



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

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Excellency,

I have been following the third cycle of the Universal Periodic Review (UPR) of the Republic of Kenya and welcome the constructive engagement of your Government during the 35<sup>th</sup> session of the UPR Working Group in January 2020.

As the final outcome report on the review of Kenya has been recently adopted by the Human Rights Council at its 45<sup>th</sup> session, I would like to take this opportunity to follow up on a number of areas raised in the two reports that my Office had prepared for the review of Kenya – the Compilation of United Nations information and the Summary of Stakeholders' submissions – which I consider in need of particular attention over the next four and a half years, until the next cycle of the UPR. In identifying those areas, I have considered the statements and/or recommendations made by 118 delegations and the presentation made and responses provided by the delegation of Kenya. I have also considered the actions taken by the Government of Kenya to implement the 192 recommendations supported during the second cycle of the UPR. The aforementioned areas cover a range of issues, which appear in the annex to this letter.

I am encouraged by the relatively high number of recommendations supported by Kenya and take particular note of the assurance given by the delegation of Kenya that steps would be taken to address those recommendations that have been noted.

Positive note is taken of the commitment made by Kenya to develop a national action plan on business and human rights, as indicated by the delegation of Kenya during the review. I understand that this national action plan is pending adoption, which I hope will take place without delay. I also encourage Kenya to develop a comprehensive national human rights action plan in order to achieve concrete results in the areas highlighted in the annex to this letter and to facilitate preparations for the fourth cycle of the UPR. My advice to all Member States is to develop and implement national action plans in close consultation and cooperation with all stakeholders, in particular the national human rights institution and all civil society organizations and, where necessary, with the support of international organizations, including my Office and other United Nations entities, under the leadership of the United Nations Resident Coordinator.

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Her Excellency  
Ms. Raychelle Awour OMAMO, SC, EGH  
Cabinet Secretary for Foreign Affairs  
Ministry of Foreign Affairs  
Republic of Kenya



I note that Kenya had supported recommendations in relation to strengthening the independence and efficiency of the Kenya National Commission on Human Rights, and encourage the Government to expedite the appointment of the commissioners, in order to ensure the continued functioning of the Commission in compliance with the Paris Principles.

I welcome the establishment of the National Committee on International and Regional Human Rights Obligations and encourage Kenya to ensure that it has the capacity and competence to undertake comprehensive reporting and follow-up in relation to recommendations received from all international and regional human rights mechanisms and to treaty obligations, while linking these to the Sustainable Development Goals. I strongly recommend the use of the OHCHR practical guide on this topic, which is available at:  
[http://www.ohchr.org/Documents/Publications/HR\\_PUB\\_16\\_1\\_NMRF\\_PracticalGuide.pdf](http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf).

My Office stands ready to assist the Government of Kenya in developing the capacity of the Committee, including through the establishment of a national recommendations tracking database.

Please note that I am sharing my advice with all Member States as they go through the third cycle of the UPR with a view to assisting them with the implementation of the recommendations, following the review. An important measure that can positively contribute to follow-up action is voluntary mid-term reporting. Therefore, I strongly encourage all Member States to submit a voluntary mid-term report two years after the adoption of the UPR outcome report. In this regard, I welcome the practice of Kenya of submitting mid-term reports and encourage the Government to do so again on follow-up to the third cycle of the review, by the end of 2022.

As stated by the Secretary-General in his 2017 report on the work of the Organization (A/72/1, paragraph 98): *"The Human Rights Council's universal periodic review process is now entering a new cycle, with every Member State scheduled for a third round of scrutiny. We will work to strengthen the relevance, precision and impact of the Council's recommendations, including by providing better support to Member States in implementation, stronger collaboration with United Nations country teams and the establishment of national mechanisms for human rights reporting and follow-up to link the universal periodic review to the implementation of the Sustainable Development Goals."*

I look forward to discussing with you ways in which my Office may assist Kenya in relation to the areas identified in this letter and its annex.

Please accept, Excellency, the assurances of my highest consideration.

Michelle Bachelet  
High Commissioner for Human Rights

cc: His Excellency  
Hon. Ababu NAMWAMBA, EGH  
Chief Administrative Secretary and Deputy Minister  
Ministry of Foreign Affairs  
Republic of Kenya

Mr. Siddharth CHATTERJEE  
United Nations Resident Coordinator  
Republic of Kenya



## **Annex**

### **Scope of international obligations and cooperation with international human rights mechanisms and bodies**

- Ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Optional Protocol to the Convention on the Rights of Persons with Disabilities; the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; the ILO Domestic Workers Convention, 2011 (No. 189); the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Extending a standing invitation to the Special Procedures of the Human Rights Council.

