistently ensure the implementation of the safeguards contained in section 152(G), including the need for adequate notice and prior and meaningful consultation with and the provision of adequate compensation and/or resettlement of those affected;**

(c) **Strictly upholding the moratorium declared during the COVID-19 pandemic and all judicial decisions on evictions;**

(d) **Improving compensation and resettlement amongst those affected by evictions, including through enacting the Evictions and Resettlement Bill 2012 into law without delay;**

(e) **Ensuring the investigation, prosecution, conviction and punishment of all individuals who breach the law during evictions.**

Freedom of expression

42. The Committee is concerned about the lack of harmonization between the legal standards in the State party, including sections 132, 181 and 194 of the Penal Code, the Computer Misuse and Cybercrimes Act No.5 of 2018, the Prevention of Terrorism Act No. 30 of 2012, the Kenya Information and Communications (Amendment) Act No. 41 of (2013) and the Security Laws (Amendment) Act No. 19 of 2014, with articles 33 and 34 of the Constitution and articles 19 and 20 of the Covenant. The Committee is also concerned that national legal provisions have been used to limit online expression, repress LGBTI individuals and quell criticism of the Government, including among human rights defenders, journalists and civil society organizations. It is further concerned about reports of interference with the free press and attacks against journalists and media workers during the 2017 election period (arts. 19 and 20).

43. **The State party should engage in a process of harmonization between all legal standards relating to freedom of expression, including online expression, and the provisions of the Covenant, as well as articles 33 and 34 of the Constitution. The State party should ensure that any restrictions on the exercise of freedom of expression, including online expression, comply with the strict requirements of article 19 (3) of the Covenant. They should also take concrete steps to prevent any interference with the free press during the 2022 elections and protect journalists and media workers from all forms of harassment and violence.**

The right of peaceful assembly

44. The Committee welcomes that the Public Order Act (Amendment Bill) 2019, and provisions therein creating criminal and civil liability for harms and losses during assemblies, has been deemed unconstitutional and rejected by Parliament. It is however concerned about reports that requirements in the Public Order Act No. 36 of 1950 to notify the police of all assemblies are being used in practice to deny authorisation of peaceful assemblies. The Committee is also concerned about reports of the excessive use of force to disperse protests and by reports of the arbitrary detention and arrest of human rights defenders for exercising their right to peaceful assembly (arts. 19 and 21).

45. **Bearing in mind the Committee's General Comment no. 37 (CCPR/C/GC/37) on the right of peaceful assembly and the State party should bring all laws and practices governing peaceful assembly into full compliance with the Covenant. The use of force by law by enforcement officials during peaceful assemblies should be brought in line with the UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).**

Rights of the child

46. The Committee welcomes the development of the Children (Amendment) Bill 2018, which will increase the minimum age of criminal responsibility from 8 to 12 and allow for non-custodial alternatives to detention for children in conflict with the law. It is however concerned that this draft legislation has not yet been passed into law and provisions in the Penal Code still allow for the criminal prosecution of those aged below 12 (arts. 23, 24 and 26).

47. **The State party should expedite the enactment of the Children (Amendment) Bill 2018 into law, harmonize all national provisions to reflect 12 as the minimum age of criminal responsibility and ensure the consistent application of the best interests of the child principle in all incidences of children in conflict with the law.**

Participation in public affairs

48. The Committee [is concerned that continued impunity for the grave human rights violations that occurred around the 2017 elections, including lethal use of force, assaults, torture and sexual violence by police officers and the failure to provide remedies to victims, including guarantees of non-repetition, could undermine the electoral process in 2022]. It is [also] concerned that the root causes of violence in 2017, including *inter alia* multiple violations of electoral regulations, voting irregularities, failure to effectively de-centralise the electoral process and challenges faced by the Independent Electoral and Boundaries Commission in effectively and independently implementing their mandate, have not been adequately addressed. The Committee welcomes the Building Bridges Initiative but notes, with concern, a lack of information about the status of its recommendations on the need for legal reform to build trust in the electoral process (arts. 7, 14, 25 and 26).

49. **The State party should intensify efforts to provide remedies to all victims of violence in the context of the 2017 elections, including guarantees of non-repetition. The State party should also take all necessary steps, ahead of the 2022 elections, to prevent violence and ensure the effective and independent functioning of the Independent Electoral and Boundaries Commission. It should also adopt all measures necessary to ensure transparency in voting and in vote counting procedures.**

Indigenous peoples

50. The Committee is concerned about:

(a) The absence of dedicated legislation to provide specific protections for indigenous peoples in the State party;

(b) The disproportionate impact on indigenous peoples of the failure of the State party to consistently implement the safeguards contained in section 152(G) of the Land Law Amendment Act No. 28 of 2016;

(c) Slow and inadequate implementation of provisions in the Community Land Act No. 27 of 2016 to ensure indigenous peoples can obtain official recognition and registration of their lands;

(d) The failure of Government to publish the recommendations of the Task Force to advise the Government on the 'Implementation of the Decision of the African Court on Human and Peoples' Rights in Respect of the Rights of the Ogiek Community of Mau and Enhancing the Participation of Indigenous Communities in the Sustainable Management of Forests';

(e) The lack of information about measures taken to address the vulnerabilities of indigenous women in the State party (arts. , 2, 25, 26 and 27).

51. **The State party should:**

(a) **Develop and enact dedicated legislation to expand specific protection for indigenous peoples;**

(b) **Step up safeguards against forced evictions of indigenous peoples and ensure the consistent and effective application of the principle of free, informed and prior consent before any developmental or other activities take place on lands traditionally used, occupied or owned by indigenous communities;**

(c) **Intensify implementation of the Community Land Act No. 27 of 2016, including by the allocation of adequate funding to facilitate the required processes, so as to ensure indigenous peoples can obtain official recognition and registration of their land;**

(d) **Publish without delay the recommendations of the Task Force to advise the Government on the ‘Implementation of the Decision of the African Court on Human and Peoples’ Rights in Respect of the Rights of the Ogiek Community of Mau and Enhancing the Participation of Indigenous Communities in the Sustainable Management of Forests’ and comply with the decision of the Court;**

(e) **Ensure that specific measures are in place to promote and protect the rights of indigenous women.**

D. Dissemination and follow-up

52. **The State party should widely disseminate the Covenant, its Optional Protocols, its fourth periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into its official language.**

53. **In accordance with rule 75, paragraph 1, of the Committee’s rules of procedure, the State party is requested to provide, by 26 March 2023 information on the implementation of the recommendations made by the Committee in paragraphs [19 (violence against women), 41 (forced evictions) and 49 (participation in public affairs)] above.**

54. **In line with the Committee’s predictable review cycle, the State party will receive in 2027 the Committee’s list of issues prior to the submission of the report and will be expected to submit within one year its replies to the list of issues, which will constitute its fifth periodic report. The Committee also requests the State party, in preparing this report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. The next constructive dialogue with the State party will take place in 2029 in Geneva.**
