



Human Rights Council
Working Group on the Universal Periodic Review
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Compilation on Kenya

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review. It is a compilation of information contained in reports of treaty bodies and special procedures and other relevant United Nations documents, presented in a summarized manner owing to word-limit constraints.

II. Scope of international obligations and cooperation with international human rights mechanisms and bodies^{1, 2}

2. In 2017, the Committee on the Elimination of Racial Discrimination encouraged Kenya to consider ratifying those international human rights instruments that it had not yet ratified, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,³ and the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).⁴ The United Nations Educational, Scientific and Cultural Organization (UNESCO) recommended that Kenya ratify the Convention against Discrimination in Education.⁵ The Office of the United Nations High Commissioner for Refugees (UNHCR) recommended that Kenya accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.⁶

3. The Committee on the Elimination of Racial Discrimination recommended that Kenya ratify the amendment to article 8 (6) of the International Convention on the Elimination of All Forms of Racial Discrimination adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In addition, it encouraged Kenya to make the optional declaration provided for in article 14 of the Convention recognizing the Committee's competence to receive and consider individual communications.⁷

4. In 2019, the Independent Expert on the enjoyment of human rights by persons with albinism recommended that Kenya ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities.⁸



5. In 2017, the Committee on the Elimination of Discrimination against Women recommended that Kenya ratify the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the ILO Domestic Workers Convention, 2011 (No. 189).⁹

III. National human rights framework¹⁰

6. The Committee on the Elimination of Racial Discrimination recommended that, when implementing the Convention in its domestic legal order, Kenya should give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009.¹¹

7. The same Committee recommended that Kenya amend the definition of ethnic discrimination contained in the National Cohesion and Integration Act 2008 to align it with article 1 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination.¹²

8. In 2016, the Committee on the Rights of the Child recommended that Kenya harmonize all legislation on child labour with the Convention on the Rights of the Child and the ILO conventions that Kenya had ratified, amend the Employment Act and adopt and implement the Child Labour Policy and the List of Hazardous Occupations Prohibited for Children.¹³

9. The Independent Expert on albinism recommended that Kenya review the Witchcraft Act and define “witchcraft” or harmful practices related to certain manifestations of witchcraft, in order to furnish greater clarity and foster effective use of the Act,¹⁴ and also review the Counter-Trafficking in Persons Act or provide interpretive guidance in order to ensure that existing provisions on possession of body parts sufficiently addressed trafficking of body parts of persons with albinism where the body from which the part was taken had not been trafficked.¹⁵

10. The United Nations country team stated that there was a need to revise the Law of Succession Act to ensure its alignment with the Constitution and with human rights standards.¹⁶

11. UNHCR recommended that Kenya accelerate the necessary legislative changes to ensure that stateless persons could avail themselves of the relevant provision of the Kenya Citizenship and Immigration Act, 2011.¹⁷

12. The United Nations country team recommended that Kenya adopt regulations to give effect to the Protection against Domestic Violence Act of 2015.¹⁸

13. Noting the absence of legislation to ensure the application of the affirmative action principle outlined in the Constitution, the United Nations country team recommended that Kenya pass the Representation of Special Interest Groups Law (Amendment) Bill 2019.¹⁹

14. Noting the adoption of the National Policy and Action Plan on Human Rights in 2015, aimed at ensuring a coherent human rights-based approach in the implementation of development plans, the United Nations country team stated that there was a need to review the Policy to ensure that it addressed emerging issues.²⁰

15. The Independent Expert on albinism recommended that Kenya adopt and implement, in line with resolution 373 of the African Commission on Human and Peoples’ Rights, the Regional Action Plan on Albinism in Africa (2017–2021).²¹

16. The United Nations country team stated that a lack of adequate State funding had continued to affect the operations of the Kenya National Commission on Human Rights, the National Gender and Equality Commission and the Commission on Administration of Justice.²²

IV. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Cross-cutting issues

1. Equality and non-discrimination

17. The Committee on the Elimination of Discrimination against Women expressed concern that the legal framework, including exemptions under article 45 of the Constitution and article 49 (3) of the Marriage Act of 2014, discriminated against Muslim women and women in customary marriages, including through the explicit exemption of the kadhi courts from constitutional equality provisions and the fact that women could not serve as kadhis. It recommended that Kenya repeal or amend discriminatory provisions under religious and customary law, codify Muslim family law in a manner that was compatible with article 27 of the Constitution, and appoint Muslim women as kadhis and alternative dispute resolution mediators in the kadhi court system.²³

18. The same Committee noted with concern that temporary special measures were not sufficiently applied as a necessary strategy to accelerate the achievement of substantive equality between women and men in all areas covered by the Convention on the Elimination of All Forms of Discrimination against Women.²⁴

19. The same Committee expressed concern about the persistence of discriminatory stereotypes with regard to the roles and responsibilities of women and men in the family and in society.²⁵ It recommended that Kenya develop and implement a comprehensive strategy to eliminate harmful practices and stereotypes that discriminated against women.²⁶

