

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 35th Session

KENYA

I. BACKGROUND INFORMATION

Kenya is party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter the *1951 Refugee Convention*). It acceded these instruments respectively in May 1966 and November 1981 without reservations. It also ratified the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* without reservations in June 1992. Kenya is not party to the *1954 Convention relating to the Status of Stateless Persons*, the *1961 Convention on the Reduction of Statelessness*, nor to the *2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* ("Kampala Convention").

The status and treatment of refugees in Kenya is governed by the *2006 Refugee Act* and its *2009 Refugee Regulations*. The responsibility for implementing these instruments lies with the Refugee Affairs Secretariat (RAS) in the Ministry of Interior and Co-ordination of National Government. The *Refugee Act* is currently under review and a *National Policy on Asylum-Seekers and Refugees* is to be finalized and adopted. The *Refugee Act* provides that refugees should enjoy all the rights contained in the human rights treaties ratified by Kenya. Refugees have the right to free primary education and healthcare. UNHCR and partners provide these services in the settlements, while urban refugees access public primary schools and primary health care in public hospitals. Some 56% of school-age refugee children are in school. Refugees face greatest challenges accessing secondary and tertiary education, with only 27% and 13% enrolled respectively.

To date, Kenya is host to 473,971 refugees and asylum-seekers who reside in three main locations: 211,086 in the Dadaab refugee complex; 188,135 in the four Kakuma camps and Kalobeyei settlement; and 74,750 in the urban centers. The largest group of refugees originate from Somalia (almost 257,000). There has been a steady inflow of refugees since the resumption of hostilities in South Sudan in December 2013, while nationals from Ethiopia, DRC and Burundi constitute the other largest refugee communities. The volatility of the region was demonstrated by an influx of some 8,000 Ethiopians in 2018. In the absence of a comprehensive census of stateless persons, it is estimated that some 18,500 persons live in Kenya without a nationality.

For the past several years, the Government of Kenya has progressively taken increased responsibilities in the management of refugee issues benefitting to a large extent of capacity-building programmes provided by UNHCR. Following the Government's taking the lead of the camp management and coordination activities in 2013, the Commissioner for Refugee Affairs started to endorse refugee status determination (RSD) decisions and took over full responsibility for RSD in April 2016. A national Refugee Appeal Board was established in 2015 and took its first decision in October 2018. The registration and documentation processes in Kakuma and Nairobi, now led by the Government in Nairobi – still unified in Kakuma - are continuous and streamlined, eliminating duplications. Registration has been suspended in Dadaab since late 2015. Consequently, new arrivals have only been profiled which only entitled them to food aid. The management of refugee data is also gradually being assumed by the Government.

Urban and settlement-based refugees enjoy limited freedom of movement since the Government continues to implement an encampment policy. Refugees living in Kakuma and Dadaab require a temporary movement pass to travel outside the settlements. The process to apply for these passes is not fully transparent. The legal status of urban refugees remains precarious unless exempted. New arrivals who register in Nairobi are supposed to relocate to the settlements but many do not wish to. When their temporary documentation expires, they remain in a legal limbo. Exemption criteria and procedures have been put in place but only a limited number of refugees have so far benefited from this policy.

For the past few years, security concerns including very serious terrorist acts attributed to Somali refugees or allegedly committed with their support (such as the Westgate attack in September 2013, the Garissa University shooting in April 2015) have tainted refugee issues and affected the public perception of refugees. The terrorist attack in 2015 and the recent January 2019 attack on the Dusit hotel led the Government to plan to close the Dadaab camps. In May 2016, the Government announced the deadline for the closure of the Dadaab camps and disbanded at the same time the Department of Refugee Affairs (DRA). The Refugee Affairs Secretariat was established several months later and tasked with a similar mandate as the DRA. In February 2019, the Government reiterated its call for the closure of the Dadaab camps.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Recommendation no. 142.17: “Ensure that human rights and fundamental freedoms enshrined in its Constitution are protected in the fight against terrorism and the national security plan and actions; pay particular attention to safeguarding the rights and safety of [...] refugees and stateless persons; address root causes of insecurity and radicalization and point out the need for a comprehensive counter radicalization strategy” (Finland); and **no. 142.182:** “That no refugees should be forcibly returned to Somalia when conditions for their safe reestablishment are not present.” (Belgium)