### **National human rights framework**

- Enacting the draft Data Protection Bill and creating a data protection framework in line with international standards on the right to privacy.
- Aligning the definition of ethnic discrimination provided in the National Cohesion and Integration Act 2008 with article 1 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination.
- Enacting an inclusive non-discrimination law, ensuring the protection enshrined in article 27 (4) of the Constitution.
- Harmonizing all legislation on child labour with the Convention on the Rights of the Child and the ILO conventions that Kenya had ratified; amending the Employment Act; and adopting and implementing the Child Labour Policy and the List of Hazardous Occupations Prohibited for Children.
- Reviewing the Witchcraft Act with a view to defining “witchcraft” or harmful practices related to certain manifestations of “witchcraft”.
- Reviewing the Counter-Trafficking in Persons Act with a view to ensuring that it sufficiently addressed trafficking of body parts of persons with albinism.
- Adopting and implementing the Regional Action Plan on Albinism in Africa (2017–2021), pursuant to resolution 373 of the African Commission on Human and Peoples’ Rights.
- Strengthening the independence and efficiency of the Kenya National Commission on Human Rights, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

## **Implementation of international human rights obligations, taking into account applicable international humanitarian law**

### **A. Cross-cutting issues**

#### *Equality and non-discrimination*

- Repealing or amending the discriminatory provisions in religious and customary law, codifying Muslim family law in a manner that is compatible with article 27 of the Constitution, and appointing Muslim women as kadhis and alternative dispute resolution mediators in the kadhi court system.
- Developing and implementing a comprehensive strategy towards eliminating harmful practices and stereotypes that discriminated against women.
- Protecting all women, including lesbian, bisexual and transgender women and intersex persons, from discrimination, by adopting comprehensive anti-discrimination legislation affording such protection.

#### *Development, the environment, and business and human rights*

- Undertaking further and sustained efforts to combat corruption.
- Creating communities in which residents lived, worked, went to school and exercised political participation in multi-ethnic settings through the urban planning programmes.
- Raising awareness among civil servants, the judiciary and lawmakers of the Guiding Principles on Business and Human Rights and taking measures to ensure the full implementation of policy and legislative frameworks related to business and human rights.

#### *Human rights and counter-terrorism*

- Addressing reports of alleged human rights violations in relation to the counter-terrorism initiatives to combat Al-Shabab, including the ethnic profiling of certain ethnic groups and the dozens of extrajudicial killings and enforced disappearances; and ensuring that all suspected persons benefited from fundamental legal safeguards, particularly when the suspects were of foreign descent or nationality.

### **B. Civil and political rights**

#### *Right to life, liberty and security of person*

- Abolishing the death penalty and commuting the death sentences of the inmates on death-row.
- Addressing the persistent allegations of extrajudicial killings, enforced disappearances and excessive use of force by police officers; and empowering the Independent Policing Oversight Authority, the Internal Affairs Unit and the Director of Public Prosecutions to investigate and prosecute cases of alleged abuse by police.
- Taking effective measures to protect persons with albinism from violence, discrimination and stigmatization, including by identifying the gaps in the security and protection of such persons, particularly those in rural and border areas.

- Developing and implementing a comprehensive strategy to eliminate harmful practices, such as child and forced marriage, female genital mutilation, polygamy, bride price and widowhood rites.
- Addressing the high levels of gender-based violence against women and girls and the widespread incidence of sexual violence, including rape.
- Addressing the concern about the delays in prosecuting the alleged perpetrators of election-related gender-based violence, including sexual violence, during the elections in 2017, where the majority of the alleged perpetrators were police officers or members of other security forces.