20. Referring, *inter alia*, to a relevant supported recommendation from the previous universal periodic review, the Committee on the Elimination of Discrimination against Women recommended that Kenya exercise due diligence to protect all women, including lesbian, bisexual and transgender women and intersex persons, against discrimination by adopting comprehensive anti-discrimination legislation affording such protection.²⁷

21. Noting the lack of explicit legal protection against discrimination based on sexual orientation and gender identity, and citing sections 162 and 165 of the Penal Code, the United Nations country team stated that lesbian, gay, bisexual and transgender persons continued to face challenges. In addition, same-sex couples were prohibited from adopting children, and lesbian, gay, bisexual, transgender and intersex refugees faced discrimination and considerable obstacles in accessing mainstream services and livelihood opportunities.²⁸

22. The Independent Expert on albinism stated that discrimination against and stigmatization of persons with albinism were prevalent and were often perpetuated by friends, relatives, community members or people in positions of power.²⁹

2. Development, the environment, and business and human rights³⁰

23. The Committee on the Elimination of Racial Discrimination urged Kenya to take every opportunity, through urban planning programmes, to create communities in which residents lived, worked, went to school and exercised political participation in multi-ethnic settings.³¹

24. The Working Group on the issue of human rights and transnational corporations and other business enterprises stated that Kenya should endorse and more strongly publicize its role in implementing the Guiding Principles on Business and Human Rights, including by putting human rights at the centre of its activities as an economic actor.³² Furthermore, it recommended that Kenya, *inter alia*, strengthen capacity and raise awareness among civil servants, the judiciary and lawmakers of the Guiding Principles on Business and Human Rights and take measures to ensure the full implementation of policy and legislative frameworks related to business and human rights; ensure that State-owned enterprises led by example and adopted clear criteria on human rights due diligence; include human rights criteria in its public procurement practices and implement effective monitoring systems for

the verification and enforcement of human rights requirements; and provide guidance and set clear expectations for all business enterprises about their responsibility to respect human rights throughout their operations.³³

25. The same Working Group stated that, following the country's acceptance of recommendations from the previous review to develop a national action plan for the implementation of the Guiding Principles on Business and Human Rights, Kenya had initiated the process of developing such a plan. The Working Group encouraged the Government to extend efforts to raise awareness of, and involve more actors in, that process.³⁴

3. Human rights and counter-terrorism³⁵

26. The Committee on the Elimination of Racial Discrimination expressed concern at reports that counter-terrorism initiatives to combat Al-Shabab, including ethnic profiling of certain ethnic groups, had resulted in human rights violations, including dozens of extrajudicial killings and enforced disappearances. It recommended that Kenya address the alleged violations and ensure that all suspected persons benefited from fundamental legal safeguards, particularly when the suspects were of foreign descent or nationality.³⁶

B. Civil and political rights

1. Right to life, liberty and security of person³⁷

27. The United Nations country team noted that there was a moratorium on the death penalty and no executions had taken place since 1987, although courts continued to hand down death sentences for capital offences. The Government had established a working group to make recommendations on the decision of the Supreme Court in which the Court had held that the death penalty was unconstitutional.³⁸

28. In 2016, the Committee against Torture reiterated its earlier concern about persistent allegations of ongoing extrajudicial killings, enforced disappearances and excessive use of force by police officers, as well as about the low rate of investigations and prosecutions of such acts.³⁹

29. The United Nations country team noted the continued reports of incidents of abusive police conduct, including extrajudicial killings, and that in 2019, the Independent Policing Oversight Authority had reported that it was investigating 190 cases of suspected extrajudicial killings and had confirmed six convictions since its establishment.⁴⁰

30. The Independent Expert on albinism stated that she had received reports of cases of attacks on persons with albinism, including killings, mutilation, kidnapping, attempted kidnapping, rape, and trafficking of persons and body parts.⁴¹ Most reported attacks appeared to be for the purpose of using or selling body parts for witchcraft purposes.⁴² The level of fear of attacks reportedly increased, the closer a person lived to a border with neighbouring countries. Reportedly, during elections, many persons with albinism feared leaving their houses, a situation fuelled by common beliefs that elections could be won through witchcraft practices, and that some of those practices could be rendered more potent with the use of body parts of persons with albinism.⁴³ Outside of elections, and beyond the border areas, in places such as Embu County and in Nairobi, there was also a constant fear of attack and kidnapping among persons with albinism and their family members. The Independent Expert noted that the fear was perpetuated not only by actual cases of physical attack and danger, but also by the hypervisibility of persons with albinism and the unwanted and threatening attention they constantly received.⁴⁴ The Independent Expert recommended that Kenya undertake a situational survey to verify and identify gaps in security and protection measures for persons with albinism, particularly in rural and border areas.⁴⁵ The Committee on the Elimination of Racial Discrimination recommended that Kenya take effective measures to protect persons with albinism from violence, discrimination and stigmatization.⁴⁶