With regard to the 2016 announcement of the closure of Dadaab camp, a comprehensive plan of action for the Somali situation was submitted to the Government calling for continuous support of voluntary returns, systematic use of biometrics that would address the double registration cases, resumption of registration, relocation of non-Somali refugees, cooperation on security issues and development of skills and self-reliance. The plan resulted in renewed commitments to find sustainable solutions to the Somali refugee situation and improve the management of asylum. In March 2017, the Government hosted the Inter-Governmental Authority on Development’s (IGAD) Special Summit on the protection and durable solutions for Somali refugees, where the IGAD Member States adopted the *Nairobi Declaration on Durable Solutions for Somali Refugees and Reintegration of Returnees in Somalia* (also known as the Nairobi Declaration).¹

Additional positive developments

In September 2016, the Government of Kenya supported the adoption of the *New York Declaration*. The Government adopted a year later the Comprehensive Refugee Response Framework (CRRF). In December 2018, Kenya endorsed the Global Compact on Refugees (GCR) confirming its previous commitment towards international cooperation, responsibility-sharing in the search for durable solutions to refugees and benefits to host communities. While the draft Implementation Plan for the CRRF has not been adopted by the Government, in practice, the CRRF and GCR are being applied notably through the inclusion of urban refugees in health and social services, in the education sector and the *Kalobeyei Integrated Socio-Economic Development Plan in Turkana -West* (KISED).² The latter forms an integral part of the *Country*

¹ IGAD, Nairobi Declaration on Somali Refugees, 2017, available here: <https://igad.int/communique/1519-communique-special-summit-of-the-igad-assembly-of-heads-of-state-and-government-on-durable-solutions-for-somali-refugees>.

² Kalobeyei is a settlement, closely located to the Kakuma settlement, that was conceived in 2015 and further developed with a view to promote self-reliance of refugees and host communities living together by enhancing livelihood

Integrated Development Plan II recognizing that support and assistance to refugees cannot be provided in isolation from development plans for the host population. KISED P envisions to strengthen national services, develop socio-economic opportunities and build refugees and host communities' capabilities and economic growth.

Furthermore, in 2017, Kenya also participated in the IGAD's inter-ministerial meeting on education and supported the adoption of the *Djibouti Declaration*, thereby committing to including refugees in the national education systems. Subsequently, Kenya drafted an *Education Policy on the Inclusion of Refugees and Asylum-Seekers* enabling them to access accredited, supervised public education during their stay in Kenya.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Protection of stateless persons

Linked to 2nd cycle UPR recommendation no. 143.31: "Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness" (Portugal)

The granting of Kenyan citizenship to the Makonde community has been a breakthrough to address in-situ statelessness situations in Kenya. The approach taken by the Government in the case of the Makonde community could potentially be replicated to address statelessness among other communities.³ There are indications that the Shona community could be granted Kenyan citizenship in a foreseeable future. The relevant statistical authorities also expressed willingness to include stateless community members in the upcoming census. However, Kenyan Somali youths and those from nomadic communities continue to face serious obstacles to access identity cards when they turn 18. The vetting process remains challenging and lengthy. Further, there is a need to address the administrative barriers that prevent stateless persons married to Kenyans as well as stateless legal residents to be registered as Kenyans through alternative identification mechanisms or documents.

Recommendations

UNHCR recommends that the Government of Kenya:

- (a) Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;
- (b) Accelerate the necessary legislative changes to ensure that stateless persons can avail themselves of the relevant provision of the 2011 Kenya Citizenship and Immigration Act;
- (c) Expedite the registration of the Shona community members and the issuance of citizenship certificates and identity cards, as well as start reviewing the situation of other groups of stateless persons in the country;
- (d) Ensure the inclusion of stateless persons and those of undetermined nationality in the 2019 census; and
- (e) Review the criteria and procedure used by the vetting committees to ensure an efficient and transparent registration process of stateless young persons.

Issue 2: Upholding of refugee rights, standards and principles

Linked to 2nd cycle UPR recommendation no. 142.182: "That no refugees should be forcibly returned to Somalia when conditions for their safe reestablishment are not present" (Belgium); and

opportunities and inclusive national service delivery. As a development project, KISED P is foreseen to be implemented over four phases running until 2030. The other key characteristics of the Plan include investment in infrastructure in various sectors, engagement with development actors as well as private sector, to have coordinated protection activities and sustainable urban and agricultural and livestock development.