*Administration of justice, including impunity, and the rule of law*

- Providing training to judges, prosecutors, legal professionals, law enforcement officials and medical personnel on the strict application of criminal law provisions to punish child and forced marriage, female genital mutilation, child rape (“beading”) and widow inheritance.
- Implementing legal aid policies in a way that ensure equal access to justice for victims of racial discrimination, minorities and indigenous peoples, in particular by providing adequate funding and staffing for legal aid services and reducing the distances between national courts and the areas where some minority groups and indigenous peoples resided.
- Creating specialised courts to enable the expeditious consideration of gender-based violence cases.
- Improving the juvenile justice system and raising the age of criminal responsibility.
- Prosecuting acts of racial discrimination and racist hate speech, and increasing the powers of the Director of Public Prosecutions in the initiation of criminal proceedings.
- Securing redress for survivors of sexual violence committed in the run up to and during the 2007 and 2017 presidential elections, and establishing mechanisms to ensure such crimes are never repeated.
- Implementing the recommendations made by the Truth, Justice and Reconciliation Commission, including those recommendations on the investigation of persons allegedly responsible for serious human rights violations and on providing remedy to the victims.

*Fundamental freedoms and the right to participate in public and political life*

- Protecting Christians from persecution and other forms of serious harm caused by terrorist groups and tackling the root causes of religious radicalization.
- Respecting the rights to freedom of expression and of association, by adopting comprehensive legislation on the protection of human rights defenders and by investigating all complaints of alleged violations.
- Adopting effective measures to protect women human rights defenders and rescinding the limit of foreign funding of non-governmental organizations.



- Addressing the concerns about barriers that prevented women from participating in political and public life on an equal basis with men, notwithstanding the constitutional two-thirds gender rule and the presidential decree on affirmative action of 2006.
- Combatting hate speech, especially in the run up to and during elections, and ensuring that all human rights are duly respected and protected in the run-up to and during the upcoming general elections, in 2022.

#### *Prohibition of all forms of slavery*

- Addressing the concern that women and girls remained at risk of trafficking for the purposes of sexual exploitation or forced domestic labour and the concern over the low level of prosecution of alleged traffickers, by, inter alia, strictly enforcing the Counter-Trafficking in Persons Act of 2010 and by investigating and prosecuting alleged perpetrators.
- Addressing the concern about the high level of child prostitution and child pornography, particularly in the tourism and travel sector, by, inter alia, effectively implementing the Sexual Offences Act of 2006.

#### *Right to family life*

- Addressing the concerns about the Marriage Act of 2014, including its lack of conformity with the Constitution and its recognition of polygamy in customary and Muslim marriages.

### **C. Economic, social and cultural rights**

#### *Right to work and to just and favourable conditions of work*

- Addressing gender-based discrimination and sexual harassment in the workplace, including with a view to protecting all individuals, irrespective of their sexual orientation or gender identity.
- Amending the Employment Act of 2007 with a view to extending maternity leave benefits to adoptive mothers and to those who suffered miscarriages or delivered stillborn babies.
- Creating a regulatory framework for the informal and agricultural sectors to provide affected women with access to social protection and to monitor their work conditions.

#### *Right to social security*

- Extending the coverage of the National Social Security Fund and the National Health Insurance Fund to all workers in the formal and informal economy and to self-employed persons.

#### *Right to an adequate standard of living*

- Adopting measures to alleviate poverty in light of the Vision 2030 and the 2030 Agenda for Sustainable Development, including through the strengthening of existing policies.





- Ensuring that the national Government remains the primary duty bearer for the realization of the right to water and sanitation while implementing the devolution of the competence of the provision of water and sanitation; investing in the maintenance and operation of new and existing services; and allocating budget lines targeting the poorer rural and deprived urban areas and disadvantaged individuals and groups.
- Continuing the implementation of the affordable housing programme for low-income people.

#### *Right to health*

- Addressing the lack of access to high-quality health care for many women, including women with disabilities, women in prostitution and rural women.
- Reducing the high maternal mortality rate, in part arising from unsafe abortions, and addressing the restrictive and unclear legal framework on abortion, which led women to seek unsafe and illegal abortions.
- Eradicating the practice of post-delivery detention of women and girls who were unable to pay their medical bills.
- Addressing the concerns about the high rates of HIV, particularly among women and girls.
- Reviewing all legal, policy and structural barriers that impede the provision of sexual and reproductive health services, in particular against adolescent girls, young women and members of key populations more vulnerable to HIV.

#### *Right to education*

- Continuing efforts to address equal access to quality education for all, particularly children in rural areas.
- Addressing the concerns about the high number of children out of school, the gender disparity in schools, including the lower completion rate for girls compared to boys, and the prevalence of sexual violence and harassment directed against girls and adolescents in schools by male teachers and pupils.
- Adopting measures to fully implement the Special Needs Education Policy, which emphasized integration and an inclusive approach to students with special needs, and allocating adequate resources for assessing and identifying learners with special needs.

