

**REPUBLIC OF KENYA**



**COMBINED REPORT OF**

**THE 12<sup>TH</sup> AND 13<sup>TH</sup> PERIODIC REPORTS ON THE AFRICAN CHARTER ON**  
**HUMAN AND PEOPLES' RIGHTS**

**AND**

**THE INITIAL REPORT ON THE PROTOCOL TO THE AFRICAN CHARTER**  
**ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN**  
**AFRICA**

**APRIL, 2020**

## TABLE OF CONTENTS

<b>LIST OF ABBREVIATIONS AND ACRONYMS</b>	3
<b>List of Tables</b>	4
<b>List of Figures</b>	4
<b>Introduction</b>	5
<b>Article 2: Prohibition of Discrimination</b>	12
<b>Article 5: Right to dignity, prohibition of torture and slavery</b>	19
<b>Article 7: Right to a fair trial</b>	23
<b>Article 8: Freedom of Conscience and Religion</b>	24
<b>Article 9: Freedom of Information and Expression</b>	25
<b>Article 10: Freedom of Association</b>	27
<b>Article 11: Freedom of Assembly</b>	28
<b>Article 12: Freedom of Movement</b>	29
<b>Article 13: Right to Participate in Government</b>	30
<b>Article 14: Right to property</b>	31
<b>Chapter 3</b>	32
<b>Economic, Social and Cultural Rights</b>	32
<b>Article 16: The Right to Health</b>	37
<b>Article 17: The Right to Education and culture</b>	40
<b>Right to take part in cultural life</b>	43
<b>Article 18: Right to family and Rights of women, children and Persons with Disabilities</b>	44
<b>Article 19: Equality of the People</b>	48
<b>Article 20: Right of peoples to existence and self determination</b>	50
<b>Article 21: Right to free disposal of wealth and natural resources</b>	50
<b>Article 22: Right of Peoples to Economic, Social and Cultural Right to Development</b>	51
<b>Article 23- Right to National and International Peace and Security</b>	57
<b>Article 24: Right to a general satisfactory environment favorable for development</b>	58
<b>Article 25: Duty to Promote Awareness of the Charter</b>	59
<b>Article 26 Independence of the Courts</b>	59
<b>Articles 27, 28 and 29: Duties of the Individual</b>	60

<b>Cooperation with the Commission .....</b>	<b>60</b>
<b>PART B: MAPUTO PROTOCOL</b>	
<b>Article 14: Health and Reproductive Rights .....</b>	<b>74</b>
<b>Articles 13, 15, 16 &amp; 17: Economic, Social Welfare Rights .....</b>	<b>77</b>
<b>Article 10: The Right to Peace.....</b>	<b>80</b>
<b>Article 11: Protection of women in armed conflicts .....</b>	<b>82</b>
<b>Articles 20-24: Rights of specially protected women’s groups .....</b>	<b>84</b>

## **LIST OF ABBREVIATIONS AND ACRONYMS**

ABMT	Appropriate Building Materials and Technologies
AGPO	Access to Government Procurement Opportunities
BIA	Bridge International Academy
BBP	Better Business Practices
CAJ	Commission on Administrative Justice
CAM	Court Annexed Mediation
EARCs	Education Assessment and Resource Centres
ECDE	Early Childhood Development Education
FGM	Female Genital Mutilation
GOK	Government of Kenya
HRDs	Human Rights Defenders
IOCD	International and Organized Crimes Division
IPOA	Independent Policing Oversight Authority
ISSB	Interlocking Stabilized Soil Blocks
KNCHR	Kenya National Commission on Human Rights
KENHA	Kenya National Highway Authority
KeRRA	Kenya Rural Roads Authority
KURA	Kenya Urban Roads Authority
MDAs	Ministries, Departments and Agencies
NEMA	National Environment Management Authority
NGAAF	National Government Affirmative Action Fund
NHIF	National Hospital Insurance Fund
NPS	National Police Service
OAG& DOJ	Office of the Attorney General& Department of Justice
ODPP	Office of the Director Public Prosecution
PWD	Persons with Disabilities
UPR	Universal Periodic Review
SGBV	Sexual Gender Based Violence

## **List of Tables**

Table 1: Distribution of population by sex per county.....	7
Table 2: Summary Report for Court Annexed Mediation as at 30 <sup>th</sup> June 2019.....	16
Table 3: Number of Complaints received by IPOA from 2012-2019.....	20
Table 4: Interns engaged by Public Institutions in FY 2018/2019.....	39
Table 5 Health sector budget allocations for National and County Governments.....	40
Table 6: Number of Persons who have Received Support from Cash Transfer Programs Since 2016.....	53
Table 7: Judiciary Annual Budget 2014-2020.....	63

## **List of Figures**

Figure 1: Children orphaned by HIV/AIDS in Kenya.....	43
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## Introduction

1. The Government of Kenya (GOK) submits a single Report encompassing the 12<sup>th</sup> and 13<sup>th</sup> combined periodic Reports on the African Charter on Human and Peoples' Rights (the African Charter), and the Initial Report on the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol). The submission of the Report is a reflection of Kenya's commitment to honour its various regional human rights obligations. During the review period, the GOK has placed remarkable emphasis on the continued implementation of the Constitution, the achievement of Kenya's Vision 2030, the Sustainable Development Goals and African Union's Agenda 2063 as solutions for improving the human rights situation on the ground.
2. The present Report was coordinated and compiled by the Office of the Attorney General and Department of Justice in collaboration with the Ministry of Public Service and Gender, in conformity with the procedures laid out in Article 62 of the African Charter and 26(1) of the Maputo Protocol and the *Guidelines for State Reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*.
3. The Report provides information on the legislative, policy, judicial, programmatic and other measures taken to improve the enjoyment of all human rights in Kenya. The Report further outlines the replies to the concluding observations adopted by the African Commission on Human and Peoples' Rights on Kenya's last periodic Report. For ease of reference, the replies to the concluding observations are incorporated as integral components of the Report. Finally, the Report also highlights the challenges faced in the implementation of some of the human rights during the reporting period.
4. The Report is divided into 2 Parts. **Part A** deals with the African Charter and comprises 3 Chapters. Chapter 1 outlines the current background information on the country and the ratification of treaties. Chapter 2 of the Report details the progress made in the implementation of the civil and political rights, and Chapter 3 provides information on the status of the implementation of economic, social and cultural rights. **Part B** presents the Initial Report on the legislative and other measures taken to implement the Maputo Protocol.
5. In March 2019, The GOK set up a National Committee on International and Regional Human Rights Obligations to provide a comprehensive, efficient and sustainable approach to reporting and follow-up. The Committee draws its members from key implementing ministries and national human rights institutions. The objective of the Committee is to systemize and rationalize the preparation of reports to regional and international human rights mechanisms, coordinate effective national follow-up on recommendations and facilitate all other forms of engagement with human rights organizations.
6. The Report has been prepared through wide consultation among Government Ministries Departments and Agencies namely: Ministry of Labour and Social Protection, Ministry of Agriculture, Livestock and Fisheries, Ministry of Foreign Affairs, State Department of Housing, State Department of Gender, Ministry of Education, State Department of Public

Service, Office of the Director of Public Prosecutions, Kenya National Bureau of Statistics, the Judiciary, Independent Policing Oversight Authority, National Legal Aid Service and the Public Service Commission; National Human Rights Institutions namely: Kenya National Commission on Human Rights, National Gender and Equality Commission and the Commission on Administrative Justice; and Civil Society Organizations namely the Independent Medico Legal Unit (IMLU), FIDA-Kenya, IPAS Africa Alliance, Article 19, ICJ-Kenya, Human Rights Defenders Coalition, Kenya Human Rights Commission, East Africa Civil Society Organizations' Forum, Each Rights, Stop the Traffic and FAWE.

7. Kenya submits this report within the backdrop of the COVID-19 pandemic. As Africa and the world grapple and struggle to control the virus, its impact not only on human life but also invariably on the protection and promotion of economic and social rights over the months and years ahead is evident. It is imperative that Africa marshals all its resources to respond to this unprecedented challenge and work in close coordination each other, the World Health Organization, other human rights organizations and the international community to prepare for, respond to and recover from the Coronavirus scourge, focusing particularly on the poorest, marginalized and vulnerable populations.

## “PART A” Chapter 1

### COUNTRY BACKGROUND AND NORMATIVE FRAMEWORK

8. The country background, constitutional, political and institutional frameworks remain relatively the same as in the previous reports except in the following areas:
9. **Population:** The 2019 Kenya Population and Housing Census conducted on 24<sup>th</sup> /25<sup>th</sup> to 31<sup>st</sup> August 2019 revealed that the total enumerated population now stands at **47,564,296**. Of these 23,548,056 were Males, 24,014,716 were Females and 1,524 were Intersex. The population has grown to 47.6 Million in 2019 from 37.7 Million in 2009. The average Household Size has declined to 3.9 in 2019 from 4.2 in 2009.

#### 10. Distribution of population by counties:

**TABLE 1: DISTRIBUTION OF POPULATION BY SEX PER COUNTY<sup>1</sup>**

COUNTY	SEX			TOTAL
	Male	Female	Intersex	
National Population	23,548,056	24,014,716	1,524	47,564,296
Mombasa	610,257	598,046	30	1,208,333
Kwale	425,121	441,681	18	866,820
Kilifi	704,089	749,673	25	1,453,787
Tana River	158,550	157,391	2	315,943
Lamu	76,103	67,813	4	143,920
Taita/Taveta	173,337	167,327	7	340,671
Garissa	458,975	382,344	34	841,353
Wajir	415,374	365,840	49	781,263
Mandera	434,976	432,444	37	867,457
Marsabit	243,548	216,219	18	459,785
Isiolo	139,510	128,483	9	268,002
Meru	767,698	777,975	41	1,545,714
Tharaka-Nithi	193,764	199,406	7	393,177
Embu	304,208	304,367	24	608,599
Kitui	549,003	587,151	33	1,136,187
Machakos	710,707	711,191	34	1,421,932

<sup>1</sup>Source: 2019 Kenya Population and Housing Census, Volume I: Population by County



Makueni	489,691	497,942	20	987,653
Nyandarua	315,022	323,247	20	638,289
Nyeri	374,288	384,845	31	759,164
Kirinyaga	302,011	308,369	31	610,411
Murang'a	523,940	532,669	31	1,056,640
Kiambu	1,187,146	1,230,454	135	2,417,735
Turkana	478,087	448,868	21	926,976
West Pokot	307,013	314,213	15	621,241
Samburu	156,774	153,546	7	310,327
Trans Nzoia	489,107	501,206	28	990,341
Uasin Gishu	580,269	582,889	28	1,163,186
Elgeyo/Marakwet	227,317	227,151	12	454,480
Nandi	441,259	444,430	22	885,711
Baringo	336,322	330,428	13	666,763
Laikipia	259,440	259,102	18	518,560
Nakuru	1,077,272	1,084,835	95	2,162,202
Narok.	579,042	578,805	26	1,157,873
Kajiado	557,098	560,704	38	1,117,840
Kericho	450,741	451,008	28	901,777
Bomet	434,287	441,379	23	875,689
Kakamega	897,133	970,406	40	1,867,579
Vihiga	283,678	306,323	12	590,013
Bungoma	812,146	858,389	35	1,670,570
Busia	426,252	467,401	28	893,681
Siaya	471,669	521,496	18	993,183
Kisumu	560,942	594,609	23	1,155,574
Homa Bay	539,560	592,367	23	1,131,950
Migori	536,187	580,214	35	1,116,436
Kisii	605,784	661,038	38	1,266,860
Nyamira	290,907	314,656	13	605,576
Nairobi City	2,192,452	2,204,376	245	4,397,073

11. **Country's Economic Performance:** Good economic policies resulted in a 6.3 per cent expansion of the Gross Domestic Product (GDP) in 2018 as compared to 4.9 percent in 2017. The growth was attributable to increased agricultural production, accelerated manufacturing activities, sustained growth in transportation and vibrant service sector activities. Agricultural activities benefitted from sufficient rains that were well spread throughout the country. Similarly, the increased precipitation was a significant boost to electricity generation and consequently favorable to growth during the review period. The Agriculture, Forestry and Fishing sector growth accelerated from a revised growth of 1.9 per cent in 2017 to 6.4 per cent in 2018. The manufacturing sector expanded by 4.2 per cent compared to a revised growth of 0.5 per cent in 2017 mainly buoyed by increased agro-processing during the review period. Other sectors that grew notably in 2018 include Electricity Supply, Transportation and Storage, Information and Communication Technology, Accommodation and Food Services at 10.5, 8.8, 11.4, 16.6 per cent, respectively in 2018. The growth realized was anchored on a relatively stable

macroeconomic in 2018. Inflation remained low at 4.7 per cent in 2018 compared to 8.0 per cent in 2017 majorly as a result of considerable declines in prices of food after the shortage experienced in 2017. The current account deficit narrowed to stand at Kshs. 441.8 billion in 2018 compared to Kshs. 503.4 billion in 2017 mainly due to a faster growth of imports of goods and services.

