



# KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR) THIRD CYCLE UPR REPORT

**JULY 17, 2019**

The Kenya National Commission on Human Rights (KNCHR) is an Independent National Human Rights Institution with 'A' Status Accreditation. It is established under the article 59 of the Constitution and operationalized under the Kenya National Commission on Human Rights Act, 2011 (revised 2012). The Commission carries out functions under its founding Act and the Prevention of Torture Act, 2017. The Commission is the designated national monitoring agency under article 33 (2) of the Convention on the Rights of Persons with Disabilities.

1<sup>ST</sup> FLOOR CVS PLAZA, KASUKU ROAD  
P. O. BOX 74359 – 00200 NAIROBI, KENYA  
Tel: +254-020-3969000  
EMAIL: haki@knchr.org  
WEB: WWW.KNCHR.ORG

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## **INTRODUCTION**

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1. Following the second cycle review of Kenya, the Kenya National Commission on Human Rights (KNCHR) and the Kenya Stakeholder's Coalition of the UPR engaged in the formulation of the Government of Kenya UPR Implementation Matrix.<sup>1</sup> The Commission has been monitoring and lobbying for the implementation of the 192 recommendations accepted by the State<sup>2</sup> and has actively engaged in mid-term review of implementation of the recommendations with state and non-state actors. The Commission has prepared a mid-term report auditing status of implementation of recommendations by the State.

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## **HUMAN RIGHTS CONCERNS AND RECOMMENDATIONS**

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<b>Transitional justice</b>
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2. The State in the 2<sup>nd</sup> cycle of the UPR accepted recommendations to support the truth, justice and reconciliation process.<sup>3</sup> The President during the state of nation address in 2015 issued a public apology for historical injustices and announced a Ksh10 Billion restorative justice fund for reparations.<sup>4</sup> The Office of the Attorney General and Department of Justice in consultation with the Commission and other stakeholders, drafted regulations<sup>5</sup> and reparations policy<sup>6</sup> to facilitate payment of reparations from the restorative justice fund. However, the regulations and policy are yet to be finalised and adopted. In 2019, the President announced that the restorative fund will go towards providing collective reparation by establishing symbols of hope through construction of heritage sites and community information centres leaving individual reparations in limbo.<sup>7</sup> The TJRC report requires both individual and community reparations to be paid as part of implementation of its recommendations.

<b>Recommendation:</b> Put in place a legal framework for the operationalization of the restorative justice fund for individual and community reparations.
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## Accountability for extra-judicial killings, torture and enforced disappearances

3. The State in 2015 supported recommendations to ensure greater accountability and transparency of security forces including investigating and prosecuting officers responsible for human rights violations.<sup>8</sup> The State further supported recommendations to enact the Prevention of Torture Act.<sup>9</sup> Efforts towards ensuring accountability and transparency for human rights violation committed by security forces has seen up to six police officers prosecuted and convicted for loss of life due to use of excessive force.<sup>10</sup> Parliament has enacted the Prevention of Torture Act<sup>11</sup> and the National Coroners Service Act<sup>12</sup>. However, the government is yet to operationalize the National Coroners Service Act by establishing the National Coroners Service.
4. Despite, increased scrutiny of security forces, the Commission continues to receive complaints of unlawful conduct by security forces<sup>13</sup> such as arbitrary arrests, extortion, illegal detention, torture, killings, disappearances<sup>14</sup> and sexual violence.<sup>15</sup> The Commission in the context of monitoring elections has documented 101 cases of person who died, 247 cases of injuries and 37 cases of damage to property in election related violence.<sup>16</sup> Furthermore, the Commission documented 201 cases of sexual and gender based violence arising out of the 2017 electioneering period of which 54.5% were reported as having been committed by the Police.<sup>17</sup> Recommendations towards investigating and securing redress and accountability for loss of life and property, sexual and gender based violence and injuries attributed to electoral violence are yet to be implemented save for the inquest into the death of six month old baby attributed to police action.<sup>18</sup>

### Recommendations

- (i) Fully implement the National Coroners Service Act and operationalize the National Coroners Service through appointment of the Coroner General, Coroners and by allocating adequate resources;
- (ii) That the State ratify International Convention on the Protection of all Persons against Enforced Disappearance and recognize the offence of enforced disappearances in its Penal Code in line with the international definition;

- (iii) Investigate and prosecute security officers responsible for human rights violations including extra-judicial executions, enforced disappearances, torture, and sexual violence; and
- (iv) Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Withdraw reservation under Article 14 (2)(c) of the African Charter on Human and Peoples Rights on the Rights of Women in Africa.