³ Stateless persons of Burundian, Rwandan, Zambian and Malawi descent; Asian children born in Kenya to British Overseas Citizens after 1983; Galjeel (Kenya Somali clan who were stripped of their nationality in 1989) and Daasanach communities.

no. 142.183: “Abide by the principle of non-refoulement and take steps to ensure that refugees/asylum seekers are not returned” (Republic of Korea)

While the Government continues to provide protection to a large number of refugees and remains open to receive persons in need of international protection, the asylum institution is fragile. The challenges to national security affect negatively the perception of refugees and have prompted the Government to decide to close the Dadaab refugee camps. UNHCR is particularly concerned about the situation of Eritrean asylum-seekers. Reports indicate that Eritrean asylum-seekers were arrested in the context of increased arrivals. UNHCR is equally concerned by court deportation orders to countries of origin that would amount to *refoulement* if carried out.

UNHCR is fully engaged to support the strengthening of the institutional capacity of RAS as the custodian of the national refugee management system. RAS needs to develop into a more formalized structure within the Government with a predictable and sustainable staffing structure and an adequate budget that would enable the carry-out of its core protection functions in a continuous and accessible manner in the absence of fraud. Further training and capacity-building of RAS staff, the development of a quality assurance project, the strengthening of the data management system are needed to respond to remaining challenges, including the registration of undocumented individuals in Dadaab which account for more than 15,000 asylum-seekers.

Recommendations:

UNHCR recommends that the Government of Kenya:

- (a) Respect the commitments made in the context of the *Nairobi Declaration* with regards to the Somali refugees in Kenya, above all respect for the principle of voluntariness of returns, and agree on a revised plan of action which features all sustainable solutions, be it in Kenya, Somalia or third countries, thereby taking into account the background and links of the Somali refugees;
- (b) Abide to the principle of *non-refoulement* and take steps to ensure that persons in need of protection are not detained by the police but referred to proper identification to the nearest RAS office;
- (c) Fully support administratively and financially the development of RAS as an efficient, strong and independent institution;
- (d) Ensure that the registration process is seamless and accessible throughout the country, and in particular, take steps to resume the registration activities in Dadaab and promptly address the situation of the undocumented individuals;
- (e) Ensure that all data of asylum-seekers and refugee is included in the National Integrated Identity Management System (NIIMS) to ensure, *inter alia*, access to schools and exams;
- (f) Expand the exemption criteria and simplify the procedures for self-sufficient urban-based asylum-seekers and refugees to allow them to reside outside the settlements;
- (g) Address comprehensively the double registration cases and clean the double records from the respective databases;
- (h) Reduce significantly the delays in issuing documentation to refugees and asylum-seekers and to remove the validity of the refugee identification card to eradicate the renewal obstacles and delays;
- (i) Agree to expand simplified RSD procedures as the most efficient measure to further reduce the backlog, to expedite the issuance of decisions as per the timelines given in the Act and resume the RSD process in Dadaab; and
- (j) Support third country solutions in facilitating the issuance of relevant exit documents (e.g. certificate of good conduct, exit permits).

Issue 3: Socio-economic inclusion of refugees

The Government of Kenya is engaged in transforming the refugee model in place for the last decades. The CRRF/GCR approach adopted in Kenya is based on the premises that the protracted refugee situations and the numbers at stake require to revisit the traditional refugee protection and assistance programmes and to address in a more efficient way the needs of both refugee and host communities. Equally, the education policy of refugee inclusion recognizes that when refugees gain access to education and labour markets, they can build their skills and

become self-reliant, contributing to local economies and fuelling the development of the communities hosting them. This transition relies on a set of laws, policies and measures that promote refugees' socio-economic inclusion and empowerment in the communities they live in. In turn, it helps to maintain peaceful relations between refugees and their hosts. Finally, inclusion of refugees' needs in the national economy and the development plans will result in greater predictability of financing for refugee programmes and quality of services for both refugees and the host communities.