12. **Employment, Earnings and Consumer Prices:** The economy created 840,600 new jobs in 2018. The informal sector, which accounted for 83.6 per cent of the total employment created 762,100 new jobs in the period under review. The number of persons engaged, excluding those in rural small-scale agriculture and pastoralist activities rose by 5.0 per cent to 17.8 million persons in 2018. Employment in the public sector went up from 833,100 persons in 2017 to 842,900 persons in 2018. The private sector which accounted for 69.5 per cent of the total employment grew by 3.0 per cent in 2018. Wage employment in the modern sector increased from 269,950 persons in 2017 to 276,510 persons in 2018. The total number of self-employed and unpaid family workers within the modern sector rose from 139,400 persons in 2017 to 152,200 persons in 2018. Overall nominal wage bill for public and private and sector rose from Kshs. 1,817.3 billion in 2017 to Kshs. 2,010.2 billion in 2018. Similarly, annual real average earnings per person increased from Kshs. 364,313.4 to Kshs. 376,080.6 over the same period. Inflation as measured by Consumer Price Index decreased from 8.0 per cent in 2017 to 4.7 per cent in 2018.
13. **International Trade and Balance of Payments:** The value of imports rose by 2.0 per cent to Kshs. 1,760.2 billion in 2018, while total export earnings rose by 3.2 per cent to Kshs. 612.9 billion, over the same period. In 2018, trade balance widened by 1.4 per cent to a deficit of Kshs. 1,147.3 billion from a deficit of Kshs. 1,131.5 billion in 2017. The leading exports were tea, horticulture, articles of apparel and clothing accessories; coffee, titanium ores and concentrates, collectively accounting for 62.0 per cent of the total domestic export earnings. The export-import ratio improved slightly from 34.4 per cent in 2017 to 34.8 per cent in 2018. The Kenyan Shilling strengthened against the US dollar to an average exchange rate of Kshs. 101.29 in 2018 compared to Kshs. 103.41 in 2017. The overall balance of payments position improved to a surplus of Kshs. 105.8 billion in 2018 from a deficit of Kshs. 16.9 billion in 2017. The current account balance improved by 12.2 per cent from a deficit of Kshs. 503.4 billion in 2017 to a deficit of Kshs. 441.8 billion, in 2018. Net financial inflows grew by 21.6 per cent from a surplus of Kshs. 546.7 billion in 2017 to Kshs. 664.6 billion in 2018, mainly driven by a 40.5 per cent increase in inflows of foreign direct investment.
14. These improvements reflect the relentless efforts by the GOK to put in place effective policies and strategies in the knowledge that the fulfilment of our regional and international human rights obligations would contribute to peace, prosperity, and security in Kenya.
15. Information on all legislative, policies, judicial, budgetary, programmatic, institutional and other measures taken to give effect to the Charter and the Protocol from 2016 to 2019 are provided in Chapter 2 and Chapter 3 of the Report.

## Ratification of Regional/International Human Rights Instruments

Concluding observation: Kenya should make a declaration under Article 34 (6) of the African Court Protocol and ratify the human rights instruments:

16. Kenya is state party to a majority of the core regional and international human rights instruments. The Treaty Making and Ratification Act, 2012 gives effect to Article 2 (6) of the Constitution by providing the processes necessary for the making and ratification of treaties. The laid down processes are quite elaborate requiring extensive public participation and stakeholders' education and consultations. Further, Parliament, which enacts the treaties/Protocols as part of Kenya's laws, must be sensitized on the specific instruments to stimulate greater approval of the instruments. In addition, since ratified treaties form part of Kenyan laws, the Government must ensure that all mechanisms for implementation are in place to meaningfully give effect to the ratified human rights instruments. All these processes take time, which then delays the ratification of treaties
17. Nonetheless, during the review period, various treaties and protocols have been ratified including the African Continental Free Trade Area Agreement and the Tripartite Free Trade Area Agreement in 2018. Kenya ratified the Marrakesh treaty in 2017, to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled.
18. During Kenya's 3<sup>rd</sup> Cycle Universal Periodic Review, the Government supported the recommendation to accede to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The GOK has also commenced the process of ratifying the Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons in Africa and the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities. These treaties offer additional guarantees to vulnerable groups in society. By the time of writing this report, the Office of the Attorney General and Department of Justice had embarked on the sensitization of government officers and Members of Parliament on the provisions of African Charter on Democracy, Human Rights and Elections whose ratification has already been approved by the Cabinet.
19. While consideration is being made to the ratification of several other regional and international human rights treaties/Protocols, the GOK has already put in place a legislative regime to guarantee the protection of rights under the specified instruments. For example, though Kenya has not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography signed in September 2000, there is no gap with regard to the protection of children's rights. The Children Act, 2001 is under review to strengthen its protective capacity. The Counter Trafficking in Persons Act, 2010 prohibits trafficking in children and classifies child labour, child marriage and sexual exploitation as a form of exploitation. The Victim Protection Act, 2014 provides protection for victims of crime and abuse of power and provides special protection to vulnerable victims such as children. The Employment Act,

2007 provides for full payment of female employees during their three months of maternity leave. With regard to the International Convention on the Rights of Migrant Workers, it is noteworthy that migrant workers are recognized under the Employment Act, 2007. The Act promotes and guarantees equality of opportunity for migrant workers or a member of the family of the worker, lawfully within Kenya. Employers are expected to strive to eliminate discrimination in any employment policy or practice.

## **CHAPTER 2**

The following is a progress report on the implementation of the specific articles of the Charter and replies to the 2015 concluding observations:

## **Article 1: Legislative or other measures to give effect to the rights, freedoms and duties enshrined in the Charter.**

20. All legislative and other measures taken to ensure the full realization of Chapter 1 of the Charter, within the reference period, are incorporated in the body of the Report.

## **Civil and Political Rights**

### **Article 2: Prohibition of Discrimination**

#### **Concluding observation: Enact a comprehensive equality and non-discrimination law;**

21. Equality for all and non-discrimination are some of the important national values and principles of governance outlined in Article 10 of the Constitution that must guide all state officers, public officers and all persons whenever they apply or interpret the Constitution, enact laws or develop and implement public policies and decisions. While Kenya does not have a specific equality and non-discrimination law, the Government has opted to incorporate the principles into various pieces of legislation, policies, and other interventions in order to afford protection to all persons. The measures are presented herein as follows:

#### **Legislation**

1. The National Cohesion and Integration Act 2009 prohibits discrimination on the grounds of ethnicity, race, colour, religion, nationality or origin in both the private and public spheres of national life. In general, it provides protection across a range of areas of life such as in employment, provision of services by public authorities licensing or planning authorities, application for membership into organizations,
2. The Community Land Act, 2016 prohibits all forms of discrimination with regard to community land. It enables communities to secure the formal legal recognition of their land rights;
3. The Land Laws (Amendment) Act, 2016 addresses the issue of historical land injustices including the remedies of restitution and compensation, which are available upon successful adjudication of claims. The Act also provides for equitable access to land and eliminates gender discrimination in land ownership;
4. The Natural Resources (Benefit Sharing) Bill, 2018 is currently under review by the Senate Committee on Land, Environment and Natural Resources. The proposed legislation seeks to provide a framework for the establishment and enforcement of a system of benefit sharing between resource exploiters, the national and county governments and the local communities to ensure that the exploration and extraction of natural resources does not lead to further socio-economic marginalization or impoverishment for the communities that own or occupy land; The Persons with Disability Act 2003 is being repealed by the Persons with Disability Bill, 2018, to enhance equalization of opportunities, habilitation and rehabilitation of Persons with Disabilities;

5. The Mental Health Amendment Bill, 2018 amends the 1989 Mental Health Act to, among other factors, get rid of the stigma associated with mental illnesses, streamline and enhance the coordination of mental health issues for the protection of mental health persons. The Bill guides national and county governments in promoting community mental health by providing for the provision of the requisite resources and development of appropriate programmes and other administrative actions;
6. The Law of Succession Act 1981, Chapter 160. Revised Edition 2012, recognizes that men and women have the equal right to inherit property. The terms of the Act permit women to inherit. The Act treats male and female children the same in terms of their right to inherit property from their parents. Widows are permitted to inherit property and are given priority over brothers or other male relatives to become the administrators of the estates of their husband's guarantees equal inheritance rights for male and female children;
7. Political Parties Act, 2011 contains a number of provisions which seek to ensure that parties reflect Kenya's diversity. Among the conditions for registration of a political party are that the membership of the party must reflect regional and ethnic diversity, gender balance, and must include representatives of minorities and marginalized groups.

### **Budgetary, administrative and other measures**

- i. The National Cohesion and Integration Commission (NCIC) conducted an Ethnic and Diversity Audit of all public institutions, which revealed the skewed dominance of the public service by Kenya's largest communities. The audit has influenced a more diversified public service at both national and county levels. County governments have explicitly targeted specific minority communities for recruitment by exemplifying the same in newspaper recruitment advertisement. The National Police Service has developed recruitment guidelines to comply with the Constitution 2010 and the NCIC Act on inclusion. As a result, the recent police recruitments took particular consideration to ensure inclusion of minorities.
- ii. Devolution is promoted, as a strategy for balanced social and economic development. It enhances the participation of the people in making decisions on issues affecting them and ensures equitable distribution of resources. The revenue raised nationally is divided on the basis of 8.45 percent for national government, 15 percent for county government and 0.5 percent for the equalization fund. To empower the devolved units to comply with the existing laws on non-discrimination in employment, the National Government developed a hand book prescribing the minimum standards the devolved units should apply in order to comply with the existing laws. The handbook further contains the best practice and principles which when applied ensure there is inclusion in employment at the county level.
- iii. An Equalization Fund was set up to provide basic services to marginalized areas to the extent necessary to bring the quality of those services to the levels generally enjoyed by citizens in the rest of the country. The fund received Kshs. 6 Billion (Approx. USD 58.2 Million) in 2016/2017, Kshs. 7.7 billion (Approx. USD 74.7 Million) in 2017/2018 and 4.4 Billion (Approx. USD 4.7 Million) the 2018/2019 year.

- iv. The National Gender and Equality Commission is in the process of auditing and monitoring affirmative action in the devolved governments on the access to employment, education, health and information by women, persons with disabilities, ethnic and other minorities and marginalized communities. The outcome of the audit will be used to identify areas where there are gaps in service delivery for further redress.

**Concluding observation: Kenya should include in its next Report, information in respect of legal procedures and available remedies on the civil and political rights of population, and also include civic education in school curricula if this is not already done.**

1. The Constitution not only recognizes the notion of effective remedies for violations of constitutional rights, but also empowers the judiciary with wide powers to provide redress or relief for violation of rights. Article 22 reads “*Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened*”. Article 23 provides the High Court with the jurisdiction to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Right. The appropriate remedies which can be ordered by the Court include: a declaration of rights; an injunction; a conservatory order; a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights; an order for compensation; and an order for judicial review. To effectively advance the realization of rights for persons seeking judicial redress and relief, the Chief Justice developed the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. The use of the Rules enhance access to justice for all persons seeking to enforce their rights against the State or any other person, whether natural or corporate.
2. In the *Tracy Wangechi Mugambi v Windsor Golf Hotel and Country Club [2019] eKLR* case, the Employment and Labour Court directed the Windsor Hotel and Country Club to pay a former employee Kshs. 2.5 million (approx. USD 25000) for sacking her over a pregnancy. The Court held that Ms. Tracy Wangechi Mugambi was discriminated against when she was sacked just after resuming duty from maternity leave. The Judge relied on Article 27(4) of the Constitution, which is explicit that no one should be discriminated against on account of pregnancy.
3. Constitutional Human Rights Commissions are additional avenues where aggrieved persons can seek remedies. The Kenya National Commission on Human Rights, the National Gender and Equality Commission and the Commission on Administration of Justice hold constitutional and legal responsibilities to investigate complaints on human rights violations and take appropriate action. The Commissions frequently engage with the communities to create civic awareness on topical human rights issues and empower the people to claim their rights.
4. Civic education in Kenya has always been carried out and is included in the education curriculum. The social studies in the primary schools level entails civic education which has sufficiently highlighted some of the basic rights that a citizen is entitled thus giving an impetus to the understanding and appreciation of the existence of human rights.

### **Article 3: Equality before the Law**



5. Article 27(1) of the Constitution espouses the principle that “*every person is equal before the law and has the right to equal protection and equal benefit of the law*”. To fully ensure the meaningful protection of the law, for all, without discrimination, the judiciary continues to develop transformative strategies to promote effectiveness and efficiency in the administration of justice, access to justice and judicial performance.
6. The Judicial Service Act ensures that the Judiciary facilitates access to justice to all Kenyans guided by considerations of social and gender equity and the need to remove any historical factors of discrimination.
7. The “**Judiciary blueprint, Sustaining Judiciary Transformation: An Agenda for Service Delivery (2017-2021)**” was launched on 26<sup>th</sup> January 2017. The Agenda outlines various interventions to enhance access to justice for all, improve integrity and ethics, embrace and utilize technology, and provide leadership and governance. Of particular importance is the improvement of physical access to courts, with the goal of enhancing the dispensation of justice by bringing judicial services closer to the people.
8. Additionally, in 2017, 39 High Courts were established in 38 of the 47 counties. Plans are also ongoing to establish at least one Magistrates Court in each of the 290 sub-counties. In the financial year 2017/2018, 8 new courts buildings were completed and 54 courts countrywide were undergoing rehabilitation. In 2018/2019, 3 new court buildings were completed and 57 courts (15 High Courts, 42 Magistrates’ Courts) rehabilitated.
9. The Judiciary has been promoting Alternative Dispute Resolution (ADR) mechanisms with an aim of enhancing access to justice in line with the provisions of Article 159 of the Constitution. The Court Annexed Mediation (CAM) project commenced in 2015 with a framework to roll out of the pilot project to all counties in a few years. The pilot phase was in the Commercial and Family Division of the High Court in Nairobi. As at July 2019, Mediation has now expanded to 12 other Counties; Kakamega, Nyeri, Kisii, Kisumu, Mombasa, Nakuru, Eldoret, Garissa, Machakos, Embu, Kilifi and Nyamira. Since commencement of the CAM project, 3,517 matters have been referred to Mediation, 2,593 concluded, with 1,279 settled successfully at a settlement rate of 50 per cent. The Mediation Accreditation Committee has so far accredited 645 mediators who are currently handling 411 commercial matters<sup>2</sup>.

