



## International Covenant on Civil and Political Rights

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### Human Rights Committee

103rd session

Geneva, 17 October–4 November 2011

### List of issues to be taken up in connection with the consideration of the third periodic report of Kenya (CCPR/C/KEN/3)

#### Constitutional and legal framework within which the Covenant is implemented, right to an effective remedy (art. 2)

1. Please state the extent to which the provisions of the Covenant have been invoked and applied since the adoption of the new Constitution in 2010, which establishes that international treaties ratified by the State party form part of its law. Please also provide information on the measures taken to improve access to remedies by individuals by addressing the limited access to domestic courts and judicial remedies. Furthermore, please describe the measures taken to address the prevalent failure to enforce court orders and judgments.

2. Please explain the measures taken to ensure that the Kenya National Commission on Human Rights (KNCHR) is provided with adequate human and financial resources, in line with the principles relating to the status of national institutions (the Paris Principles) adopted by the General Assembly in resolution 48/134. Please clarify the extent to which the KNCHR is empowered to order the release of or other remedies for unlawfully detained persons, and the extent to which such orders are complied with.

#### Counter-terrorism measures and respect of Covenant guarantees

3. Please respond to reports that the State party facilitates so-called extraordinary renditions as part of its counter-terrorism activities. Please indicate how the State party ensures that measures taken to combat terrorism comply with the Covenant.

#### Non-discrimination, equality between men and women (arts. 2, para. 1, 3 and 26)

4. Please provide information on the measures taken to improve de facto: (a) women's status in the political, economic and social life of the country; (b) the percentage of women employed in positions of responsibility, both in the private and public sectors; (c) equal pay for equal work between men and women; and (d) literacy and school enrolment rates for women and girls. Please indicate specific steps taken to eliminate persistent adverse cultural norms, practices and traditions, as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men.

5. Please provide an update on the status of the Family Protection Bill, the Family and Reproductive Health Bill (2008), the unified Marriage Bill (2007), the Matrimonial Property Bill (2007) and the Equal Opportunities Bill (2007). What measures have been taken to eliminate discrimination against women in the area of customary property law, where women from certain ethnic groups cannot inherit land and are subjected to the customs of “wife inheritance” and ritual “cleansing” by male relatives of the deceased husband? What measures have been taken to discourage the practice of polygamy as a form of discrimination against women?

**States of emergency (art. 4)**

6. Please explain whether article 58(6)(a) of the 2010 Constitution, which governs states of emergency, permits or prohibits derogation from rights that are non-derogable under article 4 of the Covenant.

**Right to life (art. 6)**

7. Please describe the measures taken to deal with past reports of widespread extrajudicial killings by the police, particularly the lack of accountability for the killings that occurred during the 2007 post-election violence, where 405 gunshot deaths were recorded out of a total of 1,113, and the killings that occurred at Mt. Elgon during the joint police-military operation dubbed *Okoa Maisha* (Save Lives) in 2008. Please provide detailed information on: (1) the number of investigations launched against the alleged perpetrators; (2) the type of charges brought against them; (3) the number of cases dismissed and the reasons for their dismissal; (4) the number of perpetrators that have been convicted and the nature of the sentences; and (5) whether victims have been adequately compensated and/or rehabilitated. Furthermore, please provide updated information on the measures taken to cooperate with the International Criminal Court (ICC) in order to prosecute those that bear the greatest responsibility for the post-election violence.

8. Please respond to allegations of ongoing extrajudicial killings and enforced disappearances by law enforcement personnel, particularly during special security operations such as the *Chunga Mpaka* operation in Mandera district in September 2008, and operations against criminal bands, such as the “Mathare Operation” in June 2007. Please provide information on investigations and/or legal sanctions in connection with these allegations, and any other measures taken to prevent their recurrence.

9. Please describe the actions taken to investigate and prosecute those responsible for the killing of two human rights defenders, Oscar Kamau King’ara and John Paul Oulu, who had cooperated with the Special Rapporteur on extrajudicial, arbitrary and summary executions during his visit in 2009. Furthermore, please explain the measures taken to protect other human rights defenders who met the Special Rapporteur during his 2009 visit, who have reportedly received death threats.