Recommendations:

UNHCR recommends that the Government of Kenya:

- (a) Take further practical steps towards refugees' inclusion in all spheres of social, cultural and economic life;
- (b) Review the current policy and harmonize the criteria for the issuance of work permits to refugees, and sensitize potential employers of the refugees' right to work;
- (c) Ensure labour rights for youth refugees by promoting access to vocational training, internships and other type of work experience;
- (d) Consider exceptionally granting the right to work for asylum-seekers who are exempt from residing in the camps and still await the outcome of their asylum claim;
- (e) Relax the encampment policy that does not support the CRRF/GCR approach and limits refugees' access to labour markets and other livelihoods opportunities; and
- (f) Reduce the delays in the issuance of refugee identification cards so that refugees have an uninterrupted access to social, financial and communication services and job opportunities.

Issue 4: Persons with specific needs

Currently, some 10 per cent of refugees and asylum-seekers in Kenya have special needs. This comprises women single-heads-of-households, persons living with disabilities and unaccompanied or separated children. Elderly refugees aged 60 and above, who also have specific needs, represent 2,6 per cent of the population. Many others are not categorized as such because their situation was not considered special at the time of registration, or they did not want to identify themselves as belonging to such categories (e.g. persons with mental health conditions or LGBTI individuals). Single women and girls are the primary victims of sexual and gender-based violence (SGBV) in the form of domestic violence, female genital mutilation, early and forced marriage or survival sex. Despite prevention, mitigation and response mechanisms in place, the incidence of SGBV among refugees remains high. Identified children-at-risk benefit from a package of basic protection and assistance measures; however, these measures are often inadequate when children reach adolescence or have a limited impact when their situation is very complex. Among people living with disabilities, a very small percentage benefit from assistive devices and other support. The situation of single elderly persons poses severe challenges in terms of care and assistance.

Recommendations:

UNHCR recommends that the Government of Kenya:

- (a) Support the inclusion of refugees and asylum-seekers with special needs as full beneficiaries of existing national assistance services and dedicated institutions, such as the National Council for People Living with Disability of Kenya and the Department of Children's Services;
- (b) Include refugees and asylum-seekers into the scope of the *Draft Kenya National Social Protection Policy* and make the necessary provisions for them to access the four pillars of social protection;
- (c) Consider decentralization of the national helpline services for reporting SGBV cases at county level for effective response services; and
- (d) Provide effective support and assistance for SGBV survivors who seek legal redress and reconsider the current threshold of proof in case of rape which currently acts as a deterrent to legal action.

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

KENYA

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations and UN Treaty Monitoring Bodies' Concluding Observations with regards to KENYA.

I. Universal Periodic Review (Second Cycle – 2015)

Recommendation ⁴	Recommending State/s	Position
Refugees, asylum-seekers, internally displaced and stateless persons		
142.17. Ensure that human rights and fundamental freedoms enshrined in its Constitution are protected in the fight against terrorism and the national security plan and actions; pay particular attention to safeguarding the rights and safety of minorities and marginalized groups, as well as human rights defenders, refugees and stateless persons; address root causes of insecurity and radicalization and point out the need for a comprehensive counter-radicalization strategy;	Finland	Supported
142.181. Maintain its important humanitarian effort in cooperation with the international community and particularly the Office of the United Nations High Commissioner for Refugees in full respect of international refugee law;	Belgium	Supported
142.182. That no refugees should be forcibly returned to Somalia when conditions for their safe reestablishment are not present;	Belgium	Supported
142.183. Abide by the principle of non-refoulement and take steps to ensure that refugees/asylum seekers are not returned;	Republic of Korea	Supported
143.22. Ratify the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, in the light of the ongoing review of Kenya's refugee law;	Ghana	Noted
143.31. Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;	Portugal	Noted
143.61. Adopt legal and administrative measures to ensure freedom of movement and other basic rights of refugees; in particular, apply appropriate exemption categories for persons with specific protection needs in order to allow their continued stay in urban centres and avoid forced relocation, avoiding family separations among refugees and asylum seekers;	Argentina	Noted
Trafficking in Persons		
142.47. Prosecute the perpetrators of trafficking and sexual exploitation of women and children;	Sierra Leone	Supported
142.50. End early marriages and the trafficking of minors;	Spain	Supported
142.60. Take further efforts against the trafficking of children and eliminate child labour by enforcing compulsory education;	Albania	Supported
142.77. Combat the trafficking and sexual exploitation of women and girls by means of adoption of a comprehensive national action plan in this domain;	Lithuania	Supported

⁴ All recommendations made to Kenya during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Kenya" (26 March 2015), A/HRC/29/10, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/064/59/PDF/G1506459.pdf?OpenElement>.