**Table 2: Summary Report for Court Annexed Mediation as at 30<sup>th</sup> June 2019<sup>3</sup>**

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<sup>2</sup>State of the Judiciary and Administration of Justice Annual Report 2018/2019, accessed at [www.judiciary.go.ke](http://www.judiciary.go.ke)

<sup>3</sup>Source: State of the Judiciary and Administration of Justice Annual Report 2018/2019



	<b>Milimani Stations (Nairobi)</b>	<b>Replication Stations Combined</b>	<b>All the Court Stations (Nairobi + Replication Stations)</b>
Total Referred	1,836	1,681	3,517
Total Concluded Matters	1,508	1,085	2,593
Total No. of Pending Matters	328	596	924
No. of Settlement Agreements	708	571	1279
Settlement Rate	47%	52.6%	<b>50%</b>
No. of Non-Settlements	563	253	816
Non-Settlement Rates	37.3%	23.3%	<b>30.30%</b>
No. of Non- Compliance Certificates Filed	148	162	310
Non- Compliance Rate	9.8%	14%	11.90%
No. of terminated matters	89	99	188
Termination Rates	5.9%	9.1%	7.50%
<b>Total Value of Matters in Mediation</b>	<b>33,582,282,989</b>	<b>3,314,447,976.96</b>	<b>36,896,730,965.96</b>
<b>Total Value of Matters with settlement agreements</b>	<b>5,803,910,599</b>	<b>1,439,682,233.9</b>	<b>7,243,592,832.9</b>

10. Further, the Constitution recognizes the significance of both the formal justice system and the richness of traditional systems that have been used in Kenya for so many years by the various communities. The use of ADR can reduce the time it takes to resolve disputes, and lessen the backlog of cases experienced by the courts. To this end in 2016, a Taskforce on Alternative Systems of Justice was established to examine the traditional, informal and other mechanisms for delivery of justice with a view to enhancing alternative dispute resolution mechanisms for improved sustainable development, economic growth and access to justice for Kenyan citizens. The Taskforce has developed a draft Alternative Justice Systems Policy that is currently undergoing stakeholders' consultations and public participation.
11. Additionally, the Kenyan courts continue to declare void any law, policy or administrative action that is inconsistent with the constitutional principle of equal protection of the law, without discrimination. A Judgment delivered by the High Court in *Petition no. 484/2014, L.N.W v The Hon. Attorney General and others, eKLR, on 26<sup>th</sup> May 2016*, declared Section 12 of the Births and Deaths Registration Act unconstitutional as being discriminatory against children born outside marriage. The petition concerned the rights of children born outside marriage. The issues in the matter revolved around the registration of births and the circumstances under which the name of the biological father should be inserted in the birth certificate of the child. The petition challenged section 12 of the Births and Deaths Registration Act, which prohibited a mother from including the biological father's name on a birth certificate without the man's consent. The Court declared that every child has a right to have the name of his or her father on the birth certificate and the consent of the father would not be required as has been the case before.

12. Access to justice is an enabler of the sustainable development goal and essentially of leaving no one behind. Access to justice is an important element that can be used to avoid violence and conflict. The judiciary in Kenya has established Court Users Committees as a transformational vehicle for improving public participation in judicial processes because they provide an opportunity to make the justice system in Kenya more participatory and inclusive and brings it closer to the people, especially the poor, and the vulnerable in society. The stakeholders in the committees include the public, Faith Based Organizations, Civil Society Organizations involved in Paralegal Networks, Representative of Special Interest Groups, The Witness Protection Agency, Children, The Law Society of Kenya, National Legal Aid Board, the County Government, the National Police Service, the county administrations, Representatives of the youth and women. The organizations all represent certain segments of the society and are expected to articulate their concerns on accessing justice to the fore.
13. Prior to 2014, intersex persons suffered great stigma and discrimination since they were not recognized either in law or in fact. The Persons Deprived of Liberty Act, enacted in 2014 provided a framework for the recognition of intersex persons and for their humane and dignified treatment while in custody.
14. The Kenyan courts have also recognized and protected the rights of intersex children. In the judgment delivered on 5th December 2015 in *Petition No.266 of 2013, Baby A Vs Attorney General and others, eKLR*- the judge declared that it is the duty of the government to protect the rights of intersex babies and persons by providing a legal framework to address issues relating to them, including registration under the Registration of Births and Deaths Act, medical examination and tests, and corrective surgeries. The Court directed the Government to work towards an appropriate legal framework governing issues related to intersex children based on internationally acceptable guidelines. Most revolutionary, in 2019 the Kenya National Population census included a “intersex” gender marker. Following the recommendations of a Task force set up by the Attorney General to implement the judgment in *Petition No.266 of 2013, Baby A Vs Attorney General and others*. The Attorney General has already established the Intersex Persons Implementation Coordination Committee to ensure that all the recommendations of the Intersex Taskforce are implemented including the review of legislation and policies to address the plight of intersex people in Kenya.

#### **Article 4: The right to life and personal integrity**

**Concluding observation: Kenya should abolish the death penalty and revise the criminal code accordingly.**

15. Article 26 of the Constitution guarantees the right to life. While the death penalty remains in our statute books, Kenya has had a non-execution policy since 1987. Death penalty sentences are routinely commuted to life imprisonment. On 14<sup>th</sup> December, 2017 the Supreme Court of Kenya, in *Francis Karioko Muruatetu and Wilson Thirimbi Mwangi vs Republic & 6 others, eKLR* declared the mandatory nature of the death sentence as provided for under Section 204 of the Penal Code unconstitutional. A task force set up to develop the necessary framework for the implementation of the court’s decision has recommended the following:

- a) A legal framework to deal with sentence re-hearing cases similar to that of the Petitioners;
  - b) A guide to death sentencing;
  - c) Parameters of what ought to constitute life imprisonment, and
  - d) Review and enactment of laws to give effect to the judgment.
16. However, while it is noted that the Court did not abolish the death sentence, the Taskforce has taken the bold step to recommend the abolition of the death penalty by proposing to categorize murder as Aggravated Murder; First Degree Murder; Second Degree Murder and Manslaughter. Aggravated Murder involves the ‘rarest of rare’ offences, with a recommendation that the offender is liable to life imprisonment with no parole and in the event that this recommendation is rejected by stakeholders, then, this is the only offence that could fetch the death penalty, at the discretion of the judge.
17. The judiciary is in the process of establishing an Implementation Committee under the auspices of the National Council on the Administration of Justice (NCAJ) that will be responsible for overseeing the re-sentencing process.
18. Kenya is largely considered a relatively safe country for persons with albinism within the region. Advocacy efforts have been highly successful in creating awareness disabling misconceptions that drive stigma and the demand for body parts of people with albinism. Any reports on attacks of persons with albinism are investigated and suspects prosecuted according to the laws of the Land.

**Concluding observations: In light of Kenya’s history of violence, Organised Crimes Division should be established in High Court, to provide a forum where perpetrators can be prosecuted and victims seek redress, including in relation to post-election violence of 2007 and 2008**

19. The Prevention of Organised Crimes Act was enacted in 2010. The objective of the Act is to enhance the prevention, investigation, and punishment of organized crimes in the country. The law spells out tough measures to deal with criminal gangs by imposing jail terms ranging from 14 years to life imprisonment for those found guilty. It provides a harsh penalty for anyone who fundraises, organizes or directs members of a criminal gang to commit a serious crime and/or for those taking or administering oath as they are liable upon conviction to life imprisonment.
20. In 2015, the Kenyan Judiciary commenced discussions on the establishment of an International and Organized Crimes Division (IOCD) within its High Court. The IOCD was to have jurisdiction over international crimes as defined by the Rome Statute and the Kenyan International Crimes Act (war crimes, crimes against humanity and genocide). The IOCD would also handle transnational crimes, such as organized crime, piracy, terrorism, wildlife crimes, cybercrime, human trafficking, money-laundering and counterfeiting. Violence related to or arising out of elections such as looting and incitement to violence as well as ethnic and communal violence will also come under the new Court’s jurisdiction. The setting up of the Court is still under discussions by various stakeholders.

21. In 2008, The Director of Public Prosecution established a Multi-Agency Taskforce to undertake a countrywide audit of all the local post-election violence (P.E.V) cases under investigation and pending before court with a view to recommending ways and means of ensuring their fair and speedy determination. However, the Taskforce faced some challenges in recommending some of the cases for prosecution due to lack of sufficient evidence to sustain a conviction. The factors identified by the Task force as contributing to the dearth in evidence are summarized as follows: Complainants identified their attackers as belonging to certain communities because of language, but could not identify any particular individual; some complainants had been re-settled on their farms and they feared repercussions if they identified their neighbors as those who committed crimes against them. Other complainants had been compensated by the government and had left the areas where clashes occurred, hence they could not be traced. The files remain open and will be investigated and prosecuted where evidence is available.

## **Article 5: Right to dignity, prohibition of torture and slavery**

**Concluding observation: Ensure that the Office of the Director of Public Prosecution provides statistics as to how many cases referred to them by the IPOA have been prosecuted;**

22. Since the establishment of the Office of the Director Public Prosecution (ODPP) significant milestones have been registered in terms of prosecuting cases referred to them by other institutions of government. The Office has been made aware of the urgent need to collect and collate data or statistics relevant to their mandates such as to indicate tangible results or reports. Therefore, in compliance, the ODPP has established a specific office to handle matters on statistics.
23. The statistics on number of cases referred by Independent Policing Oversight Authority (IPOA) to ODPP for prosecution since 2015 stands at 140 cases. In this regard, the ODPP has managed to prosecute 41 cases and so far 99 cases are still pending direction on the appropriate steps to be taken. In order to boost efficiency and cordial working relations, a joint task between IPOA and ODPP for effective handling of cases has been established. Further, Standard Operating Procedures to deal with IPOA cases in regard to effective investigation and prosecution of cases has been developed.

**Concluding observation: Establish a database on torture-related complaints in order to determine the prevalence of torture in Police Stations;**

24. The need to provide an up to date data or statistics is crucial and the government has taken measures to encourage each institution to develop a database for storing essential information. The police stations have been equipped with the necessary facilities such as computers to enable them collect and store data online. Although the database on specific torture-related complaints has not been established, plans are underway to sensitize the National Police Service, the Courts, the ODPP and the IPOA on how to handle such matters.
25. Since its creation, IPOA has received complaints on abuse of office; arbitrary arrests and unlawful detention; corruption and extortion; unfair administrative action including dismissal, transfers, promotions and training; malicious prosecution and dissatisfaction with court processes; deaths; obstruction of justice; debts and loans; police assault; land issues, improper investigations; police harassment; police inaction; police misconduct; and police shooting.

**Table 3: Number of Complaints received by IPOA from 2012-2019<sup>4</sup>**

Financial Year	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	Jan-June 2019
No. of Complaints	594	860	1,792	2,529	2,267	1,836 (Till 30 <sup>th</sup> April 2018)	1,717

**Concluding observation: Effectively implement domestic laws and policies on bail, bond and sentencing to reduce overcrowding in prisons and resultant problems of violence and adverse health consequences;**

26. The preference for incarceration of pretrial suspects and accused persons as the proper form of punishment plays a big role in overcrowding of prisons. The Bail and Bond Policy Guidelines, developed by the Judiciary in 2015 provided an opportunity to resolve the problem of overcrowding in prisons. The Guidelines streamline and address disparities in bail and bond decision-making, with a view to enabling fair administration of bail and bond measures. They further facilitate effective inter-agency cooperation and coordination in bail and bond administration and importantly, enhance conformity with the internationally agreed minimum standards for arrested persons and persons held in detention.
27. To further decongest prisons the following measures have been put in place;
- Development of a Diversion Policy in 2019 to enable prosecutors to divert cases from the court process and allow matters to be settled out of court, on merit and through agreed structures;
  - Issuance of Community Service Orders for those sentenced to three years and below and those with a balance of three years and below left to serve;
  - Development of the Criminal Procedure (Plea Bargaining) Rules, 2018;
  - Development of a draft alternative justice systems policy to enhance the use of traditional and alternative dispute resolution mechanisms;
  - Engagement of the court users' committees so that cases are reviewed regularly and brought to a speedy conclusion;
  - The award of remission of sentences as provided by the law; and
  - Development of the Sentencing Policy Guidelines (2016), which provide that where the option of a non-custodial sentence is available, a custodial sentence should be

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<sup>4</sup>Source: IPOA Board End Term Report 2012-2018; IPOA Performance Report Jan-June 2019

reserved for a case in which the objectives of sentencing cannot be met through a non-custodial sentence.