31. The Committee on the Elimination of Discrimination against Women was concerned about harmful practices, such as child and forced marriage, female genital mutilation,

polygamy, bride price and widowhood rites such as widow inheritance. It was particularly alarmed by the practice of raping girls, known as “beading”, which was prevalent among the Samburu people and justified as a cultural practice, and its consequences, including unsafe, forced abortions. The Committee recommended that Kenya, inter alia, develop and implement a comprehensive strategy to eliminate harmful practices and stereotypes, take immediate measures to eliminate the harmful practice of child rape (“beading”), and ensure that victims could file complaints without fear of retribution or stigma and had access to effective remedies and victim support.⁴⁷ The Committee also recommended that Kenya ensure that the Prohibition of Female Genital Mutilation Act of 2011 was widely known and implemented, and that perpetrators of female genital mutilation, including medical practitioners, were prosecuted and adequately punished; take measures to eradicate female genital mutilation, including through increased awareness-raising among religious and traditional leaders and the general public; and update the 2010 female genital mutilation policy.⁴⁸

32. The same Committee remained concerned about the high level of gender-based violence against women and girls and the widespread incidence of sexual violence, including rape, in the private and public spheres. It was also concerned about underreporting by victims, owing to, among other things, law enforcement and medical staff illegally charging victims for reporting forms, especially in the case of disadvantaged groups of women and women in informal settlements, and the low prosecution rate in cases of gender-based violence against women.⁴⁹

33. The same Committee expressed concern about reports of election-related gender-based violence, including of a sexual nature, during the elections in 2017. It was equally concerned about reports that the majority of the alleged perpetrators were police officers or members of other security forces, and noted with concern the delays in prosecuting perpetrators and providing redress to the victims of such violence and the Government’s apparent lack of commitment in that regard.⁵⁰

2. Administration of justice, including impunity, and the rule of law⁵¹

34. The United Nations country team stated that the Small Claims Court Act, 2016 established small claims courts, which would have the effect of reducing the backlog of cases. The United Nations country team recommended that Kenya consider operationalizing the small claims courts.⁵²

35. The Committee on the Elimination of Discrimination against Women recommended that Kenya provide training to judges, prosecutors, legal professionals, law enforcement officials and medical personnel on the strict application of criminal law provisions to punish child and forced marriage, female genital mutilation, child rape (“beading”) and widow inheritance.⁵³

36. While welcoming the adoption of the Legal Aid Act, 2016 and the National Legal Aid Policy, the Committee on the Elimination of Racial Discrimination was concerned that the combined budget of the Legal Aid Fund and the National Legal Aid Awareness Fund might be insufficient. It was also concerned at reports that the Act had not been fully implemented. The Committee encouraged Kenya to continue implementing its legal aid policies to ensure equal access to justice for victims of racial discrimination, minorities and indigenous peoples, in particular by providing adequate funding and staffing for legal aid services and reducing the distances between national courts and the areas where some minority groups and indigenous peoples lived.⁵⁴

37. The same Committee encouraged Kenya to continue to prosecute acts of racial discrimination and racist hate speech and to increase the powers of the Director of Public Prosecutions in the initiation of proceedings.⁵⁵

38. The United Nations country team stated that no progress had been made in implementing the recommendations from the report issued by the Truth, Justice and Reconciliation Commission of Kenya. It recommended that Kenya implement the recommendations from the report, install a framework for implementing the restorative justice fund and consider individual as well as collective reparations.⁵⁶

39. The Independent Expert on albinism stated that persons with albinism needed improved access to justice. The most common barriers to access to justice included a lack of information on existing mechanisms for redress.⁵⁷

40. The same Independent Expert recommended that Kenya ensure that all cases of offences against persons with albinism were promptly and thoroughly documented and investigated and that there was judicious use of legislation to fully address all types of attacks against persons with albinism, including those involving possession of body parts.⁵⁸

3. Fundamental freedoms and the right to participate in public and political life⁵⁹

41. The Committee on the Elimination of Discrimination against Women expressed concern about the shrinking space for civil society, expressed by, among other things, the threats to the lives, security and work of women human rights defenders, as well as limitations on foreign funding and the administrative limitations imposed on civil society organizations. It recommended, inter alia, that Kenya adopt effective measures to protect women human rights defenders, and rescind the limit on foreign funding of non-governmental organizations.⁶⁰

42. The United Nations country team stated that there was a proposal to revise the Public Order Act to make provisions for organizers of public meetings or public processions to be held responsible for loss of property, life or earnings, and to compensate anyone who lost property or was injured during a demonstration. If that proposal became law, it would shift the responsibility of safety and security from the police to the organizers of civic action, and would have the effect of silencing public dissent and further shrink civic space.⁶¹

43. The United Nations country team stated that the Statute Law (Miscellaneous Amendments) Act, 2019, mandated the National Counter Terrorism Centre to approve and receive reports from all non-governmental organizations. That could erode the freedom and independence of those working on human rights issues with a focus on countering terrorism.⁶²

44. The United Nations country team recommended that the Public Benefits Organizations Act, 2013 become immediately operational.⁶³