### **Rule of law and impunity**

5. The KNCHR notes with concern the persistent selective obedience and disobedience of court orders by duty bearers. Some of the notable cases of disobedience of orders of the Court include in the matter of *Miguna Miguna v Fred Okengo Matiang'i Cabinet Secretary, Ministry of Interior and Coordination of National Government & 7 others* in which the High Court gave at least 12 orders concerning production of the petitioner in Court following his arrest by police and decision concerning his citizenship which Orders have not been obeyed to date. Other past orders that have been disregarded touch on the operationalization of the Public Benefits Organizations (PBO) Act;<sup>19</sup> enactment of legislation to implement article 27 of the Constitution and address gender inequality in the political sphere;<sup>20</sup> provision of information following a request for access to information on advertisements by the Presidential Delivery Unit during general election.<sup>21</sup> Moreover, the KNCHR continues to receive petitions from aggrieved Kenyans who obtained favourable judgments on cases concerning human rights violations which the government has failed to honour.<sup>22</sup>

**Recommendation:** The Government should comply with court orders and pay outstanding compensation awards by courts.

## **Corruption.**

6. The State in 2015 accepted recommendations to strengthen anti-corruption efforts.<sup>23</sup> The KNCHR commends efforts being taken towards investigating, expediting prosecution of corruption cases, vetting of public officials<sup>24</sup> and recovery of assets.<sup>25</sup> However, the practice continues and manifests itself through payment of bribes or unlawful facilitation fees to obtain and hasten government services at national and county government offices; payment of bribes in the traffic sector to undermine prosecution for traffic offences<sup>26</sup>; and diversion of public resources for private use.<sup>27</sup> In 2019, Kenya registered a drop in the 2018 Corruption Index scoring a paltry 28 and ranking position 144 of 180 countries.<sup>28</sup>
7. The State is yet to enact legislation to protect whistle blowers contributing to a culture of silence due to systematic victimization of whistle blowers through harassment, threats<sup>29</sup> and orders for payment of damage from defamation suits.<sup>30</sup>

**Recommendation:** Enact legislation to protect whistle blowers; intensify prosecution of corrupt practices at all levels and recovery of stolen assets.

## **Implementation of the two-thirds gender principle.**

8. The State in 2015<sup>31</sup> undertook to enact legislation to implement the two thirds gender rule<sup>32</sup> and promote representation of women, persons with disabilities, youth, ethnic and other minorities as well as marginalised communities in line with the provisions of the Constitution.<sup>33</sup> Notably, the Constitution (Fifth Schedule) gives a timeline of five years within which Parliament must have enacted the legislation. Notwithstanding the commitment and constitutional requirement, gender equality in the political sphere remains an aspiration. Following the 2017 general elections, the composition of 12<sup>th</sup> Parliament fell below the constitutional threshold that would require at least 117 women in the National Assembly and 23 women in the Senate.<sup>34</sup> Parliament is yet to put in place legislative measures as required in the Constitution to address gender inequality in the political sphere despite court decisions compelling it to do so.<sup>35</sup>

### **Recommendations**

- (i) The State expedites the adoption of the Equality and Gender Policy;
- (ii) The State expedites the enactment of a comprehensive anti-discrimination law in line with Article 27 to ensure that women, persons with disabilities and the marginalised are represented in line with the Constitution of Kenya, 2010;
- (iii) Parliament should enact legislation to ensure implementation of the two third gender principle.

### **Funding to the Kenya National Commission on Human Rights**

9. The State in 2015 accepted two recommendations to allocate the National Human Rights Commission the necessary human and financial resources to fulfil its mandate.<sup>36</sup> The Commission is concerned that it continues to receive low funding from the exchequer with limited funding for programmatic intervention. The Commission's funding from the exchequer only caters for salaries and remuneration, rent utilities and communication system. The Commission operates at 24.5% of its authorized staff establishment.<sup>37</sup>

**Recommendation:** Increase financial and human resource to the national human rights institution.

### **Death Penalty**

10. The State in 2015 accepted four recommendations to support efforts towards abolishing the death penalty.<sup>38</sup> The Supreme Court of Kenya in 2017 declared the mandatory nature of the death sentence as unconstitutional and directed for the necessary amendments to the law to give effect to the judgement and re-sentencing hearings for persons affected.<sup>39</sup> The Hon Attorney General in 2018 established a taskforce to guide in the implementation of the Supreme Court ruling. As at the time of reporting, the Taskforce has completed its work and submitted its report to the Hon Attorney General. The Penal Code<sup>40</sup> and the Kenya Defence Forces Act<sup>41</sup> still retain the death penalty.

