

REPORT ON THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS SIMPLIFIED RECOMMENDATIONS



Independent Medico-Legal Unit

A World Free From Torture, Violence and Discrimination

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Introduction.

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, and in force from 23 March 1976 in accordance with Article 49 of the covenant. Article 49 allowed that the covenant would enter into force three months after the date of the deposit of the thirty-fifth instrument of ratification or accession. The covenant commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.

The ICCPR is part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR). The ICCPR is monitored by the United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council), which reviews regular reports of States parties on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee normally meets in Geneva and normally holds three sessions per year.

Kenya ratified the ICCPR on 1st May 1972 and came into force on 23rd March 1976. As part of the obligations under the convention in Article 40, Kenya has submitted 4 periodic reports with the most recent being 28th December 2018. When a State Party is reviewed by the UNHRC, the State must describe how it has implemented the obligations of the Convention and the Committee will make recommendations for further necessary reforms to enable better implementation.

Kenya had its 4th Review from the 9th to the 11th of March 2021 and the Human Rights Committee published the concluding observations on the 1st April 2021 with a focus on forced eviction, violence against women and participation in public affairs.

Recommendations from the 4th periodic review on Kenya's implementation of the ICCPR.

Issue	Recommendation
<p>1) Domestic implementation and dissemination of the International Covenant on Civil and Political Rights</p>	<ul style="list-style-type: none"> • Continue evaluating and revising, where necessary, domestic legal provisions, including the Constitution, to ensure harmonisation with the rights guaranteed in the Covenant and ensure that domestic laws are interpreted and applied in conformity with its provisions; • Ensure the full and meaningful participation of a broad range of • stakeholders in this process of harmonisation; • Intensify its efforts to raise awareness of the Covenant among members of the general public, civil society representatives, public officials, police officers, lawyers, judges, and prosecutors; • Expedite the process of ratification of the First Optional Protocol to the Covenant, which establishes an individual complaint mechanism; • Accelerate the process of appointing new commissioners to the Kenyan National Commission on Human Rights.
<p>2) Corruption</p>	<ul style="list-style-type: none"> • The State party should continue and strengthen its efforts, including through • International cooperation and effective implementation of legislation and preventive measures to combat corruption and promote good governance, transparency, and accountability. It should also expedite the passing into law of pending anti-corruption and whistle-blower protection legislation and intensify its efforts to ensure effective implementation of all relevant legal standards. The State party should step up efforts to investigate and prosecute corruption. If a person is convicted, apply penalties commensurate with the seriousness of the offence and ensure asset recovery, where appropriate. The State party should also take concrete measures to place proportionate limits on the access of state officials implicit in corruption to public office following international standards.

<p>3) The fight against impunity and past human rights violations.</p>	<ul style="list-style-type: none"> • Intensify efforts to ensure the full and effective implementation of all the recommendations of the Truth, Justice, offensesliation Commission, including expediting the process of making the Restorative Justice Fund fully operational and adopting the Commission's report by Parliament; • Step up efforts to provide access to remedies for victims of post-election violence in 2017, including accelerating the process of operationalising the Victim Protection Fund; • Take concrete steps ahead of the 2022 elections to address impunity for violence that occurred in 2017, including the prosecution and punishment of all perpetrators, particularly police and security officers, and systemic reform to all relevant law enforcement agencies
<p>4) Non-discrimination</p>	<ul style="list-style-type: none"> • Adopt comprehensive legislation prohibiting discrimination, including multiple, direct and indirect discrimination, in all spheres, in both the public and the private sectors, on all the grounds prohibited under the Covenant, including sex, sexual orientation, gender identity, religion, disability, albinism, socio-economic status, HIV/AIDS status, ethnic and political affiliation or another status; • Guarantee effective remedies for victims of discrimination in judicial and administrative proceedings; • Take concrete steps, such as comprehensive awareness-raising campaigns and sensitisation activities, to address stigma and discriminatory attitudes and promote sensitivity and respect for diversity among the general public

<p>5) Sexual orientation, gender identity and intersexuality</p>	<ul style="list-style-type: none"> • Amend all relevant laws, including sections 162 and 165 of the Penal Code, to decriminalise consensual sexual relations between adults of the same sex; • Address discriminatory attitudes and stigma towards LGBTI amongst the general public, including through comprehensive awareness-raising and sensitisation activities; • Intensify its efforts to eradicate all forms of discrimination, harassment, discrimination and violence based on sexual orientation and gender identity and provide access to justice and remedies for victims; • Take immediate action to address the expulsion of children from schools based on their actual or suspected sexual orientation and/or gender identity; • Strengthen measures to end the performance of irreversible medical acts, especially surgical operations, on intersex children who are not yet capable of giving their full, free and informed consent, except in cases where such interventions are necessary for medical reasons. Access to effective remedies for victims of such interventions should also be ensured.
<p>6) Gender equality</p>	<p>The State party should intensify efforts to implement constitutional provisions</p> <p>requiring not more than two-thirds of elective and appointive positions to be persons of the same gender. It should strengthen measures to address and prevent violence and harassment amongst women seeking elective office, including prosecuting such crimes. The State party should also ensure that the specific needs of women are included in efforts to mitigate and recover from the economic effects of the COVID-19 pandemic</p>