28. To ensure the safety of those in custody, the prison authorities take steps to categorize offenders so that dangerous criminals are not placed in the same cells with petty offenders. Also, the government has invested in surveillance equipment to ensure that those in custody do not walk into the cells with any concealed weapon that might endanger the lives of other cellmates. Moreover, the prison authorities have undergone continuous training on conducting search before the inmates are locked in their cells.
29. Medical Health workers have been posted to all prisons in the Country to provide health services in prisons. Procurement of medical drugs and medical supplies for all the inmates is undertaken on time. The Kenya Prisons Service work very closely with all County Government with a view to strengthening support to Prisons health facilities in terms of commodity supplies, staffing and supervision.

**Concluding observation: Ensure speedy processes in the judicial system, and take appropriate measures to ensure strict respect of the 48 hours duration of police custody while reviewing the regime of pre-trial detention to comply with international standards such as the Commission's Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention (the Luanda Guidelines);**

30. Every pretrial detainee has the right to complain to the National Police Service, Kenya Prison Service, the Independent Policing Oversight Authority (IPOA), the Commission on Administrative Justice and the Courts about a violation or infringement of their rights. These institutions are mandated to comply with the provisions of the Constitution in safeguarding human rights and fundamental freedoms.
31. Measures taken by National Police Service (NPS) to ensure strict respect of the 24 hours rule on the duration of police custody include: the development of Service Standing Orders to guide police in their work and provide disciplinary control measures over errant officers and issuance of Police cash bails dependent on the gravity of the offence. Where the gravity does not warrant granting a cash bail, the investigating officer presents the suspects to court and at the ODPP's request for more time to complete investigations. It must be noted that it is up to the discretion of the courts to grant bail after reviewing all the factors. Indeed, in *Criminal Division, Misc. Criminal Application No.304 of 2016, Michael Rotich vs Republic of Kenya*, the High Court ruled it illegal for the police to detain suspects for more than 24 hours on the basis that they are conducting investigations. All accused persons had a right to have their cases determined expeditiously. The police should only arrest a person when they have *prima facie* evidence that an offence has been disclosed which can result in such person being charged with a disclosed offence or a holding charge of the likely offence being presented in court.
32. The Person Deprived of Liberty Act 2014 affirms the fundamental rights and freedoms of persons in police or prison custody. All persons deprived of liberty have the opportunity to communicate with any persons of his/her choice including an advocate. Persons in custody who feel their rights have been denied or violated may lodge complaints with the officer in charge of the facility, or



the relevant Cabinet Secretary. Recourse to the Commission on Administrative Justice and the Kenya National Commission on Human Rights is available.

**Concluding observation: Continue to ensure human rights training for the police and other law enforcement officers;**

33. The police and other law enforcement officers in Kenya routinely receive training on matters of human rights. The Kenya Police Training College (Kiganjo) has the mandate to train staff to the highest possible standards of competence and integrity and to respect human rights and dignity as provided for under Article 244 (d) of the Constitution. The societal dynamism has triggered changes on policing issues especially on a human rights' perspective. The State has endeavored to ensure development and implementation of a policy framework and strategy for restructuring of the National Police Service which brought together all the law enforcers under one umbrella for training. The police training manual incorporates human rights training. All officers from the lowest cadre to the highest cadre must undergo human rights training as part of the curriculum in the numerous training institutes. Human rights training are conducted from initial training to the highest senior training level. There are four training colleges that train officers on human rights.

**Concluding observation: Make use of the Luanda Guidelines while providing training to Police on Guidelines and adopting relevant laws and policies;**

34. The Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines) have been incorporated in several pieces of legislation and policies, which form key training materials for law enforcement officers. These include; the Constitution<sup>5</sup>, Persons Deprived of Liberty Act, 2014, Legal Aid Act, 2016, the Bail and Bond Policy Guidelines, 2015<sup>6</sup> and the Diversion Policy, 2019.

**Concluding observation: Extend access of legal services to suspects in Police Custody (specifically referring to the various ways of providing legal access as listed in Part 2.8 of the Luanda Guidelines.**

35. The National Legal Aid Service established by the Legal Aid Act, 2016 provides a framework through which legal services for persons in police custody and pre-trial detention are guaranteed. The Service is mandated to provide free legal assistance, which includes legal representation for accused persons and suspects who cannot afford it. The Service, which is managed by a Board, has the power to support legal aid providers, train persons in legal aid, educate the public on legal issues, and increase legal awareness. Only fully qualified lawyers and paralegals are retained by the Board to provide legal representation.
36. The GOK developed the National Action Plan on Legal Aid (2017-2022) with 8 strategic objectives. These are: to strengthen the framework for policies, laws and administrative processes that will ensure sustainable and quality access to justice to all; to provide quality, effective and timely legal assistance, advice and representation for the poor, marginalized and vulnerable; to

<sup>5</sup>Constitution of Kenya (2010) Article 49 on the Rights of Arrested Persons

<sup>6</sup>National Council on the Administration of Justice (2015) Bail and Bond Policy Guidelines; The main objective of these guidelines is to guide police and judicial officers in the application of laws that provide for bail and bond and to ensure that the bail and bond decision-making process complies with the requirements of the Constitution.

enhance access to justice through legal aid and awareness; to promote and institutionalize the paralegal approach in access to justice; to promote the use of Alternative and Traditional dispute resolution mechanisms; to establish an implementation, monitoring, regulatory and support framework; to allot fiscal, human and technical resources for legal aid and awareness services in Kenya and to undertake research to ensure evidence-based initiatives.

37. The *Persons Deprived of Liberty Act* 2014 affirms the rights of persons in police or prison custody to due process and the right to communicate privately with their advocate.

## **Article 6: Right to liberty and security of person**

38. Article 29 of the Constitution highlights the rights of every person to freedom and security, which include the right not to be deprived of freedom arbitrarily or without just cause. The writ of *habeas corpus* is available as a recourse for unlawful detention or imprisonment. The right to *habeas corpus* is a non-derogable right entrenched in the Constitution<sup>7</sup>. The High Court in the matter of ***Daniel Baru Nyamohanga & another v Director of Public Prosecutions & 2 others [2017] eKLR*** directed an order of *habeas corpus* to the OCS Kehancha Police Station to produce the person or the body of one Daniel Baru Nyamohanga before a Court of Law. The fact of the case was that Mr. Daniel Baru Nyamohanga and co-accused were arrested by police and held in custody at Kehancha Police Station. However, while other co-accused were arraigned in court, Mr Nyamohanga remained at the Kehancha Police Station and was not seen again. He was last seen by the Officer Commanding Station at Kehancha Police station.
39. There are options for families of victims of crimes to obtain monetary compensations. The Victim Protection Board (The Board) was established by section 31 (1) of the Victim Protection Act, Act No. 17 of 2014 pursuant to Article 50 of the Constitution. The Board operates the Victim Protection Trust Fund established in Section 27 of the Victim Protection Act, 2014. The Trust Fund provides, *inter alia*, for compensation to victims of offenses. According to section 26 of the Act, compensation must be ordered by the court alongside any other penalty that may be imposed upon the offender. Consequently, the Act only provides for compensation to victims after an accused person is convicted of an offence complained of by the victim. Draft Regulations to operationalise the Fund have been developed and are awaiting adoption by the National Assembly.

## **Article 7: Right to a fair trial**

40. The right to a fair trial is an absolute right under the Constitution<sup>8</sup>. In the case of *Joseph Ndungu Kagari vs. Republic [2016] eKLR (Criminal Appeal)* it was established that the appellant was put on his defence on a count he was not charged with nor entered a plea. On the other hand, the accused persons were unrepresented. In its determination, the appellate court found that the appellant and his co-accused were not afforded a fair trial and that the entire proceedings were a sham and gross violation of Constitutional provisions safeguarding a fair trial and the proceeding also violated the provisions of the Criminal Procedure Code. The appeal was upheld by the court.

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<sup>7</sup>Constitution of Kenya (2010), Article 25(d)

<sup>8</sup>Constitution of Kenya (2010) Article 50(4) states that evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice.



41. In analyzing the applicability or realization of the right to fair trial in Kenya, **the case of Robert Muli Matolo vs. Republic [2015] eKLR** provides a clear view of how the court applied Article 50 (4) of the Constitution of Kenya. The bone of contention was that the introduction by the prosecution of witness statements and exhibits that had not been supplied to the accused was against the appellant's constitutional right to a fair trial as envisaged under the Constitution. The Court held that 'the Bill of Rights which is enshrined in Chapter 4 of the Constitution is quite broad and not only includes the right to a fair trial but, *inter alia*, rights to life, right to equality and freedom from discrimination, right to human dignity, right to privacy, right to labour relations, right of an arrested person and right to access to justice. It follows then that while considering the application of each of the rights and freedoms as enshrined in the Bill of Rights, a court must broadly address its mind to what would hinder effective administration of justice. That is why each case must be considered on its own merits and circumstances. Whilst evidence obtained by torture, coercion and entrapment may be one of the pieces of evidence that may be envisaged under the provision that does not exclude the consideration of other material factors and circumstances of each given case'.
42. Legal assistance is a key element towards promoting access to justice for all persons. However, legal fees charged by lawyers remain prohibitive for many and impede access to justice. One measure taken by the GOK is the establishment of the Legal Aid Scheme under the Legal Aid Act No. 2 of 2016, which provides a framework through which free legal aid is made available to all indigent persons. The Legal Aid Act provides the legal authority for disbursement of government funds towards meeting the requirements of setting up a legal aid scheme. The Scheme is run by a Legal Aid Board. The Task force on Legal Sector Reforms recommended that extra points would be earned in the Continuing Professional Development Programme to encourage lawyers to take *pro bono* cases.

## **Article 8: Freedom of Conscience and Religion**

43. The Constitution of Kenya guarantees the right of religion and/or beliefs. There is no state religion in Kenya. Additionally, Article 32 of the Constitution 2010 acknowledges that every person has the right to freedom of conscience, religion, thought, belief and opinion. All religious organizations are registered as societies by the Registrar of Societies.
44. Kenya has a large number of well-established churches, mosques and temples which operate freely all over the country. The wave of Protestants and/or Pentecostal fellowships has seen many other churches ballooning to more than 4,000 registered churches in Kenya. Kenya also has a large population of Muslims and Hindus. Section 30 of the Societies Act requires that religious organizations submit audited reports. Every registered society is required to furnish the Registrar of Societies on an annual basis, on or before the prescribed date, such returns, accounts and other documents as prescribed thereof. It is in fact an offence to fail to comply with the said section of the Act.
45. However, the country has witnessed a number of scandals involving pastors who prey on their ardent followers to enrich themselves through proclaiming false miracles. Rogue pastors and/or individual take advantage of the religious teachings to exploit their followers and enrich themselves at the behest of impoverished the congregants.
46. In 2016, the Attorney General prepared draft amendments to the Societies Act in an effort to streamline the registration of religious organizations in Kenya. The amendments addressed the

leadership and integrity of religious organizations, as well accountability on resources entrusted to such organizations by congregants. However, there was opposition to some of the provisions on the basis that they amount to over-regulation by the GOK. The Office of the Attorney General and Department of Justice has been holding various consultations with religious organizations to deliberate on the existing operations of the faith-based institutions with a view to encouraging the religious bodies to agree on a more streamlined and regulated system of operations. In 2019, a motion was introduced in the National Assembly directing the Attorney General to draft amendments to the Societies Act to empower the Registrar of Societies to regulate and increase financial accountability and transparency among religious institutions. The drafting of the Bill is in process.

## **Article 9: Freedom of Information and Expression**

47. Access to Information is the right of every citizen of Kenya under Section 35 of the Constitution. The Constitution guarantees that every citizen has the right of access to information held by the State; and information held by another person required for the exercise or protection of any right or fundamental freedom. In addition, every person has the right to the correction or deletion of untrue or misleading information that affects them. Further, Section 35 (3) of the Constitution provides a duty to the State to *publish and publicize* any important information affecting the nation. Regulations to operationalize the Act have been prepared and are currently undergoing stakeholder consultations and public participation.
48. To implement constitutional provisions on the rights to information, the Access to Information Act, was enacted on 21<sup>st</sup> September 2016. The Act provides the necessary legal framework to access information held by the State or any other person. Citizens now have an opportunity to access what is going on within government.
49. The right to information is not an absolute right in the Constitution of Kenya, and can be restricted by just, fair and reasonable procedures established by law. Reasonable restrictions can be imposed on the right to privacy, in the interest of the sovereignty and integrity of Kenya, the security of the State, public order or in relation to contempt of court, defamation or incitement to an offence<sup>9</sup>.
50. The Commission on Administrative Justice (CAJ) has spearheaded the development of draft regulations to operationalize the Act. On the other hand, the County Government Act<sup>10</sup> requires counties to enact laws on access to information. In order to ensure harmonization and uniformity of the county laws, CAJ has developed a draft guide to the development of County Access to Information Law and a specimen bill<sup>11</sup>.
51. The court through Civil Appeal number 141 of 2015, *CAJ versus Kenya Vision 2030 and others*, unanimously declared that decisions of CAJ are binding on public institutions unless appealed against in court. The CAJ is a co-convenor of the Open Governance Partnership initiative that brings together government and civil society to create action plans that make governments more inclusive, transparent and accountable.