**Recommendations:**

- (i) The State should fully abolish the death penalty;
- (ii) The State should provide adequate resources to facilitate the re-sentencing hearings

**Forced evictions**

11. In the second cycle review, the State undertook to take all necessary measures to provide individuals that are under threat of being evicted full protection in line with international standards.<sup>42</sup> While the Constitution at Article 40 protects the right to property and the Land Laws (Amendment) Act 2016 stipulates how humane evictions should be conducted, arbitrary evictions have continued unabated, particularly in informal settlement areas such as Kibera, Soweto, Deep Sea, Railways amongst others.<sup>43</sup>

**Recommendations**

- (i) Enact and enforce a comprehensive Eviction and Resettlement Bill that encompasses the UN basic principles and guidelines on evictions and displacement of communities and groups;
- (ii) Ratify the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).<sup>44</sup>

**Sexual and gender minorities**

12. Consensual adult private sexual conduct between persons of the same sex is a crime in Kenya under sections 162 (a) and (c) and 165 of the Penal Code.<sup>45</sup> As at the time of reporting, a petition filed in the High Court challenging the constitutionality of these sections was rejected.<sup>46</sup> Though rarely enforced, the provisions criminalizing same sex conduct underpin violence, discrimination and stigmatization of lesbian, gay, bisexual and transgender persons in Kenya.<sup>47</sup> The State accepted a recommendation to enact a comprehensive equality and anti-discrimination law that affords protection to all persons regardless of their sexual orientation or gender identity.<sup>48</sup> The Commission notes that the State is yet to implement this recommendation supported in 2015.

**Recommendations**

- (i) The State enacts a comprehensive equality and non-discrimination legislation affording protection to all persons regardless of their sexual orientation or gender identity;
- (ii) The State should decriminalize consensual same sex conduct through repeal of sections 162 (a) & (c) and 165 of the Penal Code.

**Children**

1.1.1. The KNCHR welcomes the review of the Children Act, 2001 to align it with the Constitution of Kenya, 2010.<sup>49</sup> The Proposed law enhances protection and promotion of the rights of the Child. The Bill places intersex children among the category of children that are in need of care and protection. The Commission is deeply concerned at the violation of the rights of intersex children including exclusion/non-recognition, forced non-consensual surgeries and their further marginalisation in education, employment, financial and other social/economic spheres. The Commission welcomes the Government's move to establish the Taskforce on Policy, Legal, Administrative and Institutional Reforms on Inter-sex Persons<sup>50</sup> that completed its mandate and handed over its final report to the Office of the Attorney General in March 2019.<sup>51</sup>

**Recommendations**

- (i) Fast-track the amendment to the Children Act and section 3 of the Interpretation and General Provisions Act Cap 2 Laws of Kenya to define intersex as a third sex marker;
- (ii) Fully implement all the recommendations contained in the Taskforce Report and implementation matrix.



## **Rights of indigenous persons**

13. In the Second review, the State undertook to strengthen the protection of the rights of indigenous peoples including their ancestral lands.<sup>52</sup> The KNCHR acknowledges the steps made in advancing the rights of indigenous persons including the enactment of various laws and policies such as the Community Land Act, 2016 and Mining Act, 2016 and the establishment of Taskforces.<sup>53</sup> The Commission however remains concerned at the slow pace of implementation of the decisions of the regional human rights mechanism<sup>54</sup> as well as the delayed protection of the rights of indigenous peoples and their ancestral lands.<sup>55</sup>

### **Recommendations**

- (i) Address the land question within the country to cater for all the indigenous forest community dwellers as well as resettlement of displaced persons;
- (ii) Comply with the recommendations of the African Commission<sup>56</sup> in Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council).<sup>57</sup>

## **Food security**

14. The Commission takes cognisance of the Governments' efforts in respect to the Big Four (4) Agenda that strategically aims to boost manufacturing, universal health coverage, food and nutrition security and supporting affordable housing. The Commission welcomes the prioritisation of the implementation of the "Big Four" initiatives in the Medium Term Plan III (2018-2022).<sup>58</sup> Despite government's commitment towards ensuring food security, incidences of food poverty persist which stands at 32% translating to 14.5 million Kenyans.<sup>59</sup> On average 25% of the population suffers from chronic food insecurity and poor nutrition linked to stagnated food production, high food prices, and climate change.<sup>60</sup> In addition, national level data shows 29 % of children less than five years are stunted while 11.4% of children are severely stunted linked to poor socio-economic conditions and inappropriate feeding practices.<sup>61</sup> In response to food and nutrition insecurity, the State has put in place the

National Food and Nutritional Security Policy Implementation Framework 2017-2022.<sup>62</sup>

**Recommendation:** Fully implement the National Food and Nutritional Security Policy Implementation Framework 2017-2022.