45. The Committee on the Elimination of Discrimination against Women expressed regret that, notwithstanding the constitutional two-thirds gender rule and the presidential decree on affirmative action of 2006, gender parity had not been achieved for elected or appointed offices. It expressed concern about barriers that prevented women from participating in political and public life on an equal basis with men, including threats and violence at all levels of political and public life.⁶⁴

4. Prohibition of all forms of slavery

46. The Committee on the Elimination of Discrimination against Women expressed concern that women and girls, including in refugee camps, remained at risk of trafficking for purposes of sexual exploitation or forced domestic labour. It was also concerned about the low level of prosecutions of traffickers, particularly under the Counter-Trafficking in Persons Act of 2010. The Committee recommended, inter alia, that Kenya strictly enforce the Act by investigating, prosecuting and punishing perpetrators of trafficking and exploitation of women and girls and enforce the Victim Protection Act.⁶⁵

47. The Committee on the Rights of the Child was concerned about the high level of child prostitution and child pornography, particularly in the tourism and travel sector, and recommended that Kenya effectively implement the Sexual Offences Act of 2006.⁶⁶

48. The Committee on the Elimination of Racial Discrimination recommended that Kenya accelerate its efforts to combat trafficking in persons and encouraged the State to pursue its efforts to combat abuse of Kenyan migrant workers abroad and to ratify the ILO Domestic Workers Convention, 2011 (No. 189).⁶⁷

5. Right to privacy and family life

49. The Committee on the Elimination of Discrimination against Women expressed concerns about the Marriage Act of 2014, including the fact that the Act was not in conformity with the Constitution, in that it recognized polygamy in the context of customary and Muslim marriages.⁶⁸

C. Economic, social and cultural rights

1. Right to work and to just and favourable conditions of work

50. Noting that the unrecognized and undervalued work by women represented a huge barrier for them to enter the paid labour market, and also noting reports of sexual harassment of women in the workplace and the testimonies about stigmatization of and discrimination against lesbian, gay, bisexual, transgender and intersex persons in the workplace and when seeking employment, the Working Group on the issue of human rights and transnational corporations and other business enterprises recommended that Kenya step up efforts to address gender-based discrimination and sexual harassment in the workplace, including with a view to protecting all individuals, irrespective of their sexual orientation or gender identity.⁶⁹

51. The Committee on the Elimination of Discrimination against Women expressed concern that the need for direct payment of maternity benefits by employers might lead to discrimination against women applicants and that mothers who adopted children or who suffered miscarriages or gave birth to stillborn babies were not covered by the Employment Act of 2007.⁷⁰ It recommended that Kenya amend the Act to extend maternity leave benefits to adoptive mothers and to those who suffered miscarriages or had stillborn babies, and consider adopting an alternative scheme for payment of maternity benefits, such as a national pool.⁷¹

52. The same Committee expressed concern about poor working conditions faced by women domestic workers.⁷² It recommended that Kenya create a regulatory framework for the informal and agricultural sectors to provide affected women with access to social protection and monitor their work conditions.⁷³

2. Right to social security⁷⁴

53. In 2016, the Committee on Economic, Social and Cultural Rights expressed concern that the coverage of cash transfer programmes was limited. It recommended that Kenya extend the coverage of the National Social Security Fund and the National Health Insurance Fund to all employees in the formal and informal economy and the self-employed.⁷⁵

54. The Independent Expert on albinism recommended that Kenya consider extending social security support to single parents of children with albinism whose work life was negatively impacted by necessary protection measures taken in the interests of their child.⁷⁶

3. Right to an adequate standard of living⁷⁷

55. The Independent Expert on albinism recommended that Kenya continue to adopt measures to address poverty in the light of Vision 2030 and the 2030 Agenda for Sustainable Development.⁷⁸

56. The Special Rapporteur on the human right to safe drinking water and sanitation stated in 2015 that there was a long way to go to realize the human rights to water and sanitation for all.⁷⁹ She recommended, inter alia, that the Government of Kenya (a) ensure that the national Government remained the primary duty bearer for the realization of the human rights to water and sanitation while implementing the devolution of the competence of water and service provision, (b) invest in the maintenance and operation of new and existing services and (c) allocate budget lines targeting the poorer rural and deprived urban areas and disadvantaged individuals and groups.⁸⁰

4. Right to health⁸¹

57. The Committee on the Elimination of Discrimination against Women expressed concern about the lack of access to high-quality health care for many women, including women with disabilities, women in prostitution and rural women. It also noted with concern the high maternal mortality rate, in part owing to unsafe abortions, and that the restrictive and unclear legal framework on abortion led women to seek unsafe and illegal abortions. The Committee was further concerned about the practice of post-delivery detention of women and girls who could not pay medical bills and about the high rates of HIV, particularly among women and girls.⁸²

58. The United Nations country team stated that mandatory HIV testing drove the virus underground as people became unwilling to take the test. Although the assisted partner notification service was voluntary, its implementation was perceived to be coercive. It placed the burden of the testing of partners on the person found to be HIV positive. A majority of women feared testing due to inherent challenges associated with convincing their sexual partners to test with them.⁸³