142.80. Take measures to develop an integral plan of action to combat trafficking and the sexual exploitation of women and girls, including through medical and psychological assistance to victims of these crimes;	Mexico	Supported
Children`s Rights		
143.21. Ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; sign and ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure; adopt respective amendments to the Children`s Act of 2001; and fully implement the National Plan of Action on Children 2013–2017;	Germany	Noted
Freedom of religion and freedom of expression		
143.52. Review the compliance of the Kenya Information Communication (Amendment) Act of 2013 with international standards on freedom of expression, create an enabling environment for journalists and bloggers and decriminalize media offences and defamation;	Czech Republic	Noted
Discrimination on the basis of sexual identity and gender orientation		
143.36. Repeal legal provisions that foresee penalties against lesbian, gay, bisexual or transgender persons, in order to respect the principle of non-discrimination;	France	Noted
Death penalty		
143.38. Formalize its moratorium on the death penalty with a view to its full abolition;	Australia	Noted
143.43. Abolish capital punishment and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;	Portugal	Noted

II. Treaty Bodies

Committee on the Elimination of Discrimination against Women

Concluding Observations, 2017, [CEDAW/C/KEN/CO/8](#)

Gender-based violence against women

22. The Committee welcomes the adoption of the Protection against Domestic Violence Act of 2015. However, it remains 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 is 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.

23. Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and in line with target 5.2 of the Sustainable Development Goals, to eliminate all forms of violence against all women and girls in the public and private spheres, the Committee recommends that the State party:

- (a) **Ensure the strict enforcement of the Protection against Domestic Violence Act, including through the allocation of adequate human and financial resources;**
- (b) **Increase the investigation, prosecution and conviction rates in cases of sexual and gender-based violence throughout the State party, including in informal settlements and in camps for internally displaced persons and refugees;**
- (c) **Ensure that victims, including disadvantaged groups of women and women in informal settlements, are not charged for obtaining reporting and medical forms, including P3 forms;**
- (d) **Establish additional shelters and strengthen existing shelters run by non-governmental organizations, including through adequate financial support, and**

ensure their accessibility to women and girls who are victims of gender-based violence, especially in remote areas, and to those with disabilities;

- (e) **Provide the judiciary, prosecutors, the police and other law enforcement officials with adequate training on women's rights and on gender-sensitive investigation and interrogation procedures in cases of gender-based violence against women, and train all humanitarian, military and police personnel on the prevention of sexual violence and on codes of conduct with regard to sexual exploitation and abuse.**

Trafficking

26. The Committee notes with appreciation the efforts made by the State party to combat trafficking in persons and protect victims of trafficking, including the adoption of the Victim Protection Act of 2013 and capacity-building for diplomatic staff. However, it is concerned that women and girls, including in refugee camps, remain at risk of trafficking for purposes of sexual exploitation or forced domestic labour. It is also concerned about the low level of prosecutions of traffickers, particularly under the Counter-Trafficking in Persons Act of 2010.

27. The Committee recommends that the State party:

- (a) **Address the root causes of trafficking and exploitation of women and girls by improving their economic situation;**
- (a) **b) Conduct public awareness-raising campaigns, particularly in rural and traditional communities, on the risk of trafficking in persons for women and girls;**
- (b) **Strictly enforce the Counter-Trafficking in Persons Act by investigating, prosecuting and punishing perpetrators of trafficking and exploitation of women and girls and enforce the Victim Protection Act;**
- (c) **Continue to provide training for law enforcement and border personnel on the early identification of victims of trafficking and their referral to appropriate services;**
- (d) **Provide adequate resources for support services, including shelters, for victims of trafficking;**
- (e) **Enhance bilateral, regional and international cooperation to prevent trafficking, including by exchanging information and harmonizing legal procedures to prosecute traffickers.**

Nationality

32. The Committee commends the State party on its decision to issue identity cards and title deeds to the Makonde and Nubian peoples and takes note of its declared intention to do the same for other stateless peoples, such as the Pemba and the Warundi. However, it is concerned that many women and girls in the State party remain stateless or face challenges in the enjoyment of their right to nationality, including the fact that:

- (a) Asylum-seeking and stateless women who marry Kenyan men face difficulties in obtaining citizenship for themselves and their children;
- (b) Customary marriages need to be registered in order for an applicant to obtain a passport;
- (c) Many women, particularly rural women, face difficulties in obtaining official documents.