## Health Care

15. The State undertook to take measures towards the adherence of World Health Organisation (WHO) standards on health service delivery.<sup>63</sup> The Commission welcomes Universal Health Coverage (UHC) as part of the *Big Four (4) Agenda* that is expected to ensure a healthier nation and looks forward to its full implementation after the pilot phase. The Commission is however gravely concerned about the poor state of public health facilities at both National and County levels and the continued detention of bodies and sickly persons for failure to pay medical bills. The doctor-patient ratio is still below par.<sup>64</sup> Industrial action by doctors over the last few years has been a major hindrance to accessing healthcare.<sup>65</sup> While the introduction of free maternity services in all public hospitals has boosted access to maternal health care, the quality of healthcare is wanting in many county health facilities. On reproductive health rights, a large portion of Kenyan women have unmet family planning needs with only 44.2% of Kenyan women able to access modern contraceptives.<sup>66</sup>

**Recommendation:** Put in place tangible measures including budgetary processes towards meeting the Kenya's international obligation to allocate 15% of its annual budget as mandated under the Abuja Declaration.<sup>67</sup>

## Sexual and gender based violence

16. The State in 2015 accepted recommendations on protection against sexual and gender based violence.<sup>68</sup> Despite efforts taken<sup>69</sup>, sexual and gender based violence is an endemic rights violation that continues to occur. The reporting period has witnessed persistent reports of cases in the media concerning domestic violence<sup>70</sup>, femicide<sup>71</sup> and violence against children. Whereas the country has adequate laws to respond and

prevent sexual and gender based violence, the same has not been effective. Ineffective enforcement of laws, poor coordination amongst law enforcement agencies, judiciary and other government agencies, lack of government sponsored safe houses has been blamed for the poor response to sexual and gender based violence.<sup>72</sup>

#### **Recommendations**

- (i) Investigate, prosecute and convict perpetrators of sexual and gender based violence;
- (ii) Establish safe houses in all counties for victims/survivors of sexual and gender based violence; fully implement the Protection against Domestic Violence Act.

#### **Persons with disabilities**

17. The Commission notes with concern the violations to article 19 of the Convention on the Rights of Persons with Disabilities<sup>73</sup> on the right to living independently and being included in the community manifested through:

- (a) Institutionalization of persons with psychosocial disabilities which is sanctioned by the Mental Health Act.<sup>74</sup> The situation is compounded by the lack of alternatives to medical alternatives such as government funded peer support and the lack of community based mental health services.<sup>75</sup>
- (b) Detention of persons with disabilities who require a high level of support (persons with high support needs) due to absence of government funded support services and respite care. Often support to persons with high support needs comes from families and the nature and quality of support is based on the financial ability of the family. The Commission has received complaints of persons with high support needs who are locked up and isolated in homes by families who have no option, in the absence of state funded support options. Isolation makes persons with high support needs vulnerable to abuse, exploitation and undignified living conditions.

**Recommendations**

- (i) Amend Sections 10 (3), 14, and 16 of the Mental Health Act which allows for involuntary detention of users of mental health services in consultation with organizations for/of persons with disabilities;
- (ii) Develop action plan to support de-institutionalization and transition to community based mental health service;
- (iii) Provide state funded support services for persons with disabilities at community level, including caregivers, respite services, peer support and personal assistance services.

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## END NOTES

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<sup>1</sup> The Matrix brings together recommendations supported by Kenya, outlines actions that need to be taken towards implementation of recommendations, indicators, timeframe and responsible ministries, agencies and departments. The Matrix was developed by the Office of the Attorney General and Department of Justice, Civil Society Organization participating in the Universal Periodic Review under the Kenya Stakeholder's Coalition on the UPR and the Kenya National Commission on Human Rights. The Matrix is available at [https://www.upr-info.org/sites/default/files/general-document/pdf/kenya\\_2nd\\_cycle\\_final\\_matrix\\_2016.pdf](https://www.upr-info.org/sites/default/files/general-document/pdf/kenya_2nd_cycle_final_matrix_2016.pdf)

<sup>2</sup> The Observations of the Commission on implementation of UPR Recommendations are largely drawn from investigations, audits of institutions including prisons, monitoring human rights situation in the country and dialogue with civil society organizations.

<sup>3</sup> Recommendation No 14291, 142.96, 142.100, 142.101, 142.102, 142.104, 142.107, 142.108, 142.116, 142.117, 142.176

<sup>4</sup> Speech by H.E. President during the State of Nation Address at Parliament Buildings on Thursday 26<sup>th</sup> March 2015 available at <http://www.president.go.ke/2015/03/26/speech-by-his-excellency-hon-uhuru-kenyatta-c-g-h-president-and-commander-in-chief-of-the-defence-forces-of-the-republic-of-kenya-during-the-state-of-the-nation-address-at-parliament-buildings-na/>

<sup>5</sup> Draft Public Finance Management (Reparations for Historical Injustices Fund) Regulation), 2017

<sup>6</sup> Draft Reparations Policy, 2017

<sup>7</sup> Speech by H.E President during the State of the Nation Address at Parliament Buildings 4<sup>th</sup> April 2019 available at <http://www.president.go.ke/2019/04/04/speech-by-his-excellency-hon-uhuru-kenyatta-c-g-h-president-of-the-republic-of-kenya-and-commander-in-chief-of-the-defence-forces-during-the-2019-state-of-the-nation-address-at-parliament-building/>