10. Notwithstanding a de facto moratorium since 1987, it would appear that the death penalty remains on the statute books of the State party. Please indicate whether the State party intends to abolish the death penalty and accede to the Second Optional Protocol to the Covenant, and please describe the measures taken to ensure that children are no longer sentenced to death. Furthermore, please provide statistical data on the number of individuals on death row, the type of offences they have committed, whether the death penalty was mandatory for those offences, and whether they were represented by legal counsel at their trials.

**Prohibition of torture and cruel, inhuman or degrading treatment; liberty and security of person and treatment of persons deprived of their liberty (arts. 7, 9 and 10)**

11. Please explain the concrete steps taken to eliminate the problem of domestic violence in the State party. Please provide information on: (a) the number of complaints lodged by victims of domestic violence; (b) the number of persons prosecuted and convicted; and (c) other measures taken to provide rehabilitation and reparation to victims.

12. According to information before the Committee, female genital mutilation (FGM) is widespread in the State party, particularly among ethnic groups such as the Maasai, Samburu, Somali and Pokot. It is also reported that about 34 per cent of women nationwide undergo FGM, whereas nearly 99 per cent of women do so in the north-eastern province of the State party. Please indicate the measures taken by the State party to criminalize and eliminate female genital mutilation (FGM), considering its prevalence in the State party. Furthermore, please indicate the measures taken, in practice, to eliminate FGM particularly among young girls. Please provide information on the measures taken to implement the Female Genital Mutilation Bill (2011), and on the results.

13. Please provide information on the measures taken to prevent and punish the persistent acts of torture in police custody in the State party. Please provide an update concerning the Bill on Torture, or other efforts to enact a definition of the crime of torture consistent with international standards and to legislate penalties appropriate to the gravity of the offence. What measures have been taken to address the problem of prolonged detention without trial, ill-treatment and massive violations of the rights of detainees as well as the reported high numbers of deaths in custody? Please describe the measures taken to provide training to police and prison officers on the prevention and prohibition of torture, and reforms of the police and prison departments within the framework of the Governance, Justice, Law and Order Sector Reform Programme. Please provide disaggregated statistical data on the number of criminal prosecutions and disciplinary measures taken against law enforcement officials who are alleged to have committed acts of torture and ill-treatment.

14. Please explain the measures taken to prevent unlawful or arbitrary arrest by the police, including arrests for the purpose of extorting bribes as well as other abuses. Please identify the remedies available to victims of unlawful or arbitrary arrest, and the measures taken to ensure that arrested persons are promptly brought before a judge.

15. Please describe measures taken to restrict the continuing practice of involuntary returns and so-called extraordinary renditions of individuals, nationals and non-nationals, to destinations such as Somalia, Ethiopia and Guantánamo Bay (as in the case of Mr. Abdulmalik), on the basis of national security and measures to fight terrorism. Please respond to reports that individuals have been held incommunicado before being transferred on such grounds to third countries without due process. Please indicate whether the Immigration Act has been amended to make provision for the absolute prohibition of *refoulement* in cases where a real risk of torture or cruel, inhuman or degrading treatment or punishment is present, and to provide for a process of independent review of removal orders. Furthermore, please describe any measures being taken to amend the Refugee Law (2006), which provides for an exception to the general principle of *non-refoulement* thereby allowing the expulsion of refugees on the basis of national security.

16. Please provide information on the measures taken to address the alleged dire conditions of detention, particularly allegations of overcrowding, lack of appropriate health services and high levels of violence in prisons.

17. Please provide an update on the specific steps taken under the Law Reform Commission's review of the Children's Act (2001), to bring the age of criminal responsibility, currently set at eight years of age, in line with international standards. Please also explain the measures taken to put an end to the prevalent phenomenon of treating

children as adults during criminal trials, and to the detention of accused and convicted juveniles with adults. What measures have been taken so far to extend the juvenile justice system outside the capital of the State party?

18. Please describe measures taken to ensure the personal security of refugees and internally displaced persons (IDPs) who are restricted to camps, particularly women and children, and to afford appropriate services to children living in refugee and IDP camps.

