Kenya National Commission on Human Rights

STATEMENT

UPR PRE-SESSION ON THE REPUBLIC OF KENYA

GENEVA, 18th February 2025

Delivered by the Kenya National Commission on Human Rights

A. INTRODUCTION

1. The Kenya National Commission on Human Rights (the Commission) is an independent National Human Rights Institution established under Article 59 of the Constitution of Kenya with a broad mandate to promote a culture of respect for human rights in the Republic of Kenya.
2. The Commission's Statement presents the key findings, commitments and recommendations outlined in its Fourth Cycle Universal Periodic Review Report submitted on 11th October 2024. It reflects on Kenya's progress in addressing human rights challenges and highlights areas requiring urgent action to fulfill its obligations under national and international human rights frameworks.

B. STATEMENT

Prevention of torture

3. During the previous review, Kenya accepted recommendations to prevent torture and impunity through the full implementation of the National Coroners Service Act (NCSA), 2017 and the Prevention of Torture Act (POTA), 2017. Whereas a Specimen Charge Sheet and a Prosecution Rapid Reference have been developed to facilitate prosecution of torture cases under the POTA, challenges remain in the POTA's implementation, as the Commission has not received adequate funding to monitor its implementation and has been denied access to military facilities. Furthermore, the Coroner-General's Office is yet to be fully operationalized.
4. The Commission urges the State to:
    - Initiate the process of establishing the Coroner General's Office as per the NCSA to investigate deaths, including those resulting from police action.
    - Expedite the consideration and enactment of the National Coroners Service (Amendment) Bill, 2023.
    - Criminalize enforced disappearance in Kenya.

Freedom of peaceful assembly

5. Furthermore, the State has not upheld its commitment to the freedom of peaceful assembly. There was heavy deployment of anti-riot and civilian police and the suppression of peaceful

and unarmed protesters using tear gas and arbitrary arrests during the 2024 anti-Finance Bill demonstrations. Between 18th June 2024 to 1st July 2024 alone, 39 people died, 361 were injured, 32 were forcibly displaced and 627 arrested during protests.

6. The Commission calls upon the State to:
    - Investigate and prosecute security officers responsible for violations against protesters during the 2024 protests.

Electoral reforms

7. The Commission acknowledges the State's commitment to addressing electoral violence and ensuring human rights are respected during elections. While there have been efforts to prosecute electoral-related offences and improve judicial access, challenges such as violence, intimidation, voter bribery and misuse of children remain prevalent.
8. The Commission recommends that the State:
    - Investigates and arraigns persons found culpable of perpetuating election violence.
    - Implement the December 2020 High Court decision in Petition No. 122 of 2013 regarding reparations for election-related sexual violence.

Kenya National Commission on Human Rights

9. Despite the State's commitment to take measures to strengthen the independence and efficiency of the Kenya National Commission on Human Rights, the Commission continues to face challenges such as inadequate funding, limited staffing and insufficient resources to monitor and protect human rights across the country fully. Consequently, the Commission urges that adequate funding and resources be made available to enable it to fulfil its mandate and carry out its essential functions in safeguarding human rights in Kenya.

Right to health

10. The Commission notes that despite progress in the health sector reforms, the allocation remains below the 15% threshold recommended by the Abuja Declaration. The transition from the National Health Insurance Fund to the new Social Health Insurance Fund has been marred by challenges forcing patients to pay out-of-pocket for essential health services.

Persistent strikes by healthcare workers in public hospitals due to low pay, poor working conditions and delayed salaries have also affected access to health care.

11. The Commission urges the State to:
    - Act swiftly and decisively to address the challenges in the transition from the National Health Insurance Fund to the Social Health Insurance Fund.
    - Engage in meaningful dialogue with the unions of health care workers to resolve the grievances and functioning of health facilities.

Right to education

12. During the previous review, the State committed to continue to increase investment in education. The Commission is concerned about budget cuts in the education sector which threaten teacher recruitment, training and critical programs like the School Feeding Programme. Further challenges grappling the education sector include delays in the disbursement of funds for higher education and delayed capitation for secondary schools. The Commission calls for the restoration of the School Feeding Programme budget to the Ministry of Education and a review of the Higher Education Loans Board (HELB) to address students' concerns while ensuring inclusive access to education for all.

Persons with disabilities

13. The Commission commends progress in amending derogatory language in laws and the passage of key disability-related bills. However, gaps remain in addressing discrimination and improving access to justice and services for persons with disabilities. In addition, the Commission calls for the swift enactment of disability related laws through inclusive processes and fact-track the adoption of the Persons with Disabilities National Policy 2024.

Right to adequate food

14. The Commission emphasizes the need to ensure the right to adequate food for all Kenyans, especially vulnerable groups through sustainable agricultural practices, equitable distribution systems and strengthened policy frameworks. The Commission calls for urgent measures to address food insecurity and uphold this fundamental right.

=END=