<sup>8</sup> Recommendation 142.57, 142.99, 142.102

<sup>9</sup> Recommendation 142.79, 142.192, 142.88

<sup>10</sup> *Republic versus IP Veronichah Gitahi and PC Issa Mzee* : Involved the shooting of 14 year old girl in Kwale who died after being shot by police; *Republic versus PC Titus Ngamua Musila*: Involved the shooting of a 26 year old male at Githurai 45 bus station, Kiambu by police; *Republic versus PC Benjamin Kahindi and PC Stanely Okoti*: Involved the shooting of Geoffrey Mogoi, Amos Makori and Joseph Onchuru in Kangemi, Nairobi by police; and; *Republic versus CIP Nahashon Mutua*- Involved the killing of Martin Koome while he was detained in custody at Ruaraka police station, Nairobi.

<sup>11</sup> Act No 12 of 2017 available at <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PreventionofTortureAct2017.pdf>. The Act criminalises torture and provides for a framework for investigating cases of torture.

<sup>12</sup> Act No 18 of 2017 available at <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/NationalCoronersServiceActNo18of2017.pdf>. The Act establishes the National Coroners Service responsible for investigations into suspicious deaths

<sup>13</sup> Kenya National Commission on Human Rights 'The State of Human Rights and Freedoms in the Republic of Kenya: A Statement by the Kenya National Commission on Human Rights' (14<sup>th</sup> March 2017) available at <https://www.knchr.org/Portals/0/Statements/STATE%20OF%20THE%20NATION%20STATEMENT%202017.pdf?ver=2017-03-14-154040-247>

<sup>14</sup> Kenya National Commission on Human Rights 'The Error of Fighting Terror with Terror: A Preliminary Report of KNCHR Investigations on Human Rights Abuses in the Crackdown against Terrorism' (September 2014) available at <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf>. In this report, the Commission documented 25 cases of extrajudicial executions and 81 cases of

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enforced disappearances committed in counter-terrorism operations being conducted by the Kenya Defence Forces, National Police Service and the National Intelligence Service

<sup>15</sup> Kenya National Commission on Human Rights ‘Silhouettes of Brutality: An Account of Sexual Violence during and after the 2017 General Elections’ available at

[https://www.knchr.org/Portals/0/KNCHR\\_Silhouettes\\_of\\_Brutality.pdf](https://www.knchr.org/Portals/0/KNCHR_Silhouettes_of_Brutality.pdf)

<sup>16</sup> Kenya National Commission on Human Rights ‘The Fallacious Vote’ (April 2018) available at

[https://www.knchr.org/Portals/0/CivilAndPoliticalReports/The%20Fallacious\\_B5\\_210518\\_2215.pdf?ver=2018-05-23-092645-480](https://www.knchr.org/Portals/0/CivilAndPoliticalReports/The%20Fallacious_B5_210518_2215.pdf?ver=2018-05-23-092645-480); Kenya National Commission on Human Rights ‘Mirage at Dusk: A

Human Rights Account of the 2017 General Election’ (2018) available at

[https://www.knchr.org/Portals/0/CivilAndPoliticalReports/Mirage%20at%20Dusk\\_B5\\_210518\\_2215.pdf?ver=2018-05-23-125203-263](https://www.knchr.org/Portals/0/CivilAndPoliticalReports/Mirage%20at%20Dusk_B5_210518_2215.pdf?ver=2018-05-23-125203-263); Kenya National Commission on Human Rights ‘Still a Mirage at

Dusk: A Human Rights Account of the 2017 Fresh Presidential Elections’ (2018) available at

<https://www.knchr.org/Portals/0/CivilAndPoliticalReports/Still-a-Mirage-at-Dusk.pdf?ver=2018-05-23-123451-723>

<sup>17</sup> Kenya National Commission on Human Rights ‘Silhouettes of Brutality: An Account of Sexual Violence during and after the 2017 General Elections’ available at

[https://www.knchr.org/Portals/0/KNCHR\\_Silhouettes\\_of\\_Brutality.pdf](https://www.knchr.org/Portals/0/KNCHR_Silhouettes_of_Brutality.pdf). Of the 201 cases of sexual violence documented, 54.5% were reported as having been committed by the Police whereas 45.5% were committed by civilians. 80% of the survivors did not receive medical attention within required 72 hour due to insecurity and fear of leaving their homes for fear over their safety.

<sup>18</sup> Inquest No 6 of 2017 at the Chief Magistrates Court in Kisumu

<sup>19</sup> *Trusted Society of Human Rights Alliance v Cabinet Secretary Devolution, Planning & 3 others* [2016] e KLR available at <http://kenyalaw.org/caselaw/cases/view/135653/>

<sup>20</sup> *Centre for Rights Education and Awareness & 2 Others v Speaker of National Assembly & 6 others* [2017] e KLR available at <http://kenyalaw.org/caselaw/cases/view/133439/>

<sup>21</sup> *Katiba Institute v President’s Delivery Unit & 3 others* [2017] e KLR available at <http://kenyalaw.org/caselaw/cases/view/144012/>

<sup>22</sup> See Annex marked ‘1’ containing a table of cases and compensatory amounts awarded by the courts reported to the Commission as having not been complied with.