<p>7) Counter-terrorism measures</p>	<p>The State party should undergo a process of legal review and reform to ensure respect for human rights in the fight against terrorism, including revision of the definition of terrorism in the Prevention of Terrorism Act No. 30 of 2012 and expediting the process of amending the Security Laws (Amendment) Act No. 19 of 2014 in line with the judgement of the High Court. It should also take steps to ensure counter-terrorism legislation is not used to limit any rights enshrined in the Covenant, including life, liberty, non-refoulment and security of person.</p>
<p>8) Violence against women</p>	<ul style="list-style-type: none"> • Continue and expand its efforts to prevent and address female genital mutilation, including through prosecution and punishment, awareness-raising, sensitisation, cross-border cooperation and data collection; • Take concrete steps to eradicate other harmful traditional practices, including wife inheritance, ritual cleansing and child marriage; • Take all necessary measures to provide effective remedies, [to women who were victims of violence, including sexual violence, in the period surrounding the 2017 elections and to punish such acts of violence; • Strengthen its institutional and legal frameworks to address domestic violence, including the criminalisation of marital rape, targeted measures to protect women from violence during the COVID-19 pandemic and the full and effective implementation of the Protection against Domestic Violence Act of 2015; • Ensure that safe spaces are available to women who have been victims of violence in all parts of the State party's territory, including rural areas; • Collect data on minority women subjected to violence to • effectively target measures to ensure their protection.

<p>a. Voluntary termination of pregnancy and sexual and reproductive rights</p>	<p>the State party should take steps to ensure clear and harmonised laws, policies and guidelines to govern access to the safe and legal termination of pregnancy, as permitted under Article 26 of the Constitution, including in cases of pregnancy resulting from sexual violence. This should include expeditiously enacting the Reproductive Health Bill 2019, repealing articles of the Penal Code criminalising abortion and reinstating both the Standards and Guidelines for reducing morbidity and mortality for unsafe abortion in Kenya and the National Guidelines on Management of Sexual Violence. It should also consider widening access to the safe and legal termination of pregnancy.</p>
<p>b. Death penalty</p>	<p>The State party should expedite the amending of the national legal frame following the Supreme Court's findings in the 2017 Francis Murutetu & another –v- Republic of Kenya case. It should also take concrete steps toward the total de jure abolition of the death penalty and consider acceding to the Second Optional Protocol to the Covenant to abolish the death penalty.</p>

<p>9) Enforced disappearances, extrajudicial killings and other practices related to the unlawful use of force by State and non-State actors</p>	<ul style="list-style-type: none"> • Step up efforts to ensure timely investigations, prosecutions and punishments of all reported cases of enforced disappearances, extrajudicial killings and other unlawful uses of force, including cases relating to violence in the context of the 2017 elections; • Revise the legal framework to ensure that all forms of enforced disappearances are clearly defined in criminal law with associated penalties that are proportionate to the severity of the offences; • Ensure that the training of police officers is extended to all relevant state officers, including those in the Kenya Police Service and the Kenya Wildlife Service, and draw upon relevant national and international standards, including the Sixth Schedule of the National Police Service Act No. 11 of 2011, the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169), the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).
<p>10) Climate change and environmental degradation</p>	<p>The State party should continue expanding its efforts to develop its resilience to climate change through adaptation and mitigation measures. All projects that affect sustainable development and resilience to climate change should be developed with, By</p> <p>me offences, ill-treatment informed participation of the affected population, including indigenous peoples.</p>
<p>11) Prohibition of torture and other cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty</p>	<p>The State party should step up efforts to effectively implement the Prevention of</p> <p>Torture Act No.17 of 2014, including ensuring that victims can access rehabilitation services and intensify efforts to ensure investigations, prosecutions, convictions and punishments for torture and ill-treatment, including cases where State officials are implicated. It should also strengthen judges, prosecutors, lawyers and law enforcement officials and consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</p>

<p>12) Prison conditions</p>	<p>The State party should continue and intensify its efforts to improve conditions and reduce overcrowding in places of deprivation of liberty, particularly by increasing the use of alternatives to detention and ensure that conditions in places of detention are</p> <p>entirely in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)</p>
<p>13) Liberty and security of person</p>	<p>The State party should continue and strengthen efforts to reform the police force and provide training to judges, prosecutors, lawyers and relevant officers on national provisions and international human rights standards on liberty and security of person. They should amend the Prevention of Terrorism Act No. 30 of 2012 to bring provisions on pre-trial detention in line with article 50 of the Constitution and the Covenant provisions. The State party should step up the efforts to impartially investigate complaints of arbitrary arrest and detention, punish such acts, and take additional measures to promote civic space, including operationalising the Public Benefits Organisation Act, no. 18 of 2013 adopting the model Human Rights.</p> <p>Defenders Protection Policy developed by the Kenya National Commission on Human Rights.</p>
<p>14) Elimination of slavery, servitude and trafficking in persons</p>	<ul style="list-style-type: none"> • Intensify efforts to fully implement the Counter-Trafficking in Persons Act No. 8 of 2010, including ensuring the full operationalisation, the National Referral Mechanism and its Victim Assistance Fund; • Step up investigations, prosecutions, convictions and punishments of those responsible for trafficking-related crimes; • Continue efforts to train state officials on countering human trafficking and expand training to all relevant state officials, including judges, prosecutors, law enforcement officers and immigration agents, as well as lawyers; • Include targeted measures to protect persons from albinism from trafficking; • Strengthen efforts to screen and monitor the activities of employment agencies and protect Kenyan nationals working abroad.