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<sup>9</sup>Access to Information Act (No. 31 of 2016), Section 6

<sup>10</sup> County Governments Act (No. 17 of 2012), Section 96(3) provides that subject to national legislation governing access to information, a county government shall enact legislation to ensure access to information.

<sup>11</sup> Commission on Administrative Justice (2020) Draft Specimen Model Law on Access to Information, Available at <https://www.ombudsman.go.ke/index.php/access-to-information/access-to-information-law/category/84-draft-specimen-model-law-on-access-to-information>

52. The State has taken initiatives for the introduction of Access to Information as an indicator in performance contracting framework of the national government. In addition, the CAJ has developed a popular version of the Access to Information Act, in order to simplify the language for the wider public. It has also developed a handbook on best practices on implementation of access to information in Kenya. The Commission has developed a guide on proactive disclosure by public entities.
53. The CAJ has taken several measures to monitor the right to access to information. In order to ensure compliance, public institutions are required to report quarterly to CAJ on requests for information received. In 2018/2019 financial year the Commission developed the 8<sup>th</sup> edition of reporting guidelines for implementing the performance contracting framework. On County Governments, in order to enhance information at the county level, county governments have appointed access to information officers. The State has encouraged Proactive disclosure under Circular 1 of 2019/ATI to guide public entities on proactive disclosure.

### **Freedom of expression**

54. The government is obligated by the Constitution<sup>12</sup> to observe, respect, protect, promote and fulfil the rights and fundamental freedom for all people. Journalists and human rights Defenders (HRDs) have a crucial part to play in pointing out human rights violations whenever they occur and also in calling for the resolution and redress of these violations. They also play a big role in providing human rights education to the citizens.
55. Kenya has efficient and effective structures for safeguarding the rights of all persons in Kenya, including HRDs. The Independent Police Oversight Authority provides an important platform where the defenders can report any grievances that they may have against the police. A Model Human Rights Defenders Policy and Action Plan developed by the KNCHR and the National Coalition on Human Rights Defenders recognizes and reaffirms the critical role of HRDs in the promotion and protection of human rights in Kenya and the need for the state to fulfill its mandate to provide a safe and secure legislative and operating environment. The policy outlines the importance of sustained civic education, expanded human rights education in schools, universities, colleges and teacher training institutions, and the Training of Police and other enforcement agencies under both National and County Governments.
56. Kenya is bound to a series of international and regional legal instruments regarding free expression. Articles 33 and 34 of the Kenya 2010 Constitution expand freedoms of expression and of the press, specifically, by prohibiting the state from interfering with the editorial independence of individual journalists as well as both state-owned and private media. In the same breadth the Constitution also curbs press freedom with regard to privacy, incitement, hate speech, and anti-government propaganda in times of war.
57. The Media Council Act 2013 establishes the Media Council of Kenya as the body that sets media standards and regulates and monitors compliance with those standards. Journalists through the Media Complaints Commission have a medium through which they can file complaints against government, individuals, or organizations, when their rights have been violated. The Commission is independent from the Council to enforce media standards set by the Council, and whose mandate is to arbitrate in disputes between (a) Public and the Media (b) Government and media

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<sup>12</sup> Constitution of Kenya(2010), Article 21

(c) Within the media (Intra-media). The Complaints Commission consists of Seven (7) members appointed through a competitive and industry driven process. The seven members include a chairperson who has held a judicial position or is an advocate of the High Court of Kenya of not less than 10 years standing and six other persons possessing experience and expertise in journalism and related field.

58. In exercising the right to freedom of expression, media enterprises, journalists, media practitioners, foreign journalists and consumers of media services are expected to reflect the interests of all sections of society; Be accurate and fair; Be accountable and transparent; Respect the personal dignity and privacy of others; Demonstrate professionalism and respect for the rights of others; and be guided by the national values and principles of governance set out under Article 10 of the Constitution
59. Among other things the Media Council is expected to promote and protect the freedom and independence of the media; prescribe standards of journalists, media practitioners and media enterprises; ensure the protection of the rights and privileges of journalists in the performance of their duties; promote and enhance ethical and professional standards amongst journalists and media enterprises; set standards, in consultation with the relevant training institutions, for professional education and training of journalists; develop and regulate ethical and disciplinary standards for journalists, media practitioners and media enterprises; accredit local and foreign journalists by certifying their competence, authority or credibility against local standards based on the quality and training of journalists in Kenya.
60. The case, *Jacqueline Okuta & another v Attorney General & 2 others (2017)*, *eKLR*, raised fundamental questions such as whether or not criminal defamation is a ground on which a constitutional limitation on the rights of freedom of the expression could be legally imposed. The petitioners argued that even though the freedom of expression is not absolute and can be limited for the protection of rights and reputations of others, criminal libel is not a reasonable or justifiable restriction on freedom of expression. They added that it is a "*disproportionate instrument for protecting the reputations, rights and freedoms of others*" and that the remedy in tort is sufficient and less restrictive means of achieving the purpose. Criminal sanctions on speech therefore ought to be reserved for the most serious cases particularized under Article 33 (2) (a)-(d)<sup>13</sup> and that the offence of criminal libel does not strike a balance between freedom of expression and the limitation clause in Article 24 but instead arbitrarily and excessively invades the right in Article 24 which is not justifiable in a democratic society. The court ruled that indeed criminal sanctions on speech ought to be reserved for the most serious cases particularized under Article 33 (2) (a)-(d) of the constitution aimed at protecting public interest. The court thus declared that section 194 of the Penal Code, cap 63, Laws of Kenya as unconstitutional and invalid to the extent that it covers offences other than those contemplated under Article 33 (2) (a)-(d) of the Constitution.

## **Article 10: Freedom of Association**

61. Freedom of association, as envisioned by the Constitution, entails the voluntary joining of an individual to an association of his/her choice. No person shall be compelled to join an association

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<sup>13</sup>Constitution of Kenya(2010), Article 33(2) (a)-(d) limits the right to freedom of expression in four instances namely propaganda for war, incitement to violence, hate speech or advocacy of hatred that constitutes ethnic incitement or is based on any ground of discrimination specified in Article 27(4).

of any kind. Further, freedom of association entails that legislation that requires registration of an association of any kind shall provide that; such registration may not be withheld or withdrawn unreasonably and there shall be a right to have a fair hearing before a registration is cancelled. In Kenya, officers in the National Police Service and the Kenya Defence Forces Act are barred from joining and participating in the activities of a trade union and going on strike by their respective legislation<sup>14</sup>.

62. Kenya upholds the rights of trade unions to go on strike in order to pursue their collective interests. As a member of the International Labour Organization (ILO), Kenya's amended labour laws to comply with the ILO conventions and the Constitution of Kenya. The Employment Act (Revised Edition 2012 [2007]), the Work Injury Benefits Act (Revised Edition 2012 [2007]), and the Occupational Safety and Health Act (Revised Edition 2012 [2007]) have been revised to bring them in conformity with the Constitution and to ensure they uphold labour rights of individuals.
63. Further in a bid to promote the enjoyment of freedom of association, the Societies Act, provides for the registration of societies in Kenya. This Act establishes the Office of the Registrar of Societies where applications for registration of societies or associations are lodged and considered. Society is given a broad definition within the Act. That is, a society includes any club, company, partnership or other association of ten or more persons, whatever its nature or object, established in Kenya or having its headquarters or chief place of business in Kenya, and any branch of a society. The Non-Governmental Organizations (NGO) Coordination Act sets up the NGO Coordination Board to regulate and manage NGOs in Kenya.
64. There is also a Labour Relations Act which provides for the establishment and registration of Trade Unions and Employers' Organizations. The legislation lays out the procedure for the registration of trade unions and employers' organizations. The act also provides a framework of how operations of a trade union and employers' organization are to be conducted.

## Article 11: Freedom of Assembly

**Concluding observation: Take legislative and other measures in order to protect, and promote human rights in conformity with the UN Declaration on Human Rights Defenders, the African Charter, the Kigali Declaration and other regional and international human rights instruments that guarantee the right to freedom of association and assembly; and iii. Provide adequate information on several rights with respect of which the Report provided no data on measures taken for the fulfillment of those rights.**

65. The Constitution of Kenya guarantees the rights to assemble, demonstrate, picket and present petitions to public authorities peaceably and unarmed in Article 37. On the other hand, Article 36 enunciate that every person has the right of association, which includes the right to form, join or participate in the activities of an association of any kind. In this regard, a person shall not be compelled to join an association of any kind. The Public Order Act (Revised Edition 2014 [2012]), balances the freedom of assembly with the duty to maintain public order. Any group intending to hold a public meeting or assembly is expected to notify the regulating officer a minimum of three days before the event. Organizers of public assemblies or their authorized

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<sup>14</sup> Constitution of Kenya (2010), Article 24(5) provides that Legislation may limit the rights of persons serving in the Kenya Defence Forces and National Police Service specifically the right to privacy, freedom of association, right to assembly, demonstrate, picket or petition, Right to Labour Relations, Economic, Social & Cultural Rights and Rights of an arrested persons



agents are expected to be present throughout the public gathering and to assist the police in maintenance of public order.

66. The Government supports and upholds the rights of individuals, human rights defenders and groups to assemble freely, to picket, demonstrate and present petitions. This is a normal part of engagement particularly at the political level and civil society levels. In Kenya, political parties, members of parliament, civil society, and the academia engage in robust lively public debate on various matters of topical interest.
67. However, demonstrations have sometimes degenerated into riots and criminal activities including looting of private property, robbing and physically harming innocent bystanders have been witnessed. In the case of *Ngunjiri Wambugu v Inspector General of Police, & 2 others [2019] eKLR*, the court issued four declarations namely that; the fundamental right under Article 37 of the Constitution of Kenya to assemble, to demonstrate, to picket and to present petitions to public authorities is conditional on the protestors or demonstrators conducting themselves peaceably and unarmed and that police officers are duty bound to immediately stop protestors or demonstrators if they are armed with any form of weapons including stones or any offensive weapon of whatever nature and that the petitioner and non-demonstrators/third parties enjoy equal rights and freedoms during demonstrations since their rights and fundamental freedoms are not suspended during such times. The Court also directed the respondents to formulate and/or amend the requisite law and regulations to ensure that demonstrations are peaceful and held as per the Constitution including *inter alia* prescriptions for demarcation of demonstration zones, responsibilities for clean-up costs, maximum numbers, consents of persons/entities adjacent to demonstration zones with appropriate penalties when they go outside the expectations of the law. The Respondents were also directed to formulate a Code of Conduct for conveners of demonstrations that includes detailed explanations of how they intend to ensure non-demonstrators are not adversely affected by such demonstrations and that provide a clear line of responsibility of who is liable in case of loss to life or property, or for injury, when a member of the public is aggrieved due to such demonstration.
68. In light of the above court ruling, the Director of Public Prosecutions in collaboration with the respondents formed a joint committee in October 2019 to develop guidelines of the Rights to Assembly, demonstration and picketing. The joint team will also review status of all cases where protesters have been arrested and prosecuted and advise the way forward.

## **Article 12: Freedom of Movement**

69. Every person in Kenya has the right to move freely and to exit the country. Citizens are granted the right to enter, remain in and reside anywhere in Kenya. All visitors to Kenya who are not citizens must apply for visas from the Immigration Office. There is no impediment for foreigners who have obtained all necessary documentation to be in the country, to move and reside anywhere in Kenya. All areas are accessible except those designated as security zones, State houses across the country and private land. State and public officers require clearance from the Director of Immigration or the Head of Public Service to leave the country. However, restrictions to depart the country, even for citizens, may be made or imposed by the courts, depending on circumstances, such as a court order. In the event where a person feels that his/her rights have been infringed they have the right to institute court proceedings claiming that a right or fundamental freedom has been denied, violated or infringed or threatened.

## Refugees, IDPs and Migrant Workers

**Kenya should expedite the finalization and adoption of the Refugees Bill of 2015 which provides for proper management of refugee matters in the country**

70. The Refugee Bill of 2015 is under review after the President recommended that the Refugee Bill be subjected to more public participation in accordance with Article 118 of the Constitution.
71. All registered refugees and asylum seekers in Kenya are able to enjoy their rights according to their status. Refugees are able to access free public education for all refugee children. This includes schooling in the refugee camps and in urban areas. In Dadaab refugee camp there is: Kenyatta University campus, 35 primary schools and 7 secondary schools. As at December 2017, Refugee children in school in Dadaab camp, 7, 794 boys are in pre- primary school, 31, 964 boys in primary school, 277 boys in secondary school, 6,220 girls in pre-primary , 21, 346 girls in primary school and 76 girls in secondary school
72. The voluntary repatriation of Somalia refugees has been taking place since 2013 tripartite agreement which was signed in November 2013. By April 4, 2017, 62, 629 persons had been voluntarily repatriated to Somalia. The repatriation has remained solely voluntary and is carried out in a humane and dignified manner. The UNHCR has been paying the return package to the refugees and hiring transport. The Kenya government has been offering escorts to the border stations where the Somalia government and UNHCR Somalia receive the refugees.
73. The Kenya Government created a technical team to oversee the voluntary repatriation process in May 2016. The National Multi Agency Repatriation Team has been having meetings with Somalia Technical Team. So far four meeting have been held by the two teams. One meeting was held in Kismayu and other three were held in Nairobi, Kenya. The two teams hold these meetings together with UNHCR. The objective of the meetings is to address any challenges affecting voluntary repatriation.