<sup>23</sup> Recommendation 142.94; 142.111; 142.119

<sup>24</sup> See Standard Newspaper Report ‘Vetting:400 Accounting Officers Cleared’ (20<sup>th</sup> August 2018) available at <https://www.standardmedia.co.ke/article/2001292707/vetting-400-accounting-officers-cleared>

<sup>25</sup> See Star Newspaper Report ‘The State Recovers Ksh 3 Billion looted from the National Youth Service’ (5<sup>th</sup> February 2019) available at <https://www.the-star.co.ke/news/2019-02-05-state-recovers-sh3bn-looted-from-nys/>

<sup>26</sup> Transparency International-Kenya ‘Traffic Legislation and Drivers of Corruption in Traffic Matters’ (May 2018) available at <https://tikenya.org/wp-content/uploads/2018/11/Drivers-of-Corruption-Report.pdf>

<sup>27</sup> See Daily Nation Newspaper Report ‘Big Corruption Scandal amounts that Shocked Kenyans in 2018’ (31<sup>st</sup> December 2018) available at <https://www.nation.co.ke/news/Big-corruption-scandal-amounts-that-shook-Kenyans-in-2018/1056-4915472-m10u9bz/index.html>

<sup>28</sup> Transparency International-Kenya ‘Press Release: Kenya Registers a Drop in the 2018 Corruption Index’ (29<sup>th</sup> January 2019) available at <https://tikenya.org/wp-content/uploads/2019/01/Corruption-Perceptions-Index-2018-Press-Release-1.pdf>

<sup>29</sup> Transparency International ‘Whistleblowers: Kenya Needs them for the War against Corruption to Succeed’ (Adili Issue 50) (March 2015) available at [https://tikenya.org/wp-content/uploads/2017/08/2015\\_Adili150\\_whistleblower.pdf](https://tikenya.org/wp-content/uploads/2017/08/2015_Adili150_whistleblower.pdf)

<sup>30</sup> Transparency International-Kenya ‘Policy Brief on Comprehensive Legislation on Whistleblower Protection in Kenya’ (July 2015) available at <https://tikenya.org/wp-content/uploads/2017/06/policy-brief-no-1-2015-comprehensive-legislation-on-whistleblower-protection-in-kenya-1.pdf>; See Daily Nation Report ‘Court Orders Githongo to Pay Murungaru Kshs 27 Million for Defamation’ (2<sup>nd</sup> May 2019) available at <https://www.nation.co.ke/news/Githongo-ordered-pay-Murungaru-Sh27m/1056-5097344-2145bbz/index.html>

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<sup>31</sup> Recommendation 142.122; 142.130; 142.134; 142.139; 142.141; 142.144; 142.177; 142.178

<sup>32</sup> Article 27 (8) and Article 81 (b) of the Constitution of Kenya, 2010 requires Parliament to enact legislation that seeks to address gender inequality in political sphere by ensuring that not more than two thirds of members of elective or appointive bodies shall be of the same gender (two third gender principle)

<sup>33</sup> Article 100 of the Constitution of Kenya binds Parliament to enact legislation to promote the representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities as well as marginalised communities.

<sup>34</sup> Currently, there are 23 women elected to single constituency sit, 47 elected as county women representatives and six women nominated by political parties bringing the tally to 76 and a deficit of 47. Senate has three women elected and 18 women nominated by political parties bringing the tally to 21 women and deficit of 2.

<sup>35</sup> Centre for Rights Education and Awareness & Another versus Speaker of the National Assembly & 2 Others [2017] e KLR available at <http://kenyalaw.org/caselaw/cases/view/142135> . In this case the court found that failure of the legislature to pass legislation to ensure implementation of the two third gender principle is a violations of the Constitution and women’s rights. The court then directed parliament to enact the law within 60 days from the day of the judgment.

<sup>36</sup> Recommendation 142.11 and 142.26

<sup>37</sup> See Public Service Commission ‘Evaluation Report for the Year 2017/18 on Public Service Compliance with Values and Principles in Article 10 and 232 of the Constitution’ (December 2018) available at <http://publicservice.go.ke/index.php/publications/reports>. The Commission currently has 115 staff out of the approved staff establishment of the 465 to enable the Commission function optimally.