### **D. Rights of specific persons or groups**

#### *Women*

- In relation to the advancement of women, consider strengthening the coordination between the State Department of Gender Affairs and the National Gender and Equality Commission and providing them with adequate resources, and consider equipping the National Gender and Equality Commission with a complaint mechanism and the authority to issue binding rulings.
- Effectively implementing the Protection against Domestic Violence Act (2015).



- Addressing the high poverty rate among women and their exclusion from decision-making in relation to rural development, and the discrimination against rural women in relation to property rights and their limited access to high-quality health care.
- Addressing the concerns of CEDAW that indigenous women, including Endorois women, have limited access to traditional lands due to the lack of implementation of the ruling of 2010 by the African Commission on Human and Peoples' Rights, which recognized their rights to ancestral land in the Rift Valley.

#### *Children*

- Revising all laws and regulations permitting corporal punishment to ensure their alignment with the Constitution, which prohibits corporal punishment, and promoting positive and non-violent forms of child-rearing and discipline.
- Adopting and implementing the draft national action plan for ending child marriage.
- Addressing the increasing number of children in street situations by, inter alia, developing a comprehensive policy to address its root causes; providing such children with protection and adequate social services; and supporting family reunification programmes.
- Implementing an early warning mechanism to prevent the abandonment of children with disabilities and providing them with community-based services and assistance with a view to eliminating institutionalization.
- Addressing the concern about the high number of orphans and vulnerable children who were deprived of a family environment and living in care institutions, including by ensuring adequate safeguards and clear criteria for determining whether a child should be placed in alternative care, establishing a system of foster care for children, and ensuring thorough and transparent periodic reviews of the placement of children in foster care and institutions.
- Addressing the concern about the recruitment of children into non-State armed groups, including by eliminating the social, economic and political marginalization of children and youth who belong to Muslim communities or to the Somali ethnic group.

#### *Persons with disabilities*

- Adopting a long-term strategy to raise awareness of and to combat discrimination against persons with disabilities, and ensuring that cases of discrimination against persons with disabilities could be brought before courts.
- Eliminating all forms of substituted decision-making regimes in relation to persons with disabilities, particularly those with intellectual and psychological disabilities, and replacing them with a supported decision-making system; and repealing legislation and abolishing practices allowing for the deprivation of legal capacity on the basis of impairment.
- Addressing the concerns about the institutionalization of persons with disabilities, including by adopting a strategy for the de-institutionalization of such persons and by launching a comprehensive strategy to make available community based services to all persons with disabilities in need of such services.





### *Indigenous peoples*

- Addressing the concerns that activities such as projects to develop, conserve or exploit indigenous ancestral land or its natural resources had not been undertaken with the free, prior and informed consent of the indigenous communities.
- Ensuring the legal acknowledgement of the collective rights of the Sengwer, the Endorois, the Ogiek and other indigenous peoples to own, develop, control and use their lands, resources and communal territories according to customary laws and traditional land-tenure systems and to participate in the exploitation, management and conservation of the associated natural resources.
- Preventing, investigating, prosecuting and sanctioning acts threatening the physical security and property of the Sengwer, the Endorois, the Ogiek and other indigenous peoples.

### *Refugees, asylum seekers and internally displaced persons*

- Ensuring the protection of asylum seekers and refugees by, inter alia, continuing to partner with international humanitarian agencies to establish and maintain sufficient capacity for refugees and asylum seekers in reception facilities and by providing refugees and asylum seekers with adequate food, shelter and health services.
- Ensuring equal access to education through the full integration of refugees and asylum seekers into national education policies, in accordance with the 2017 Djibouti declaration on refugee education.
- Preventing and combating sexual and gender-based violence in camps for internally displaced persons and refugees.

### *Stateless persons*

- Accelerating efforts to address statelessness, including by awarding citizenship to all Nubians who were residing in Kenya on the date of independence and to their descendants.
- Addressing the concerns that many women and girls remained stateless or faced challenges in the enjoyment of their right to nationality, and that asylum-seeking and stateless women married to Kenyan men faced difficulties in obtaining citizenship for themselves and their children.