## Migrant workers

74. Migrant workers are recognized under the Employment Act, 2007. The Act promotes and guarantees equality of opportunity for migrant workers or a member of the family of the worker, lawfully within Kenya. Employers are expected to strive to eliminate discrimination in any employment policy or practice.

## Article 13: Right to Participate in Government

75. Public service: The Constitution recognizes and promotes equal access to public services. The devolved system of government has brought greater efficiency in service delivery to the people, enhanced the participation of the people in issues that involve them, ensures the equitable distribution of resources and services, recognizes diversity, and protects minorities and marginalized communities.
76. The Huduma Kenya Programme is a Kenya Vision 2030 flagship project. The Programme was launched by H.E Uhuru Kenyatta, President of the Republic of Kenya, on 7th November, 2013. The program has greatly enhanced access and efficient delivery of Government Services to all Kenyans from One Stop Shop citizen service centers. This means that persons can obtain birth

certificates, national identity cards, passports, registration of business names, and applications for marriage certificates, drivers' licenses, police abstracts and many other services in one place.

77. The GOK has increased the use of internet connectivity to assist in better service delivery. Kenya is one of the few countries in Africa with a high share of internet usage from mobile phones. Internet access through the mobile phone in the country recently hit 83%. The internet is now used in Kenya to facilitate better transport services, registration services, dissemination of information to the general public, improve surveillance and security, to name a few benefits. Of particular interest is the launch of the National Integrated Identity Management System (NIIMS) in January 2019. The National Management System (NIIMS) is a national programme for the mandatory registration of all Kenyan citizens and registered foreigners resident in Kenya and was established in the 2018 Amendment of Registration of Persons Act Sec. 9A. The number will assist the Kenyan government to develop a national biometric population database of all persons in Kenya in order to assign a personal unique identification to facilitate access to government services.
78. The right of citizens to take part in the political process of the country is a fundamental pillar of Kenya's constitutional democracy. Every citizen is free to form, or participate in forming, a political party; to participate in the activities of, or recruit members for, a political party; or to campaign for a political party or cause. Most importantly every citizen has the right to take part in free, fair and regular elections based on universal suffrage. The Government of Kenya has instituted various overarching reform measures aimed at advancement towards universal suffrage. This is particularly true for women and persons with disabilities (PWD). Measures taken include:
- i. **Election financing:** Election Campaign Financing Act, was enacted in 2013. The legislation limit the contributions one can make to any candidate's campaign. This serves the key public interest in deterring corruption of candidates, thus ensuring that the will of the people is respected.
  - ii. **Registration of prisoners:** The IEBC is mandated by the Constitution to register all eligible Kenyans as voters, prepare, maintain and revise the register of voters. In court case *High Court at Nairobi, Petition 574 of 2012, Kituo Cha Sheria and Independent Electoral and Boundaries Commission*, the court declared that all prisoners who are eligible have a right to vote under Article 38(3) (a) and (b) of the Constitution.
  - iii. **Kenyans in the Diaspora:** The Supreme Court of Kenya, in *Petition No. 25 of 2014, Independent Electoral And Boundaries Commission (IEBC) Vs New Vision Kenya and Others* affirmed the right of eligible Kenyans living in the Diaspora to vote and ordered the progressive registration of Kenyans living abroad to enable them take part in local elections. In the 2017 general elections, IEBC registered Diaspora voters in five countries namely Tanzania, Uganda, Rwanda, Burundi and South Africa. Registration of Kenyans in other parts of the world will be a progressive exercise.

## Article 14: Right to property

79. The National Land Use Policy was launched on 12<sup>th</sup> June 2017. The Policy sets out to enhance planning and promote equitable utilization with the main aim of ending the perennial land problems in the country. The principle objective of the policy is to provide legal, administrative,



institutional and technological framework for optimal utilization and productivity of land and land related resources in a sustainable and desirable manner at National, County and Sub-county and other local levels.

80. The National Spatial Plan (2015-2045)<sup>15</sup> details the national spatial vision that will guide the long-term spatial development of the country for a period of 30 years. It addresses the disconnect between economic and spatial planning that has led to uncoordinated and unguided development by establishing a broad physical planning framework that provides physical planning policies to support economic and sectoral planning. The Plan supports the implementation of strategic national projects specifically the flagship projects spelt out under Kenya Vision 2030 by indicating their spatial locations and providing a framework for absorbing the spatial impacts of these projects. Further, the Physical and Land Use Planning Act, 2019 makes provision for the planning, use, regulation and development of land.
81. Sections 152B-152I of the Land Laws Amendment Act, 2016 introduced procedures on how to humanly evict unlawful occupiers from public, private and community lands. With regard to evictions from public land, the National Land Commission must give a three months mandatory notice to all affected persons in writing in the Kenya Gazette and in at least one of the newspapers with nationwide circulation, and by radio announcement in a local language where appropriate. Further, the law allows any person who is aggrieved by such notice to apply to court for relief. The high rate of unemployment in Kenya has been a source of great concern for policy makers in government and other key sectors. Government has deplored a number of measures to enhance employment promotion interventions.

## **Chapter 3**

### **Economic, Social and Cultural Rights**

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<sup>15</sup>National Spatial Plan (2015-2045) available at <https://lands.go.ke/wp-content/uploads/2018/03/National-Spatial-Plan.pdf>

## Background

82. During the period under reference, the GOK made significant progress towards the attainment of Kenya's Vision 2030- the country's development programme from 2008 to 2030. The implementation of Kenya's Vision 2030<sup>16</sup> is undertaken through Medium Term Plans (MTPs). The Government, the Private Sector and development partners have been instrumental in the progress made and will continue to play a critical role as we move towards 2030. MTP III is the current 5 Year Plan to implement the third cycle of Kenya's transformative agenda towards achieving Vision 2030. It runs from 2018-2022 under the theme '*Transforming Lives: Advancing Socio-Economic Development through the Big Four*'. During the preparation of the MTP III the GOK ensured that regional and international commitments, such as the Sustainable Development Goals Agenda and the Africa Union Agenda 2063 were incorporated into the national development agenda. The MTP III outlines the main policies, legal and institutional reforms as well as programmes and projects that the Government plans to implement during the plan period. It gives priority to implementation of the "Big Four Agenda" initiatives as follows;

- Increase the manufacturing share in the economy from 9.2% to 15%,
- Provide affordable housing by building 500,000 affordable houses across the country in the five-year period,
- Enhance Food and Nutrition Security (FNS) through irrigation projects, construction of food storage facilities and implementation of high impact nutritional projects,
- Achieve 100% universal health coverage.

## Article 15: Right to Work

83. The high rate of unemployment in Kenya has been a source of great concern for policy makers in government and other key sectors. Government has deplored a number of measures to enhance employment promotion interventions.

84. The Sector Plan for Labour and Employment was formulated alongside the Second Medium Term Plan (MTP) 2013-2017, of the Kenya Vision 2030. The Sector Plan highlighted in detail the policies, programmes and projects for implementation over the Second Medium Term Plan period whose main theme was 'Transforming Kenya: Pathway to Devolution, Socio-Economic Development, Equity and National Unity'. The key focus areas for this Sector Plan were; employment promotion and optimal utilization of human resources, and social protection through targeted policies and activities as outlined therein. It also focused on the provision of timely labour market information, demand driven skills development, modernization of technology in training institutions, productivity management, occupational safety and health, youth empowerment and harmonious labour relations.

85. Government will further enhance the local manufacturing industry to increase employment opportunities to Kenyans and reduce the trade deficit that the country is

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<sup>16</sup>Kenya Vision 2030 available at <https://vision2030.go.ke/> Kenya's development blueprint covering the period 2008 to 2030 and aims at making Kenya a newly industrializing, "middle income country providing high quality life for all its citizens by the year 2030".

currently experiencing. There are several planned initiatives for boosting the local manufacturing sector, top among them being the establishment of special economic zones, where manufacturing companies/plants will receive several benefits such as reduced taxation.

**Concluding observation: Implement Sessional Paper Number 4 of 2013 on National Employment Policy and Strategy for Kenya; create employment opportunities and skill training.**

86. Sessional Paper Number 4 of 2013 on National Employment Policy and Strategy for Kenya Employment Policy is an invaluable framework for facilitating the creation of decent, productive and sustainable employment opportunities, stimulating economic growth and socio-economic development. The Policy identifies and proposes integrated interventions that take a holistic view of the economy while recognizing Kenya's regional and international commitments. The strategies include cascading the implementation of the Kenya Vision 2030 to county levels; promoting accelerated and sustained economic growth through implementation of prudent macroeconomic and sectoral policies; deepening the use of cluster and sectoral development strategies as a means of employment creation; mainstreaming productivity in all sectors of the country's economy including the informal and *Jua Kali* sector; and exploitation of the employment creation potential of the social and solidarity economy, and the micro and small scale enterprises. Others are improving the linkage between demand and supply sides of the labour market while taking cognizance of the national, regional and global labour market dynamics, and formulating and implementing a wage policy that guarantees a robust, flexible, equitable, predictable and sustainable wage system.

87. The Policy contains a comprehensive Implementation Plan that is currently being implemented as follows:

- a) **Development of a National Policy on Elimination of Child Labor, 2016.** The policy maximizes the effects of the existing macro and sectoral policies and programmes that among other things target economic growth, employment creation, increasing access and returns to education, and poverty reduction, which are some of the underlying causes of child labor. It builds synergy and mainstreaming child labor interventions in national, county and sectoral policies. The policy focuses on strategies that are aimed at prevention, identification, withdrawal, rehabilitation and reintegration of children involved in all forms of child labor. The ultimate vision is to have a child labor free society. As part of implementing the policy in 2017, the government established additional Child Protection Centers to provide housing, counseling, and reintegration services to rescued child laborers. The government also developed a National Employment Policy that dictates reporting on the number of children withdrawn from child labor and the progress of child labor-free zones.
- b) **Establishment of Child Protection Units:** The Kenya National Police Service has established a Child Protection Unit to investigate cases of child exploitation such as commercial sexual exploitation;

- c) **Establishment of the National Employment Authority** by the National Employment Authority Act 2016. The Act transfers all employment functions to the Authority, which provides a comprehensive institutional framework for employment management; to enhance employment promotion interventions; to enhance access to employment for youth, minorities and marginalized groups and for connected purposes. An employer with at least 25 employees must notify the Director of Employment of any vacancy and/or termination of occurring in the organization.
- d) **Formulation of an integrated approach to dealing with HIV and AIDS/ Development** and implementation of HIV and AIDS policies in all workplaces. HIV and AIDS remains a major challenge in Kenya and its impact continues to adversely affect service delivery. The public sector has borne the brunt of the scourge where staff has been affected thus affecting the delivery of services to the people. It is against this background that the government adopted a coordinated approach in the fight against the pandemic in the public sector. The Public Sector Workplace Policy on HIV and AIDS, was formulated in 2010. All MDAs are therefore expected to respond urgently, appropriately and strategically for successful delivery of their mandate through mainstreaming of HIV and AIDS. In these regard these entities have prepared individual workplace policies mainstreaming HIV and AIDS into their core functions. It ensures that the MDAs are able to sustain the provision of adequate quality services. HIV and AIDS is one of the components in MDAs performance contracting. Consequently, targets relating to aspects of HIV and AIDS have been incorporated in the performance objectives of all MDAs.
- e) **National Internship Policy and Guidelines for the Public Service:** One of the contributing factors to low employment opportunities is the lack of practical work-based experience among the graduates<sup>17</sup>. To address this challenge, the public service, as one of the largest employer has a role to play in ensuring that the youth, especially those with relevant qualifications, are offered opportunities to enable them gain practical work experience. It is against this backdrop that in 2016, the Government through the Public Service Commission developed the Internship Policy and Guidelines for the Public Service. This policy provides a framework for engagement and management of internship programmes in the public service. It outlines the various provisions and requirements of the programme, selection procedures and roles and responsibilities of various stakeholders in the internship programme. In the Financial year 2018/2019, a total of 5,344 interns were engaged by public institutions, out of which 2,452 (46%) were male, 2,892 (54%) were female and 81 (1.5%) were PWDs<sup>18</sup>. A summary of the interns engaged by public institutions disaggregated by gender, disability status and duration of engagement is presented in Table 3 below;

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<sup>17</sup>Public Service Commission (2016) 'Internship Policy and Guidelines for the Public Service' available at [https://www.publicservice.go.ke/images/guidlines/PSC\\_Internship\\_Policy\\_and\\_Guidelines\\_for\\_the\\_Public\\_Service\\_May\\_2016.pdf](https://www.publicservice.go.ke/images/guidlines/PSC_Internship_Policy_and_Guidelines_for_the_Public_Service_May_2016.pdf)

<sup>18</sup>Public Service Commission (2019), 'Status of the Public Service Compliance with the Values and Principles in Articles 10 and 232 of the Constitution for the year 2018/2019' available at: <https://www.publicservice.go.ke/index.php/publications/reports>

**Table 4: Interns engaged by Public Institutions in FY 2018/2019**

Category of Institutions	Total No. of Interns	Gender		Disability Status		Duration		
		Male	Female	Non PWD	PWD	Below 6 months	6 months-1 year	Above 1 Year
Constitutional Commissions and Independent Offices	177	95	82	177	0	59	113	5
Ministries & State Departments	360	174	186	360	0	48	289	23
Public Universities	326	168	158	321	5	231	81	14
State Corporations and Semi-Autonomous Government Agencies	4,369	1,950	2,419	4,293	76	2,227	1,451	691
Statutory Commissions and Authorities	112	65	47	112	0	10	91	11
<b>Total</b>	<b>5,344</b>	<b>2,452</b>	<b>2,892</b>	<b>5,263</b>	<b>81</b>	<b>2,575</b>	<b>2,025</b>	<b>744</b>

**Source:** Status of the Public Service Compliance with the Values and Principles in Articles 10 and 232 of the Constitution for the year 2018/2019 report

88. The government through the Ministry of Education initiated a programme to construct Technical Institutes in every constituency to bolster the capacity of the existing ones to increase the number of youths with skills and enhance employability. The Government has developed a National Industrial Training and attachment policy to guide industrial training and attachment in the country. This is aimed at equipping the youths with the relevant skills and increase employability and productivity as well as improved linkages between industry and training institutions. The youth enterprise fund has been streamlined to empower youth to start and grow their businesses.
89. The National Youth Service programme has engaged the unemployed youth and imparted skills thereby opening employment opportunities. The implementation of the preferential procurement policies (affirmative action on government procurement) supports enterprises run by the vulnerable and thereby creating jobs and employment opportunities.