<sup>38</sup> Recommendation 142.58; 142.61; 142.63; 142.87

<sup>39</sup> See case of *Francis Karioko Muruatetu and Another Versus Republic [2017] e KLR* available at <http://kenyalaw.org/caselaw/cases/view/145193> . In this case, two inmates who has been convicted of murder brought petitions to the court seeking a determination on the constitutionality of the death sentence. The court declared that the mandatory nature of the death sentence is unconstitutional and remitted to the high court the petitioner’s case and other similar cases for re-sentencing. The court found that mitigation is a congruent element of a fair trial and taking away the discretion of the court to take into account mitigating circumstances could make the sentence wholly disproportionate to the accused criminal culpability. The court further directed the Hon Attorney General, the Director of Public Prosecutions and other relevant agencies to prepare a detailed professional review with a view to setting a framework to deal with sentence re-hearing similar to that of the petitioners herein. The institutions are to report back within one year. In addition, the judgment is to be placed before the Speakers of the National Assembly and the Senate for necessary amendments, formulation and enactments of law to give effect to the judgment on what is to constitute life imprisonment

<sup>40</sup> Section 204 of the Penal Code which provides for the punishment of murder as death penalty, though the supreme court in a decision in the case of *Francis Karioko Muratetu Versus Republic [2017] e KLR* available at <http://kenyalaw.org/caselaw/cases/view/145193> has declared the mandatory nature of the sentence as unconstitutional; other sections of the Penal Code that provide for death penalty sentence include Section 296 (2) on robbery with violence; section 297 (2) on attempted robbery with violence; section 60 on administering an oath purported to bind a person to commit a capital offence; and section 40 (3) on treason.

<sup>41</sup> Section 58 communicating with the enemy; section 60 spying; section 62 offences by a person in command when in action section 63 misconduct in action by others; section 67 advocating for governmental change by force; section 72 mutiny and section 73 failure to suppress mutiny

<sup>42</sup> Recommendation Nos. 142.149; ESCR Rec 48

<sup>43</sup> See Kenya National Commission on Human Rights ‘Press Release on Ongoing Evictions of Kibera Residents along the Langata-Ngong Road Project’ (24<sup>th</sup> July 2018) available at <https://www.knchr.org/Portals/0/Statements/KNCHR%20PRESS%20STATEMENT%20ON%20KIBERA%20EVICTIONS%20.pdf?ver=2018-07-24-170956-307>. In the statement signed by the Chairperson, the Commission calls for an immediate cessation to evictions in Kibera pending finalization of the enumeration and relocation of affected persons.

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- <sup>44</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).<sup>44</sup> The Convention was adopted on October 23, 2009 and came into force on December 06, 2012.
- <sup>45</sup> Cap 63 Laws of Kenya available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2063>
- <sup>46</sup> Eric Gitari & 7 Others versus Attorney General and Others Petition No 150 & 234 of 2016 (Consolidated) available at <http://kenyalaw.org/caselaw/cases/view/173946/>
- <sup>47</sup> Kenya National Commission on Human Rights ‘Press Release on International Day against Homophobia, Biphobia, and Transphobia (IDAHOBIT) released on 17<sup>th</sup> May 2018’ available at <http://www.knchr.org/Portals/0/Statements/KNCHR%20IDAHOBIT%20statement.pdf?ver=2018-05-17-131148-583>
- <sup>48</sup> Recommendation 142.21
- <sup>49</sup> The process is being led by the National Council for Children Services hosted in the Ministry of Labour and Social Protection
- <sup>50</sup> Gazette Notice No. 4904 of 2017.
- <sup>51</sup> Copy of the Taskforce Report Accessible at <https://www.knchr.org/Publications/Thematic-Reports/Group-Rights/Rights-of-Sexual-Minorities>.
- <sup>52</sup> Recommendations No. 142.176; 142.179 and 142.180.
- <sup>53</sup> Taskforce on Implementation of the Decision of the African Court on Human and Peoples Rights Issued against the Government of Kenya in Respect of the Rights of the Ogiek Community of the Mau (Gazette Notice No 10944 of 23<sup>rd</sup> October 2017) available at [http://kenyalaw.org/kenya\\_gazette/gazette/download/Vol.CXIX-No\\_167.pdf](http://kenyalaw.org/kenya_gazette/gazette/download/Vol.CXIX-No_167.pdf).
- <sup>54</sup> Minority Rights Groups International & 2 Others (on behalf of Ogiek community) and Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council available at [http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46\\_276\\_03\\_eng.pdf](http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46_276_03_eng.pdf).
- <sup>55</sup> Gazette Notice No. 11215 of 2<sup>nd</sup> November, 2018.
- <sup>56</sup> KNCHR Baseline Survey Report at p. 27.
- <sup>57</sup> *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* Communication 276 of 2003 available at [http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46\\_276\\_03\\_eng.pdf](http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46_276_03_eng.pdf).
- <sup>58</sup> Government of the Republic of Kenya, ‘Third Medium Term Plan 2018 – 2022 Transforming Lives: Advancing socio-economic development through the “Big Four.”’ Available at <https://vision2030.go.ke/publication/third-medium-term-plan-2018-2022/>.
- <sup>59</sup> Kenya National Bureau of Statistics ‘Basic Report: Kenya Integrated Household and Budget Survey (KIHBS)’ (March 2018) available at <https://www.knbs.or.ke/publications/>. The survey findings show that six counties registered food poverty of more than half of their population which includes Turkana (66.1%); Mandera (61.9%); Samburu (60.1%); Busia (59.5%) and West Pokot (57.3%).
- <sup>60</sup> Ministry of Agriculture, Livestock and Fisheries ‘National Food and Nutrition Security Policy Implementation Framework 2017-2022’ (2017) accessible at <http://extwprlegs1.fao.org/docs/pdf/ken170761.pdf>
- <sup>61</sup> Kenya National Bureau of Statistics Basic Report page 132
- <sup>62</sup> Available at <http://extwprlegs1.fao.org/docs/pdf/ken170761.pdf>
- <sup>63</sup> Recommendation No. 142. 165.
- <sup>64</sup> The Kenya National Bureau of Statistics places the No. of Health personnel per 100,000 of population at 349 in 2017, a 6.1% improvement from that in previous year (2018 Economic Survey).
- <sup>65</sup> Government of the Republic of Kenya, ‘Third Medium Term Plan 2018 – 2022 Transforming Lives: Advancing socio-economic development through the “Big Four.”’ Available at <https://vision2030.go.ke/publication/third-medium-term-plan-2018-2022/>.
- <sup>66</sup> Ministry of Health, Republic of Kenya, PMA 2016/Kenya-R5 Family Planning Brief (2017) available at <https://www.pma2020.org/sites/default/files/KER5-2PG-FP-Indicator-Brief-v13-2017-07.14.sed.pdf>.
- <sup>67</sup> The Abuja Declaration on HIV/AIDs, Tuberculosis and Other Related Infectious Diseases.
- <sup>68</sup> Recommendation 142.28; 142.33; 142.47; 142.49; 142.51; 142.55; 142.66; 142.68; 142.73; 142.71; 142.77; 142.80; 142.83; 142.84; 142.86; 142.89