33. The Committee recommends that the State party:

- (a) **Ensure, in line with the Committee's general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, that all refugee and stateless women married to Kenyan nationals may obtain citizenship and confer it on their children without administrative barriers;**
- (b) **Issue identity cards and title deeds to stateless persons in the State party, including the Pemba and Warundi peoples, as well as all children born in Kenya to British Overseas citizens;**
- (c) **Facilitate the provision of official documents and registration of marriages, especially in rural areas, including through increased resources, technological capacity and the geographical spread of Huduma centres;**
- (d) **Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

Committee on the Elimination of Racial Discrimination

Stateless persons

27. The Committee notes with interest the efforts made by the State party to register stateless individuals. However, the Committee is concerned at reports that some ethnic groups, including the Nubians, individuals of Somali descent and groups living near the country's borders, face challenges and lengthy vetting procedures in obtaining identity documents (arts. 1, 2 and 5).

28. In accordance with its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee urges the State party to stop discriminatory practices and accelerate its efforts to address statelessness, including through standardized registration procedures and issuance of official identification documents. The Committee also urges the State party to consider awarding Kenyan citizenship to all Nubians who were residing in Kenya on the date of Kenyan independence and their descendants.

Refugees and asylum seekers

37. The Committee commends the State party for having received and hosted hundreds of thousands of refugees and asylum seekers for over 25 years, in coordination with international humanitarian agencies. However, the Committee is seriously concerned at the Government's decision to appeal the 2017 High Court ruling that the order to close the Dadaab camp, which hosts over 250,000 refugees, was null and void. The Committee is concerned at the absence of information concerning burden sharing by the international community, as the Committee recommended in its previous concluding observations (see CERD/C/KEN/CO/1-4, para. 25). The Committee is also concerned about restrictions on the freedom of movement of refugees, the absence of alternative resettlement options and substandard conditions for those living in the camps (arts. 2, 5 and 6).

38. The Committee recommends that the State party ensure the protection of asylum seekers and refugees in its territory, in accordance with its legal obligations, in particular by:

- (a) 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;**
- (b) Inviting once again the international community to discharge its responsibility towards refugees under the principle of burden sharing;**
- (c) Developing, in consultation with the groups concerned and in partnership with the Office of the United Nations High Commissioner for Refugees and other relevant organizations, a long-term strategy for the durable solution of local integration of the refugees, especially with regard to education and access to decent livelihoods, as residence in camps does not represent a durable solution for their inhabitants;**
- (d) Respect the 2013 High Court decision in Kituo Cha Seria and others v. The Attorney General and follow the law when declaring curfews, ensuring that they are not maintained for a disproportionate length of time and are resorted to only in exceptional circumstances.**

Committee on the Rights of the Child

Non-discrimination

21. The Committee expresses concern at the fact that discrimination against certain groups of children still exists in policy as well as in practice, particularly in respect of girls, children with disabilities, children with HIV/AIDS, refugee children, indigenous children, Nubian children, children in street situations and children from disadvantaged or marginalized families.

22. The Committee urges the State party to:

- (a) **Revise all its legislation and policies in order to bring them into full compliance with article 2 of the Convention, and ensure full implementation of all legal provisions and policies;**
- (b) **Intensify efforts to eliminate discrimination, particularly patriarchal attitudes and gender stereotypes, and ensure that a wide range of stakeholders, including girls and all sectors of society, are involved in such efforts so as to facilitate social and cultural change and to create an environment that promotes equality.**

Respect for the views of the child

27. The Committee welcomes the establishment of the Kenya Children's Assembly at national, county and sub-county levels. Nevertheless, the Committee is concerned that the Children's Assembly is not open or accessible to certain groups of children, such as refugee children and children with disabilities.