## **Article 16: The Right to Health**

90. To actualize commitment to the constitutional provisions on the right to the highest attainable standards of health and SDG 3, the GOK is implementing the following strategies/interventions:
91. Better healthcare has been highlighted as one of the big four priority agenda items. The Ministry of Health with the support of WHO and other partners have worked on a roadmap to achieve the provision of quality health care services to all households in the country. Consultations and deliberations were undertaken and settled on a two-phase strategy in which the UHC model was to be piloted in four counties before rolling it out to the rest of the country. In this regard Universal Health Coverage has been rolled out in four counties, on a pilot basis, with an aspiration that by 2022, all persons in Kenya will be able to use the essential services they need for their health and wellbeing through a single unified benefit package, without the risk of financial catastrophe. The four counties are Kisumu, Machakos, Nyeri, and Isiolo all of which were selected due to high prevalence of communicable and non-communicable diseases, high population density, high maternal mortality and high incidence of road traffic injuries. The pilots are the first phase of the UHC model expected to be rolled out in every household in all the 47 counties during the next four years as at 2018.
92. In order to ensure that quality services are offered, Kenya has adopted a national quality assurance framework - the Kenya Quality Model for Health, which provides a pathway through which optimal levels of patient safety can be achieved, and introduction of joint health inspections checklists, which emphasize on risk-based ranking of facilities, and enforcement of an appropriate follow up action. This will lead to a locally driven quality assurance framework on which a regulation and accreditation system can be developed to incentivize facilities to move towards accreditation and total quality management.
93. The Health Act, 2017, establishes a national health system that facilitates, in a progressive and equitable manner, the highest attainable standard of health services. The Act protects and promotes the health rights of all persons in Kenya including rights of children, basic nutrition and health care services, and rights of women and other vulnerable groups. Section 6 (1) (b) of the Act protect the right to access appropriate reproductive healthcare services for all Kenyans, including women and girls.
94. The Kenya Environmental Sanitation and Hygiene Policy 2016-2030 provides broad guidelines to both state and non-state actors at all levels to work towards universal access to improved sanitation leading to improved quality of life for the people. Primarily, the KESH policy aims to increase the proportion of the population with access to improved sanitation to 100 percent by 2030 and ensure a clean and healthy environment for all in Kenya.
95. To prevent new HIV infections, integrated prevention mechanisms have been implemented countrywide. These include structural, behavioural and bio-medical interventions; Voluntary Medical Male Circumcision, Prevention of Mother to Child Transmission and Condom programming). Increased Antiretroviral Therapy uptake at 97%; and the development of Policy documents to address stigma and violence towards key populations.

96. The government has an insurance system, the National Health Insurance Fund (NHIF). In recent years the government has made significant efforts to increase insurance penetration to cover both salaried employees and those from the informal sector. The NHIF membership rose by 13.2 per cent from 6.8 million in 2016/17 to 7.7 million in 2017/18. Membership from the formal sector registered a growth of 4.3 per cent compared with a 23.3 per cent increase in the informal sector during the review period. The Government has rolled out key NHIF reforms aimed at enhanced efficiencies, improved revenue mobilization and strategic purchasing of services. Further attempts have been made to extend coverage to outpatient services and the micro-insurance market.
97. Tuberculosis incidence per 100,000 population has dropped. This progress is attributed to the implementation of priority interventions that include: development of the National Strategic Plan, increase in the number of GeneXpert machines; introduction of shorter-term regimen for management of drug resistant TB; and implementation of the TB prevalence survey which revealed a reduction in the actual burden of TB.
98. The government has continued to distribute long-lasting insecticidal nets (LLINs), intermittent preventive treatment in pregnancy, and scaling up diagnosis and management of malaria cases.
99. Emerging issues include: the emergence of: drug resistant strains of TB; other diseases such as Bird flu, Dengue fever, Chikungunya; higher; increased incidence of Non-Communicable Diseases such as hypertension, heart disease, diabetes and cancer.
100. Some challenges faced by the country in realizing SDG goal 3 are that Health programmes remain heavily donor dependent; there exists inadequate emergency services for delivery and under-utilization of existing antenatal services; and inadequate skills and competences of health workers and skewed distribution of the health workers across counties

**Concluding observation: Kenya should ensure better management and increase of healthcare budget, and solve resource allocation problems by ensuring the use of systematic formulae for allocating fund so as to satisfy the equity criteria.**

101. Kenya is gradually increasing the proportion of its discretionary public budget allocated to health. In the 2019/20 financial year, the national health sector was allocated Kshs. 93.3 billion (Approx. USD 933 Million). This is nearly three times the amount allocated in the 2013/14 Kenya health budget. This is an increase of about 30% in the last two financial years. In the FY 2017/2018 to 2018/2019 the national budget for health rose by 49% and the budget for counties by 17.8%.

**Table 5: Health sector budget allocations for National and County Governments<sup>19</sup>**

Financial year	National government(Kshs. billion)	County governments (Kshs. billion)	Total (Kshs. billion)	Percentage year-on-year change in total
2014/15	47.4	68.2	115.6	-
2015/16	59.2	86.7	145.9	26.2%

<sup>19</sup>Source: Programme-based budget for 2014/15, 2015/16, 2016/17, 2018/19 and 2017/18, and reports by the Controller of Budget on county governments' allocation.

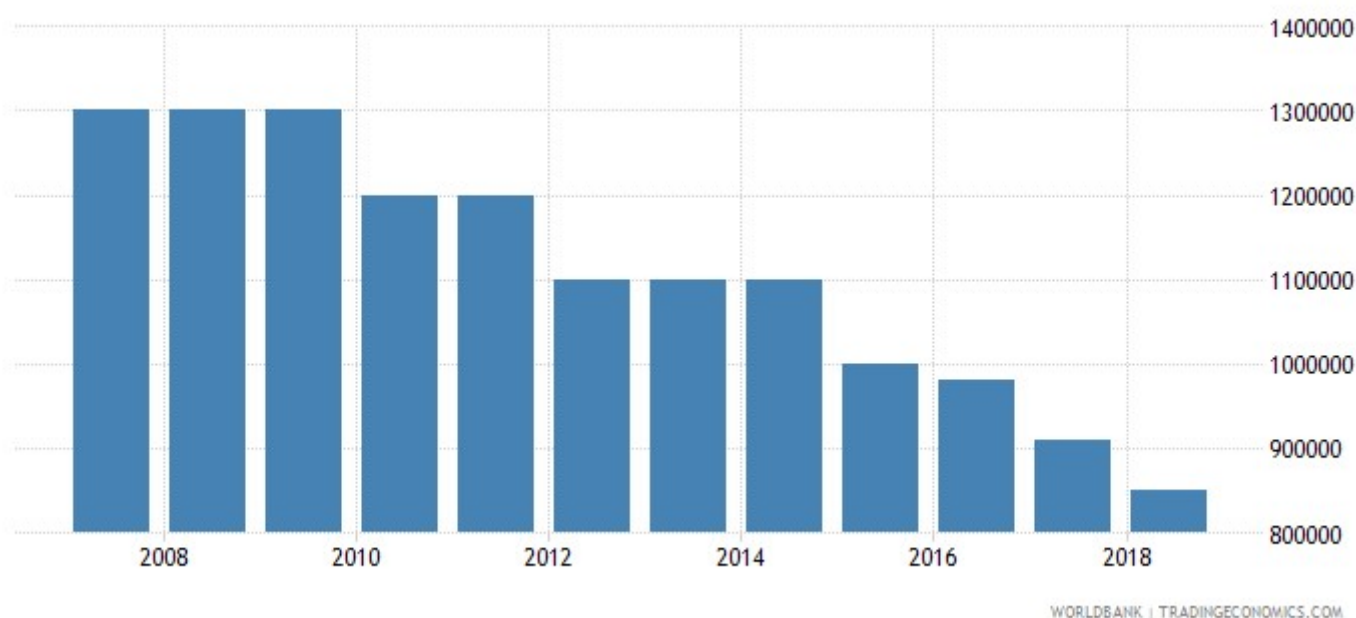


2016/17	60.3	95.8	156.1	7%
2017/18	61.6	107.5	169.1	8.4%
2018/19	90	112.9	202.9	20%

**Concluding observations: Include information and statistics on children orphaned by HIV/AIDs and other vulnerable children affected by HIV/AIDs in its next Report as well as measures taken to support them.**

Children orphaned by HIV/AIDS in Kenya was reported at 850000 in 2018<sup>20</sup>

**Figure 1: Children orphaned by HIV/AIDS in Kenya**



**NB:** Number of children orphaned by HIV/AIDS is the estimated number of children who have lost their mother or both parents to AIDS before age 15 since the epidemic began. Some of the orphaned children included in this cumulative total are no longer alive; others are no longer under age 15.

102. Progress has been made in Kenya with regard to HIV prevention with the prevalence dropping 2 percentage points in the last 5 years and new infections among children almost halved. HIV however, continues to contribute the highest mortality rates, burdening households and straining national health systems. With this understanding, the Kenya AIDS Strategic Framework 2014/2015- 2018/2019 exemplifies the firm commitment to support National and County governments to deliver better health for all with a focus on cost effective and socially inclusive interventions to prevent and manage HIV and AIDS. The Strategic Framework emphasizes an equitable HIV response that ensures no one is left behind. This is a priority for Kenya to achieve her goals.

<sup>20</sup>According to the World Bank collection of development indicators, compiled from officially recognized sources. Kenya - Children orphaned by HIV/AIDS - actual values, historical data, forecasts and projections were sourced from the World Bank on February 2020



103. The health sector has continued to undertake interventions aimed at controlling the spread of HIV/AIDS in the country. As a result, considerable achievements have been made within the sector. The proportion of HIV positive pregnant women receiving ARVs to prevent-mother-to-child- transmission of HIV have improved. ART is now available for free.
104. The key challenges facing HIV and AIDS control, include high dependence on donor funding as 75% of the funds spent on HIV and AIDs come from donors. It is noted that donors are not scaling up their financial support, due to other competing priorities/needs.

**Concluding observation: Fast track the Law on Safe Abortion and resolve some of the obstacles impeding the passing of law by sensitizing religious leaders on consequences of unsafe abortion; Finalize the draft Guideline on Safe Abortion.**

105. Article 26(4) of the Constitution provides for right to Life. Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law. Article 43(1 a) provides that every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care. Acts of Parliament that support reproductive health include: The Penal Code; The Code of professional conduct and discipline for doctors, 6th edition (2012); The Code of professional conduct for clinical officers (2012); Ministry of Health National Guidelines on Management of Sexual Violence, 2014 and Standards of Nursing education and practice, Code of Ethics and Conduct and Scope of Practice for Nurses in Kenya. The Health Act 2017 provides that every person has a right to reproductive health care which includes access to treatment by a trained health professional for conditions occurring during pregnancy. The Act also stipulates that any procedure carried out shall be performed in a legally recognized health facility with an enabling environment consisting of the minimum human resources, infrastructure, commodities and supplies for the facility.
106. The High Court issued a ruling in *Federation of Women Lawyers (FIDA – Kenya) & 3 others v Attorney General & 2 others; East Africa Center for Law & Justice & 6 others (Interested Party) & Women’s Link Worldwide & 2 others (Amicus Curiae) [2019] eKLR* stating that withdrawal of the 2012 Standards and Guidelines for Reducing Morbidity and Mortality from Unsafe Abortion in Kenya (2012 Standards and Guidelines) by Ministry of Health was unconstitutional.
107. In terms of the progress made in improving access to sexual and reproductive health services, particularly for women and children living in rural areas, Counties have taken the services closer to the people. All the 47 counties have Health Departments dealing with health-related issues, and they work closely with the health facilities within their regions. The Counties ensure that there is allocation of funds to reach out to the rural areas and there is in place facilities equipped to provide health care. The National Gender and Equality Commission is also undertaking a study whose findings will influence the Governments interventions in terms of health care of children in need of reproductive services.