59. The Independent Expert on albinism stated that since 2013, the Government had dedicated a substantial annual budget to persons with albinism. The funds had enabled the provision of sunscreen lotions and adaptive devices such as glasses and monoculars, as well as skin cancer prevention kits, available in 190 hospitals across the country.⁸⁴ There were cases where persons with albinism had been denied the prevention kits because they were not preregistered with the National Council for Persons with Disabilities.⁸⁵

5. Right to education⁸⁶

60. Noting the commitment of the Government to ensure inclusive and quality education for all and the relevant legislation and policies in place, the United Nations country team recommended that Kenya: (a) address other costs associated with education, such as those for uniforms, books and meals; (b) address the segregation of children with disabilities in schools; (c) regularize refugee and camp-based learning institutions to adhere to national regulations and standards; and (d) develop specific interventions responding to the distinct learning needs of refugee and host-community children.⁸⁷

61. The Independent Expert on albinism stated that although the Special Needs Education Policy emphasized integration and an inclusive approach to students with special needs, it was yet to be fully implemented. The resources for assessing and identifying learners with special needs were inadequate.⁸⁸

62. The Committee on the Elimination of Discrimination against Women expressed concern about the large number of children out of school, gender disparity in schools, including the lower completion rate for girls compared with boys owing to, among other things, early pregnancy, female genital mutilation, child and/or forced marriage and a lack of sanitary towels. The Committee was also concerned about the lower number of women attending university compared with men and about the prevalence of sexual violence and harassment directed against girls and adolescents in schools by male teachers and pupils.⁸⁹

D. Rights of specific persons or groups

1. Women

63. In the light of concerns related to the national machinery for the advancement of women, the Committee on the Elimination of Discrimination against Women recommended that Kenya strengthen coordination between the State Department of Gender Affairs and the National Gender and Equality Commission and provide them with adequate resources; equip the National Gender and Equality Commission with a complaint mechanism and the authority to issue rulings that are binding; and collect and publish data disaggregated by sex, gender, ethnicity, disability and age in order to inform policy and programmes on women and girls, as well as to assist in the tracking of progress in the achievement of the gender-related targets of the Sustainable Development Goals.⁹⁰

64. The same Committee expressed concern about the high poverty rate among women, their exclusion from decision-making with regard to rural development, discrimination against rural women in relation to property rights and their limited access to high-quality health care. The Committee was also concerned about the effects of climate change on rural women.⁹¹

65. The same Committee noted with concern that indigenous women had limited access to traditional lands owing to the failure to implement the ruling of 2010 by the African Commission on Human and Peoples' Rights, which recognized their rights to ancestral land in the Rift Valley, and the lack of consultation with them.⁹²

66. The same Committee expressed concern about the failure to protect the health, sexual and reproductive rights of women with disabilities; their lack of access to justice; limits on their legal capacity and ability to own property; and violence against them, including the practice of forced sterilization.⁹³

67. The same Committee expressed concern that women in prostitution ran a heightened risk of gender-based violence, including abuse by the police. It noted with concern the widely held prejudices against women in prostitution and that they faced fines or arrest when they sought access to justice.⁹⁴

2. Children

68. The Committee on the Rights of the Child was concerned at the persistent practice of corporal punishment despite its prohibition under the Constitution, and urged Kenya to revise all laws and regulations authorizing corporal punishment, and to promote positive and non-violent forms of child-rearing and discipline.⁹⁵

69. In the light of the increasing number of children in street situations, the Committee on the Rights of the Child recommended that Kenya develop a comprehensive policy to address the root causes; provide such children with protection and adequate social services; and support family reunification programmes.⁹⁶

70. The Committee on the Rights of Persons with Disabilities was deeply concerned at the abandonment and institutionalization of children with disabilities. It recommended that Kenya implement an early warning mechanism to prevent the abandonment of children with disabilities and provide them with community-based services and assistance with a view to eliminating institutionalization.⁹⁷

71. The Committee on the Rights of the Child was concerned about the high number of orphans and vulnerable children who were deprived of a family environment and living in care institutions.⁹⁸ The Committee on the Rights of Persons with Disabilities referred to the absence of measures to return children with disabilities currently in orphanages to a family setting.⁹⁹ The Committee on the Rights of the Child recommended that Kenya ensure adequate safeguards and clear criteria for determining whether a child should be placed in alternative care, establish a system of foster care for children and ensure thorough and transparent periodic reviews of the placement of children in foster care and institutions.¹⁰⁰

72. The Committee on the Rights of the Child urged Kenya to expedite the amendment of the Children Act, 2001 and other regulations on adoption in line with article 21 of the Convention on the Rights of the Child, and recommended harmonizing national legislation with the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.¹⁰¹

73. The same Committee was concerned about the recruitment of children into non-State armed groups. It urged Kenya to eliminate the social, economic and political marginalization of children and youth who belonged to Muslim communities or to the Somali ethnic group.¹⁰²