<p>15) Treatment of aliens, including refugees, asylum seekers and migrants</p>	<ul style="list-style-type: none"> • Strictly uphold the principle of non-refoulement in both law and practice; • Amend the Refugee Bill 2019, including provisions that include prisons, police stations and remand homes in the definition of transit centres, clauses 19 (2) and 23 (5), to ensure its full compatibility with the Covenant; • Pass an amended version of the Refugee Bill into law and effectively implement its provisions without delay; • Stop the practice of detaining non-citizens solely for irregular entry into the country; • Take concrete steps to reduce statelessness, and in particular prevent statelessness of children.
<p>16) Internally displaced persons</p>	<p>The State party should intensify its efforts to expedite durable solutions for internally displaced persons, in accordance with relevant international standards, including the Covenant and the UN Guiding Principles on Internal Displacement. The State party should also operationalize the National Consultative Coordination Committee as a matter of priority.</p>

<p>17) Forced evictions</p>	<p>The State party should ensure that all evictions are carried out in accordance with national and international standards, including by:</p> <p>(a) Putting in place a sustainable system of equitable land tenure to prevent forced evictions;</p> <p>(b) When there is no alternative to force evictions, taking all necessary measures to effectively implement the Land Law Amendment Act No. 26 of 2016 and consistently ensure the implementation of the safeguards contained in section 152(G), including the need for adequate notice and prior and meaningful consultation with and the provision of adequate compensation and/or resettlement of those affected;</p> <p>(c) Strictly upholding the moratorium declared during the COVID-19 pandemic and all judicial decisions on evictions;</p> <p>(d) Improving compensation and resettlement amongst those affected by evictions, including through enacting the Evictions and Resettlement Bill 2012 into law without delay;</p> <p>(e) Ensuring the investigation, prosecution, conviction and punishment of all individuals who breach the law during evictions.</p>
<p>18) Freedom of expression</p>	<p>The State party should engage in harmonisation between all legal standards relating to freedom of expression, including online expression, the provisions of the Covenant, and articles 33 and 34 of the Constitution. The State party should ensure that any restrictions on the exercise of freedom of expression, including online expression, comply with the strict requirements of Article 19 (3) of the Covenant. They should also take concrete steps to prevent any interference with the free press during the 2022 elections and protect journalists and media workers from all forms of harassment and violence.</p>

<p>19) The right to peaceful assembly</p>	<p>Bearing in mind the Committee's General Comment no. 37 (CCPR/C/GC/37) on the right of peaceful assembly and the State party should bring all laws and practices governing peaceful assembly into full compliance with the Covenant. The use of force</p> <p>by law by enforcement officials during peaceful assemblies should be brought in line with the UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)</p>
<p>20) Rights of the child</p>	<p>The State party should expedite the enactment of the Children (Amendment) Bill 2018 into law, harmonise all national provisions to reflect 12 as the minimum age of criminal responsibility and ensure the consistent application of the best interests of the child principle in all incidences of children in conflict with the law.</p>
<p>21) Participation in public affairs</p>	<p>The State party should intensify efforts to provide remedies to all victims of</p> <p>violence in the context of the 2017 elections, including guarantees of non-repetition. The State party should also take all necessary steps ahead of the 2022 elections to prevent violence and ensure the effective and independent functioning of the Independent Electoral and Boundaries Commission. It should also adopt all measures necessary to ensure transparency in voting and vote counting procedures.</p>

22) Indigenous peoples

- Develop and enact dedicated legislation to expand specific protection for indigenous peoples;
- Step up safeguards against forced evictions of indigenous peoples and ensure the consistent and practical application of the principle of free, informed, and prior consent before any developmental or other activities take place on lands traditionally used, occupied or owned by , indigenous communities;
- Intensify implementation of the Community Land Act No. 27 of 2016, including by the allocation of adequate funding to facilitate the required processes, to ensure indigenous peoples can obtain official recognition and registration of their land;
- Publish without delay the recommendations of the Task Force to advise the Government on the 'Implementation of the Decision of the African Court on Human and Peoples' Rights in Respect of the Rights of the Ogiek Community of Mau and Enhancing the Participation of Indigenous Communities in the Sustainable Management of Forests' and comply with the decision of the Court;
- Ensure that specific measures are in place to promote and protect the rights of indigenous women.



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