28. With reference to the Committee's general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party:

- (a) **Make the Children's Assembly at national, county and sub-county levels open and accessible to all children in the State party without discrimination, including refugee children and children with disabilities;**
- (b) **Actively involve children at national and county levels, including through the Children's Assemblies, in the development of law, policy and budget relevant to children's issues and in the monitoring of their implementation.**

Birth registration and nationality

29. The Committee welcomes the adoption of the Citizenship and Immigration Act (2011) which provides for Kenyan nationality for all children born in the State party and recognizes the equal right of women and men to transmit Kenyan nationality to their children, as well as the substantial increase in the number of birth registrations. Nevertheless, the Committee is concerned that:

- (a) Free and universal birth registration has not been achieved;
- (b) The proportion of births registered has been stagnating in recent years, with substantially lower rates of birth registration in rural and remote areas;
- (c) Some groups of children, such as refugee children, children of Nubian descent, Makonde children, indigenous Somali children in Kenya, children with mothers in custody and intersex children, face difficulty in obtaining birth registration;
- (d) Children of stateless persons and migrants aged between 8 and 18, including those who belong to the Nubian, Pemba, Galj'el and Makonde communities, may not have obtained Kenyan nationality despite the measures introduced in the Citizenship and Immigration Act (2011).

30. The Committee urges the State party to:

- (a) **Expedite the adoption of a law that provides for universal and free birth registration at all stages of the registration process;**
- (b) **Further strengthen various efforts to ensure the birth registration of all children, in particular in rural and remote areas, including through mapping out and registering those who have not been registered at birth;**
- (c) **Implement effectively the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012), and finalize the draft policy on internally displaced persons and a set of regulations to operationalize the Act;**
- (d) **Consider acceding to the Convention relating to the Status of Stateless Persons, of 1954, and to the Convention on the Reduction of Statelessness, of 1961;**
- (e) **Fully implement the decision of the African Committee of Experts on the Rights and Welfare of the Child in the case entitled "Institute for Human Rights and Development in Africa and Open Society Justice Initiative on behalf of children of Nubian descent in Kenya v. the Government of Kenya" (decision No. 002/Com/002/2009);**
- (f) **Seek technical assistance from the Office of the United Nations High Commissioner for Refugees and UNICEF, among others, for the implementation of these recommendations.**

Children with disabilities

45. The Committee notes that progress has been made in relation to early detection, prevention and mitigation of disabilities. However, the Committee is concerned that:

- (a) Children with disabilities, in particular those living in rural areas, are often stigmatized, confined at home, denied opportunities for development or abandoned;
- (b) There is a lack of the disaggregated data that are necessary for designing a comprehensive strategy for the inclusion of children with disabilities;
- (c) Many mainstream schools are not equipped for inclusive education, some refuse admission to children with disabilities, and specialized schools are not available, accessible or affordable;
- (d) Health care and reasonable accommodation for children with disabilities are mainly unaffordable.

46. With reference to the Committee's general comment No. 9 (2006) on the rights of children with disabilities, the Committee urges the State party to adopt a human rights-based approach to set up a comprehensive strategy, based on disaggregated statistical data, for the inclusion of children with disabilities. It also recommends that the State party:

- (a) Intensify measures, including awareness-raising, to combat stigma against children with disabilities, including children with psychosocial or intellectual disabilities, and to encourage parents of children with disabilities to support the fullest possible social integration and individual development of their children, in particular in rural areas;**
- (b) Give priority to inclusive education at mainstream schools over special schooling and allocate adequate human, financial and technical resources for schools to provide inclusive education in an effective way, including for refugee children with disabilities;**
- (c) Fully implement the Persons with Disabilities Act (2003) in line with article 23 of the Convention and the Convention on the Rights of the Persons with Disabilities and ensure that children with disabilities have effective access to health services, including rehabilitation services, free of charge whenever possible.**

Asylum-seeking and refugee children

59. The Committee commends the State party's efforts to accept a large number of asylum seekers and refugees from neighbouring countries. However, the Committee is concerned that the State party's long-term encampment policy and certain proposals and responses to the heightened security situation in the State party do not fully respect and protect the rights of asylum-seeking and refugee children, including:

- (a) Proposals on encampment of all asylum seekers and refugees in refugee camps and suspension of registration of asylum seekers in urban areas;
- (b) Proposals on the closure of refugee camps;
- (c) The relocation and deportation of refugees without due process, which has caused family separation and has left refugee children unaccompanied and has disrupted their education.