3. Persons with disabilities

74. The Committee on the Rights of Persons with Disabilities called upon Kenya to set up a long-term strategy to raise awareness of and to combat discrimination against persons with disabilities.¹⁰³ The Committee recommended that Kenya ensure that cases of

discrimination against persons with disabilities could be invoked before courts and that victims received appropriate redress.¹⁰⁴

75. The same Committee noted that various laws included provisions for depriving persons with disabilities of their legal capacity, particularly persons with intellectual and/or psychosocial disabilities, and was concerned about de facto guardianship in families of persons with disabilities. It recommended that Kenya eliminate all forms of substituted decision-making regimes and replace them with a supported decision-making system; repeal legislation and abolish practices allowing for the deprivation of legal capacity on the basis of impairment; and prohibit the deprivation of legal capacity on a customary basis.¹⁰⁵

76. Concerned about the institutionalization of persons with disabilities, the same Committee recommended that Kenya adopt a strategy for the de-institutionalization of persons with disabilities; launch a comprehensive strategy to make community-based services available for persons with disabilities; and take steps to introduce specific budgetary allocations for promoting independent living.¹⁰⁶

4. Minorities and indigenous peoples¹⁰⁷

77. The Committee on the Elimination of Racial Discrimination expressed alarm at reports of Sengwer people being forcibly evicted from their traditional forest lands in the Embobut Forest, in violation of a High Court injunction. It noted allegations that agents of the Kenya Forest Service had burned dozens of Sengwer homes. Similarly, the Committee expressed worry about reports that the Endorois indigenous community had been subjected to attacks and forced evictions by armed raiders. It was also concerned at reports that in spite of the 2014 High Court decision in *Joseph Letuya and others v. The Attorney General*, the forced eviction of the Ogiek people from the Mau Forest continued. In addition, the Committee was concerned at reports that activities affecting the ancestral land occupied by indigenous peoples had been undertaken without their free, prior and informed consent. It called on Kenya to prevent, investigate, prosecute and sanction acts threatening the physical security and property of the Sengwer, the Endorois, the Ogiek and other indigenous peoples; ensure legal acknowledgement of the collective rights of the Sengwer, the Endorois, the Ogiek and other indigenous peoples to own, develop, control and use their lands, resources and communal territories according to customary laws and traditional land-tenure systems and to participate in the exploitation, management and conservation of the associated natural resources; and carry out effective consultations between relevant actors and communities likely to be affected by projects to develop, conserve or exploit indigenous ancestral land or its natural resources and obtain the free, prior and informed consent of indigenous communities before implementing such projects.¹⁰⁸

78. Noting reports that indigenous peoples had difficulty accessing education due to the lack of nearby schools, the same Committee recommended that Kenya strengthen its efforts to ensure that all Kenyans enjoyed access to education without discrimination, including through the adoption of appropriate special measures.¹⁰⁹

79. The same Committee was concerned that inter-ethnic conflicts continued to be fuelled by inequities arising from the present landownership pattern. Noting that the discriminatory pattern of land distribution was a core grievance fuelling ethnic disputes, the Committee urged Kenya to take the requisite measures towards the redistribution of land.¹¹⁰

5. Refugees and asylum seekers¹¹¹

80. Following its expression of relevant concerns, the Committee on the Elimination of Racial Discrimination recommended that Kenya ensure the protection of asylum seekers and refugees in its territory, in accordance with its legal obligations, by, inter alia, continuing to partner with international humanitarian agencies to establish and maintain sufficient capacity for refugees and asylum seekers in reception facilities by providing adequate food, shelter and health services.¹¹²

81. UNHCR recommended that Kenya take further practical steps towards ensuring the inclusion of refugees in all spheres of social, cultural and economic life.¹¹³

82. UNHCR referred to a relevant supported recommendation from the previous review and recommended that Kenya, inter alia, abide by the principle of non-refoulement.¹¹⁴

6. Stateless persons

83. The Committee on the Elimination of Racial Discrimination expressed concern at reports that some ethnic groups, including the Nubians, individuals of Somali descent and groups living near the country's borders, faced challenges and lengthy vetting procedures in obtaining identity documents. It urged Kenya to stop discriminatory practices and accelerate efforts to address statelessness, and to consider awarding citizenship to all Nubians who were residing in Kenya on the date of Kenyan independence and to their descendants.¹¹⁵

84. UNHCR recommended that Kenya review the criteria and procedure to ensure an efficient and transparent registration process of stateless persons.¹¹⁶

85. The Committee on the Elimination of Discrimination against Women expressed concern that many women and girls remained stateless or faced challenges in the enjoyment of their right to nationality. It noted that asylum-seeking and stateless women who married Kenyan men faced difficulties in obtaining citizenship for themselves and their children; customary marriages needed to be registered in order for an applicant to obtain a passport; and many women, particularly rural women, faced difficulties in obtaining official documents.¹¹⁷