**Elimination of slavery and servitude (art. 8)**

19. Please provide information on the measures taken, in practice, to combat the trafficking of persons for prostitution and forced labour, particularly in the coastal regions of the State party. Please give an update on the status of the 2009 Counter Trafficking in Persons Bill. Please indicate the impact that the implementation of the Children's Act has had in the protection of children against sale, trafficking and abduction. Has its implementation resulted in effective protection and concrete investigations and sanctions of alleged perpetrators? If so, please provide statistical data on the actual results emanating from the implementation of this Act.

**Independence of the judiciary and the right to a fair trial (art. 14)**

20. Please explain the measures taken to ensure that suspects have access to a lawyer during the initial stages of detention and that suspects, other than those facing a capital murder charge, benefit from a legal assistance scheme.

21. Please provide detailed information on the measures taken to ensure the financial independence of the judiciary and its insulation from any external interference and corruption.

22. Please clarify whether decisions taken by the Kadhi courts, in charge of applying religious laws, can be reviewed by ordinary courts. What mechanisms are in place to ensure the free consent of the parties, in particular of women, to the adjudication of their cases by the Kadhi courts?

**Freedom of opinion and expression, freedom of assembly, and freedom of association (arts. 19, 21 and 22)**

23. According to information before the Committee, journalists and human rights defenders have been subject to harassment and intimidation, especially by security forces. Also, journalists carry out self-censorship to avoid defamation action by public officials in response to legitimate criticism. Please comment and indicate the measures taken to guarantee, in practice, the right to freedom of expression.

24. According to information before the Committee, in 2008, police arrested over 60 journalists and civil society activists who had gathered to protest the Kenya Communications (Amendment) Bill (2008), which had been passed by Parliament. Please provide the grounds for such arrests and how such action complies with the Covenant. What measures are being taken to prevent police from denying authorization for lawful public meetings and dispersing meetings that have lawfully assembled?

**Measures for the protection of minors (art. 24)**

25. Please provide information on the concrete measures taken to address the problem of non-registration of children at birth, which leaves a high percentage of children, especially in rural areas, without birth certificates. Please describe any measures taken to address the restrictive procedures for birth registration, discrimination with regard to the registration of children born out of wedlock and children whose fathers are not Kenyan, as well as the lack

of mechanisms and infrastructure to facilitate birth registrations. Please also provide information on the effects of the Citizenship and Immigration Act (2011) on the conferral of nationality at birth, and how this law has been implemented in practice.

**Equal protection of the law and non-discrimination (arts. 2 and 26)**

26. Please provide updated information on the State party's efforts to decriminalize same sex unions by repealing provisions of the Penal Code, chapter 63 of the Laws of Kenya. Please also describe measures taken to deal with stereotypes in society with regard to homosexuality, which is largely considered to be taboo and repugnant to cultural values and morality, and to protect lesbian, gay, bisexual and transgender (LGBT) individuals against violence, incitement to violence, and extortion. Please provide an update on the measures taken to adopt a comprehensive equality and non-discrimination law that expands the grounds for non-discrimination to include sexual orientation and gender identity.

27. Please elaborate on the legislative and administrative measures taken to ensure that all those infected with HIV/AIDS have equal access to treatment, and the degree to which the resources available may fall short of the need. Furthermore, what other measures are being taken to eliminate the stigmatisation and discrimination of persons infected with HIV/AIDS, who are reportedly ostracized in the society? Please comment on how effective the HIV/AIDS Prevention and Control Act (2006) is in practice, particularly in combating discrimination against persons with HIV/AIDS.

**Rights of persons belonging to minorities (art. 27)**

28. Please provide information on efforts taken to ensure that the rights of minority groups, such as the Elmolu, Yakuu, Sengwer, Maasai and Ogiek, are respected, particularly their right to access traditional lands. Please explain the measures taken to address the problems faced by the Awer, Galjael, Somali, Nubian, and Oromo groups who have reportedly been prevented from enjoying full citizen rights because they lack proper identity cards.

**Dissemination of information relating to the Covenant and the Optional Protocol (art. 2)**

29. Please provide information on the steps taken to disseminate information on the Covenant, the State party's third periodic report and its forthcoming examination by the Committee. Please also provide more information on the involvement of representatives of ethnic and minority groups, civil society, non-governmental organizations and the national human rights institution in the preparatory process for the report.