60. With reference to the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, the Committee urges the State party to:

- (a) Ensure all security operations and policies relevant to asylum seekers and refugees comply fully with international human rights and refugee law which the State party has ratified, in particular the rights of the child;**
- (b) Ensure that returns of refugees, including refugee children, will not occur unless their returns are voluntary and carried out in safety and dignity;**
- (c) Revise the policy on long-term encampment of refugees and allow greater opportunities for refugees to reside outside designated areas;**
- (d) Uphold the rights of the child to family unification and to have his or her best interests taken as a primary consideration in all policies and procedures on refugees and asylum seekers.**

61. The Committee welcomes the issuance of “refugee identity passes” to refugee children. However, the Committee is also concerned that individual identification cards, which are used as a basis for accessing social services such as education or health care, are issued only to those who are living in urban areas and are over 16 years old or recognized as unaccompanied or separated children.

62. The Committee recommends that the State party issue individual identity documentation to all refugee and asylum-seeking children regardless of their age, residence or status of family unification in order to guarantee their refugee or asylum-seeking status and their access to essential services.

Internally displaced children

63. The Committee welcomes the adoption of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012) to resettle people displaced by the 2007-2008 post-election violence. Nevertheless, the Committee is concerned that:

- (a) Some internally displaced persons in Rift Valley, including children, remain in need of durable solutions and legal protection;
- (b) Reconstruction of houses and public facilities has reportedly not commenced for persons displaced prior to 2007-2008 violence, such as those in Moyale and Marsabit.

64. The Committee recommends that the State party:

- (a) Implement effectively the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012), finalize the draft policy on internally displaced persons, and issue regulations to operationalize the Act;**
- (b) Facilitate conflict resolution, peacebuilding, resettlement and reconstruction for persons displaced prior to the 2007-2008 violence, in accordance with the peace declaration of February 2014;**
- (c) Accede to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009).**

Sale, trafficking and abduction

73. The Committee notes the statement of the State party, made at the dialogue, that trafficking of children for various purposes is a serious concern in the State party.

74. The Committee recommends that the State party implement effectively the Counter Trafficking in Persons Act (2010).

Committee on the Rights of Persons with Disabilities

Concluding Observations, 2015, [CRPD/C/KEN/CO/1](#)

Situations of risks and humanitarian emergencies (art. 11)

21. The Committee is concerned about the absence of information on the situation of internally displaced persons with disabilities and those living in refugee camps, and the lack of information on emergencies and disaster strategies in formats accessible to persons with disabilities.

22. The Committee recommends that the State party:

- (a) Adopt a national plan to ensure the protection of persons with disabilities in situations of risk and humanitarian emergencies and to ensure universal accessibility and inclusion for persons with disabilities at all stages and levels of all disaster risk reduction policies and their implementation;**
- (b) Provide information in modes, means and formats of communication accessible to all persons with disabilities, in all of the State party’s official languages and indigenous languages about early warning mechanisms in case of risk and humanitarian emergency;**
- (c) Adopt measures to monitor the situation of persons with disabilities in refugee camps and internally displaced persons with disabilities, and ensure that they are**

entitled to access all services available, including accessible shelters, water and sanitation, education and health.

Liberty of movement and nationality (art. 18)

35. The Committee express concern about the lack of registration of children with disabilities upon their birth, in particular children in situations of internal displacement and those living in refugee camps.

36. The Committee recommends that the State party strengthen the registration programme with the necessary budget and personal resources to ensure that persons with disabilities in all areas of the country, including persons in refugee camps, gain access to identification documents.

Statistics and data collection (art. 31)

55. The Committee is concerned about the lack of systems to collect information on the situation of persons with disabilities, including the barriers that they face to exercise their rights.

56. The Committee recommends that the State systematically facilitate the collection, analysis and dissemination of data disaggregated by sex, age, disability, indigenous communities, refugee or migrant status and geographical location across all sectors, including health, education, employment, political participation, access to justice, social protection and violence, by disability and according to other categories listed above, and that it amend the census questions, in close cooperation with organizations of persons with disabilities, to accurately reflect the population.