Notes

- ¹ Tables containing information on the scope of international obligations and cooperation with international human rights mechanisms and bodies for Kenya will be available at www.ohchr.org/EN/HRBodies/UPR/Pages/KEIndex.aspx.
- ² For relevant recommendations, see A/HRC/29/10, paras. 142.1–142.2, 142.10, 142.34–142.39, 142.117, 142.181, 143.1–143.6 and 143.33.
- ³ CERD/C/KEN/CO/5-7, para. 39. See also United Nations country team submission for the universal periodic review of Kenya, para. 27.
- ⁴ CERD/C/KEN/CO/5-7, para. 39.
- ⁵ UNESCO submission for the universal periodic review of Kenya, p. 6.
- ⁶ UNHCR submission for the universal periodic review of Kenya, p. 3.
- ⁷ CERD/C/KEN/CO/5-7, paras. 43–44.
- ⁸ A/HRC/40/62/Add.3, para. 100.
- ⁹ CEDAW/C/KEN/CO/8, paras. 33 and 37 (e).
- ¹⁰ For relevant recommendations, see A/HRC/29/10, paras. 142.3–142.9, 142.11–142.16, 142.18–142.30, 142.32–142.34, 142.40–142.46, 142.48–142.56, 142.58–142.63, 142.68–142.100–142.108, 142.110–142.116, 142.118–142.122, 142.124–142.141, 142.145, 142.148, 142.150, 142.152, 142.154–142.155, 142.161–142.165, 142.169–142.174, 142.177–142.179, 142.185, 142.192, 143.35–143.57 and 143.61.
- ¹¹ CERD/C/KEN/CO/5-7, para. 40.
- ¹² *Ibid.*, para. 10.
- ¹³ CRC/C/KEN/CO/3-5, para. 72 (a), (c) and (e).
- ¹⁴ A/HRC/40/62/Add.3, para. 101; see also para. 54.
- ¹⁵ *Ibid.*, para. 102.
- ¹⁶ United Nations country team submission, para. 10.
- ¹⁷ UNHCR submission, p. 3.
- ¹⁸ United Nations country team submission, para. 20.
- ¹⁹ *Ibid.*, para. 11.
- ²⁰ *Ibid.*, para. 3.
- ²¹ A/HRC/40/62/Add.3, para. 98.
- ²² United Nations country team submission, para. 4.
- ²³ CEDAW/C/KEN/CO/8, paras. 8–9.
- ²⁴ *Ibid.*, para. 16.
- ²⁵ *Ibid.*, para. 18.
- ²⁶ *Ibid.*, para. 19 (a).
- ²⁷ *Ibid.*, para. 11, referring to A/HRC/29/10, para. 142.41 (Sweden).
- ²⁸ United Nations country team submission, para. 9.
- ²⁹ A/HRC/40/62/Add.3, para. 57.

- ³⁰ For the relevant recommendation, see A/HRC/29/10, para. 143.158.
- ³¹ CERD/C/KEN/CO/5-7, para. 24.
- ³² A/HRC/41/43/Add.2, para. 84.
- ³³ *Ibid.*, para. 86 (a)–(e).
- ³⁴ *Ibid.*, para. 10, referring to A/HRC/29/10, para. 142.27 (Norway).
- ³⁵ For relevant recommendations, see A/HRC/29/10, paras. 142.17, 142.184, 142.186–142.188 and 142.190–142.191.
- ³⁶ CERD/C/KEN/CO/5-7, paras. 29–30.
- ³⁷ For relevant recommendations, see A/HRC/29/10, paras. 142.57, 142.109 and 142.164.
- ³⁸ United Nations country team submission, para. 14.
- ³⁹ Letter dated 29 August 2016 from the Committee against Torture addressed to the Permanent Representative of Kenya to the United Nations Office and other international organizations in Geneva, referring to paragraph 9 of CAT/C/KEN/CO/2 and Corr.1. Available at https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/KEN/INT_CAT_FUL_KEN_25016_E.pdf.
- ⁴⁰ United Nations country team submission, para. 15.
- ⁴¹ A/HRC/40/62/Add.3, para. 45. See also CERD/C/KEN/CO/5-7, para. 33.
- ⁴² A/HRC/40/62/Add.3, para. 47.
- ⁴³ *Ibid.*, para. 48.
- ⁴⁴ *Ibid.*, para. 49.
- ⁴⁵ *Ibid.*, para. 106.
- ⁴⁶ CERD/C/KEN/CO/5-7, para. 34.
- ⁴⁷ CEDAW/C/KEN/CO/8, paras. 18–19.
- ⁴⁸ *Ibid.*, paras. 20–21. See also United Nations country team submission, para. 39.
- ⁴⁹ CEDAW/C/KEN/CO/8, para. 22.
- ⁵⁰ *Ibid.*, para. 24.
- ⁵¹ For relevant recommendations, see A/HRC/29/10, paras. 142.47, 142.123 and 142.189.
- ⁵² United Nations country team submission, para. 18.
- ⁵³ CEDAW/C/KEN/CO/8, para. 19 (c).
- ⁵⁴ CERD/C/KEN/CO/5-7, paras. 15–16.
- ⁵⁵ *Ibid.*, para. 14 (b).
- ⁵⁶ United Nations country team submission, para. 19.
- ⁵⁷ A/HRC/40/62/Add.3, paras. 82–83.
- ⁵⁸ *Ibid.*, paras. 108–109.
- ⁵⁹ For relevant recommendations, see A/HRC/29/10, paras. 142.131 and 142.142–142.144.
- ⁶⁰ CEDAW/C/KEN/CO/8, paras. 12–13.
- ⁶¹ United Nations country team submission, para. 23.
- ⁶² *Ibid.*, para. 24.
- ⁶³ *Ibid.*
- ⁶⁴ CEDAW/C/KEN/CO/8, para. 30.
- ⁶⁵ *Ibid.*, paras. 26 and 27 (c).
- ⁶⁶ CRC/C/KEN/CO/3-5, paras. 37–38.
- ⁶⁷ CERD/C/KEN/CO/5-7, para. 32.
- ⁶⁸ CEDAW/C/KEN/CO/8, para. 50.
- ⁶⁹ A/HRC/41/43/Add.2, paras. 67, 69 and 86 (r).
- ⁷⁰ CEDAW/C/KEN/CO/8, para. 36.
- ⁷¹ *Ibid.*, para. 37 (a) and (b).
- ⁷² *Ibid.*, para. 36.
- ⁷³ *Ibid.*, para. 37 (d).
- ⁷⁴ For the relevant recommendation, see A/HRC/29/10, para. 142.159.
- ⁷⁵ E/C.12/KEN/CO/2-5, paras. 35–36. See also CRC/C/KEN/CO/3-5, paras. 55 (f) and 56 (h).
- ⁷⁶ A/HRC/40/62/Add.3, para. 127.
- ⁷⁷ For relevant recommendations, see A/HRC/29/10, paras. 142.146–142.147, 142.149 and 142.156.
- ⁷⁸ A/HRC/40/62/Add.3, para. 124.
- ⁷⁹ A/HRC/30/39/Add.2, para. 82.
- ⁸⁰ *Ibid.*, para. 84 (b), (k) and (l).
- ⁸¹ For relevant recommendations, see A/HRC/29/10, paras. 142.166–142.168 and 143.59–143.60.
- ⁸² CEDAW/C/KEN/CO/8, para. 38.
- ⁸³ United Nations country team submission, para. 12.
- ⁸⁴ A/HRC/40/62/Add.3, paras. 40–41.
- ⁸⁵ *Ibid.*, para. 63.
- ⁸⁶ For relevant recommendations, see A/HRC/29/10, paras. 142.151 and 142.175.
- ⁸⁷ United Nations country team submission, p. 12.