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<sup>69</sup> The reporting period has seen to the enactment of the Protection against Domestic Violence Act, the Launch of the Standard Operating Procedures for prevention and response to gender based violence by the National Police Service available at <sup>69</sup> <http://www.nationalpolice.go.ke/2015-09-08-17-56-33/news/271-nps-unveils-standard-operating-procedures-for-prevention-and-response-to-gender-based-violence.html> and the Standard Operating Procedures for the Management of Violence against Children by the Ministry of Health available at [https://www.popcouncil.org/uploads/pdfs/2018RH\\_KenyaMOH-SOPsMgmtSVAC.pdf](https://www.popcouncil.org/uploads/pdfs/2018RH_KenyaMOH-SOPsMgmtSVAC.pdf)

<sup>70</sup> See <https://www.standardmedia.co.ke/evewoman/article/2001272080/five-horrific-cases-of-domestic-violence-against-women-in-kenya-in-the-past-three-months> ;

<https://www.capitalfm.co.ke/news/2016/08/concern-mounts-rising-domestic-violence-cases/>

<sup>71</sup> See BBC Report ‘Mothers Speak out Over Kenya Femicide Cases’ (2019) available at

<https://www.bbc.com/news/av/world-africa-48299987/mothers-speak-out-over-kenya-femicide-cases>

<sup>72</sup> National Gender and Equality Policy ‘County Government Policy on Sexual and Gender Based’ (2017) available at

<https://www.ngeckkenya.org/Downloads/NGEC%20Model%20Policy%20on%20GBV%20for%20County%20Govts.pdf> page 22

<sup>73</sup> Kenya is a state party to the Convention on the Rights of Persons with Disabilities having ratified the Convention in 2008 creating an obligation to protect, respect and fulfil rights of persons with disabilities.

<sup>74</sup> Section 10 (3) provides power to person in charge of mental health facility to decide whether or not to release a patient admitted to a facility voluntarily; Section 14 allows for involuntary admission and detention of user of mental health facility where it is deemed that the person is incapable of expressing himself as willing or unwilling to receive treatment; section 16 allows a police officer to detain a person whom he believes is suffering from a mental disorder or who has been neglected or is being treated cruelly and take him/her to a mental health facility. At the facility, the person can be detained for treatment for a period of up to 72 hours and where the persons in charge of the facility deems the person as needing treatment will proceed to handle the patient as an involuntary admission in line with section 14 of the Mental Health Act.

<sup>75</sup> Users and Survivors of Psychiatry-Kenya ‘Submissions on the Rights of Persons with Disabilities to Live Independently and be Included in the Community’ available at

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CallDGDtoliveindependently.aspx> .