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- ⁸⁸ A/HRC/40/62/Add.3, para. 74.
⁸⁹ CEDAW/C/KEN/CO/8, para. 34.
⁹⁰ *Ibid.*, paras. 14–15.
⁹¹ *Ibid.*, para. 42.
⁹² *Ibid.*, para. 44.
⁹³ *Ibid.*, para. 46.
⁹⁴ *Ibid.*, para. 28.
⁹⁵ CRC/C/KEN/CO/3-5, paras. 33 (c) and 34 (c).
⁹⁶ *Ibid.*, paras. 69 and 70 (b), (c) and (d).
⁹⁷ CRPD/C/KEN/CO/1, paras. 13 and 14 (a) and (b). See also CRC/C/KEN/CO/3-5, paras. 45 (a) and 46 (a).
⁹⁸ CRC/C/KEN/CO/3-5, para. 41.
⁹⁹ CRPD/C/KEN/CO/1, para. 41.
¹⁰⁰ CRC/C/KEN/CO/3-5, para. 42. See also CRPD/C/KEN/CO/1, para. 42 (a).
¹⁰¹ CRC/C/KEN/CO/3-5, para. 44.
¹⁰² *Ibid.*, paras. 65 and 66 (a).
¹⁰³ CRPD/C/KEN/CO/1, para. 16; see also para. 47.
¹⁰⁴ *Ibid.*, para. 10 (a).
¹⁰⁵ *Ibid.*, paras. 23 and 24 (a) and (b).
¹⁰⁶ *Ibid.*, paras. 37–38.
¹⁰⁷ For relevant recommendations, see A/HRC/29/10, paras. 142.176 and 142.180.
¹⁰⁸ CERD/C/KEN/CO/5-7, paras. 19–20.
¹⁰⁹ *Ibid.*, paras. 21–22. See also UNESCO submission, para. 10.
¹¹⁰ CERD/C/KEN/CO/5-7, paras. 23–24.
¹¹¹ For relevant recommendations, see A/HRC/29/10, paras. 142.182–142.183.
¹¹² CERD/C/KEN/CO/5-7, paras. 37–38.
¹¹³ UNHCR submission, p. 5.
¹¹⁴ *Ibid.*, p. 4, referring to A/HRC/29/10, para. 142.183 (Republic of Korea).
¹¹⁵ CERD/C/KEN/CO/5-7, paras. 27–28. See also UNHCR submission, p. 3.
¹¹⁶ UNHCR submission, p. 3.
¹¹⁷ CEDAW/C/KEN/CO/8, para. 32.
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