## **Article 17: The Right to Education and culture**

108. Since the inception of the Free Primary Education (FPE) in 2003, Kenya has made tremendous progress on educational access. Since then, net enrolment rate has increased exponentially. Participation rate in organized learning increased from 74.9 per cent in 2016 to 77.2 per cent in 2018. Early Childhood development education: ECDE enrolment has recorded a

7% increase from 3.17 million (1.61 million boys and 1.56 million girls) in 2015 to 3.39 million (1.73 million boys and 1.66 million girls) in 2018.

109. The sustained implementation of the Free Primary Education and Free Day Secondary Education has seen increased completion in primary education; and increased participation and completion of secondary education.
110. The enrolment has been increasing over time with the primary education GER increasing from 104.1% in 2016 to 104% in 2018 while the Net Enrollment Rates (NER) increased from 91.2 per cent to 92.4 per cent during the same period. The GER increased from 66.7% in 2016 to 70.3% in 2018. The NER increased from 49.5% in 2016 to 53.2% in 2018. The sector has been disbursing conditional grants to VTCs (formerly known as youth/village polytechnics) through the county governments. This initiative has led to increased enrolment in VTCs which grew from 80,905 in 2016 /2017 to 107,680 in 2018/2019 and is mainly attributed to the expansion of the VTCs infrastructure development, modernization and expansion of VTCs by the County Governments. This expansion in the number of universities has led to increased enrolment of students pursuing university education in both public and private universities to stand at 542,005 in 2018/19, 559,210 in 2017/18 and 548,160 in 2016/17.
111. In the financial year 2017/2018, the total number of educational institutions increased by 5.1 per cent from 86,179 in 2016 to 90,587 in 2017. The number of pre-primary, primary and secondary schools went up by 1.3 per cent, 6.7 per cent and 7.2 per cent, respectively, in 2017. Notably, the rate of increase for private schools was higher than that of public schools during the year under review (2017/2018). The total number of registered Technical Vocational and Education Training (TVET) institutions rose substantially by 50.9 per cent from 1,300 in 2016 to 1,962 in 2017. The increase is partly as a result enforcement of the TVET Act where all the institutions were required to be registered. The number of public universities increased by one following the granting of charter to Garissa University College.
112. The number of primary schools increased from 33,202 in 2016/2017 to 37,910 in 2018/2019. Primary School Enrolment overall also significantly with that of girls rising from 5,060,300 in 2016 to 5,178,300 in 2018 while that of boys rose from 5,219,300 in 2016 to 5,364,300 in the same year. Enrolment in Technical and TVET Institutions rose from 113,963 for male in 2016, to 205,142 in 2018 while of female rose from 88,593 in 2016 to 158,742 in 2018.
113. The attainment of Kenya Vision 2030 and Sustainable Development Goals are major pledges by Government, in line with the right to education for all Kenyans. Consequently, the Government is committed to enhancing access to quality and relevant education and training to its citizens at all levels, while ensuring equity. To actualize these provisions curriculum reforms have been prioritized within the national legislation informed by Article 53 of the Constitution which recognizes free and compulsory basic education as a right of every child.
114. In December, 2015 the National Curriculum Policy was developed. The policy is a clear framework for undertaking curriculum reform in Kenya. The policy enhances access to education, provide relevant pathways for transition of all learners and contribute to strengthened governance

of education at various levels. The policy then paved the way for the preparation of a Competency Based Education and Training Policy Framework in 2018. The Policy in effect transformed Kenya's educational framework by introducing a new competency-based curriculum to ensure that all learners acquire competencies and qualifications capable of promoting national values, inspiring individual innovation and life-long learning. A major challenge of the old 8.4.4 curriculum was that it was too rigid and has limited opportunities to align basic education with children's career interests, aptitudes, and abilities. The Competency Based Education and Training is a mode of training where the emphasis is placed on the acquisition of competence. It is designed to meet the demands of industry and business of the 21<sup>st</sup> Century.

115. Other measures in place to promote right to education include; development of Sessional paper No. 1 of 2019 on a policy framework for reforming education, training and research for sustainable development. The policy provisions in this Sessional Paper aim at enhancing capacities to provide quality and relevant education, training and research; Education Disaster Management Policy; Reforming Education and Training for Sustainable Development in Kenya and development of a Policy Framework for Nomadic Education in Kenya.
116. In its endeavor to address the teachers and trainers' shortage, the Government has provided funds for the recruitment of Intern teachers. Consequently, the Sector intends to continuously recruit these teachers in order to supplement the existing permanent and pensionable workforce. The teachers /trainees need be factored for future permanent & pensionable terms and the numbers increased to close the gap in the Teacher-Pupil ratio across the country especially in marginalized areas. There is now 100% transition from primary to Secondary School.

**Concluding Observation: Ensure monitoring of Bridge International Academies regarding their system and methods of education**

117. The provision of free primary education is considered one of the most important pro-poor policies and has the potential of reducing future income inequalities. Efforts by the government to provide free education for all have seen an upsurge on the number of children attending school. There is a shortage of public schools with a concomitant increase of enrolment in private schools. This has led to the rise of low-cost private schools, especially in slum and rural areas. While the government has put in place a number of measures to ensure standards are upheld in all schools there have been some challenges in regulating some private schools.
118. Bridge International Academy (BIA) is a not-for-profit private chain of nursery and primary schools with over 400 institutions in Kenya, serving informal settlements and poor rural areas. BIA is being supported by the International Finance Corporation and has also received funding from the UK Department for International Development (DFID), and other private philanthropists and institutions. The Government has categorized the Schools as private and must therefore adhere to private school rules and regulations. The allegations that the Bridge Schools breached Kenyan labour standards, health and safety requirements, and national education regulations are currently under investigation.
119. The Government has indicated its concerns that development partners such as the World Bank through its private finance arm the International Finance Corporation, and the Department for International Development did not consult with or seek the approval of the Ministry before

supporting the BIA chain of schools. It is important that all interventions by development partners in the education sector should be coordinated and approved by the Ministry of Education before implementation and frequent joint Monitoring and Evaluation missions should be undertaken, and the findings of these evaluations made public. Steps have been taken to ensure that the schools follow approved curriculum and there is a continual monitoring of the schools to ensure quality education.

120. To mitigate quality assurance issues, the Education Standards and Quality Assurance Council was established in 2013 by the Basic Education Act, 2013. The Council is charged with ensuring standards and maintains quality in institutions of basic education; administer policies and guidelines set for basic education; supervise and oversee curriculum implementation and delivery; in cooperation with county education, monitor the conduct of assessments and examinations in institutions of basic education; and monitor and evaluate standards and quality in basic education. Its mandate includes monitoring the schools for quality assurance through regular school inspections and assessments
121. Kenya is a multi-cultural and multi-lingual society. Kenya is made up of more than 44 ethnic communities with ties to either linguistic or cultural orientations. Kenya has in place strategy in its education system of encouraging the use of mother tongue or indigenous languages at the lower level of education system even though English is recognized as official language and Kiswahili recognized as the national language as per Article 7 of the Constitution.

### **Right to take part in cultural life**

122. Culture is the foundation of the Kenyan nation and the cumulative civilization of its people. In recognition of this, the state has promoted all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage and protects cultural intellectual property rights. For example, the State has promoted the use of vernacular or local languages in teaching in early child development and education centres. Community cultural centres have been constructed to provide full and sustained support for the development of the diverse cultural expressions in the country. Community Cultural Festivals are held annually in various regions of the country in partnership with local communities including the marginalized and people with disabilities. These programmes act as avenues for promoting and preserving the rich cultural heritage as well as facilitating participants in enjoying their cultural life and building national cohesion and integration.
123. To implement constitutional principles on culture, a draft National Policy on Culture has been developed by Government in collaboration with academia, civil society organizations and other stakeholders. The draft policy covers a range of broad areas related to culture such as national development, national heritage, languages, cultural industries, the family, human rights, education, media, education and tourism. Through the policy Kenya commits to responds to both international and national requirements for the protection and appreciation of diversity of cultural expression while at the same time charting a path that promotes her unique identity and culture. The policy seeks to protect and preserve the unique identity of the people of Kenya and use it for their well-being and development. The policy further guides the practice of democratic governance through promotion of inclusion and participation for all citizens as a guarantee for social cohesion and peace. The policy emphasizes the appreciation of cultural diversity and recognizes it as an opportunity towards widening the range of options open to every citizen and as

a root of development, not simply understood in terms of economic growth, but also as a means for achieving a more satisfactory intellectual, emotional, moral and spiritual existence.

## **Article 18: Right to family and Rights of women, children and Persons with Disabilities**

### **Protection of the Right to Family**

124. The Constitution highlights the centrality of the family as an important unit of society and the necessary basis for social order. The rights of adult persons of opposite sexes to found a family based on free consent of the parties are protected and safeguarded. In addition, the supreme law protects equal rights at the time of the marriage, during the marriage and upon dissolution of the marriage.
125. The Protection against Domestic Violence Act 2015 was enacted by Parliament to provide for the protection and relief of victims of domestic violence and to provide for the protection of a spouse and any children or other dependent persons. The legislation implements Articles 10, 28, 29, 43 and 45 of the Constitution. The coming into force of the Act was significant because although domestic violence has been meted out to on men, women and children for so many years, there was no specific legislation on such a crime. The Act is important because it solely addresses violence within the family set up.

### **Protection of the Rights of Women***(Refer to the initial report on the Maputo Protocol contained herein)*

### **Protection of the Rights of Children** *(Refer to the Initial report on the Maputo Protocol contained herein on measures regarding female genital mutilation and early marriages.)*

126. The Government has developed a National Plan of Action for Children in Kenya (2015-2022) which provides an operational framework to guide stakeholders and partners in coordinating, planning, implementing and monitoring programmes for the child. In addition, this policy document outlines priorities and interventions necessary for the progressive realization of children's rights in Kenya.
127. The government has also developed Guidelines on Identification and Referral of Children with Disability and Special Needs. The guidelines are aimed at health workers, as well as caregivers. A training manual for health workers on prevention, early identification and intervention on disability is in use.
128. To protect children from abuse, Violence, trafficking and exploitation, the Government operates a National Child Helpline 116 with a toll-free telephone line where anyone can call to report cases of child abuse. The Centre responds to an average of 5,000 to 7,000 cases in a year. The main call

centre is located at Lower Kabete, Nairobi County. It has other two subsidiaries call centers in Eldoret and Garissa counties.

**Concluding observation: Cease the practice of child labour;**

129. Certain categories of child labor are prohibited by the Employment Act. In 2017, the government established additional Child Protection Centres to provide housing, counseling, and reintegration services to rescued child laborers. A Child Protection Centre is a one stop shop placed within the community to serve as a hub of information and services principally for children. This is a place where children at risk of violence, exploitation, neglect, abuse, or separation from family receive integrated protection services such as: rescue, legal aid, re-integration with families, individual case assessment, counselling and referral to other services. Kenya currently has child protection centres in Kilifi (Malindi) and Nakuru Counties.
130. The government also developed a National Employment Policy, 2017 that obligates officials to report the number of children withdrawn from child labour and the progress of child labour-free zones.

**Protection of the rights of persons with disabilities**

131. The Sector Policy for Learners and Trainees with Disabilities, 2018 aligns the provision of education and training to the Constitution of Kenya 2010, the Basic Education Act (2013), as well as the Sustainable Development Goal No. 4 on Equitable, Inclusive Quality Education and lifelong learning for all. Specifically, this policy seeks to achieve four objectives, to: 1) Align education and training services for learners and trainees with disabilities with the relevant national policy frameworks; 2) Develop a clear policy framework for the provision of inclusive education and training; 3) Address the existing policy and implementation gaps in the provision of education and training for learners and trainees with disabilities; and 4) Develop guidelines for the implementation of the policy. The strategies and policies outlined in the Policy are being implemented.
132. The National Council on Persons with Albinism has registered 3,156 persons with Albinism in the sunscreen program as at June 2019. Further, the 2019 Kenya Population and Housing Census has included a specific question that will be able to collect data on albinism separately from the other disabilities outlined in the six domains namely: visual, hearing, speech, physical, mental and self-care.
133. The Persons with Disabilities Bill 2018 seeks to repeal the present Act to ensure conformity with the Constitution of Kenya, 2010 and Convention on the Rights of Persons with Disabilities. The Bill was approved by Cabinet on 14th August 2018 and has been tabled in Parliament. It provides a broader protective framework of the rights of persons with disabilities in Kenya. The Bill also includes persons with Albinism in the broader definition of persons with disabilities, obligates the state to facilitate public participation for persons with disabilities, and addresses concerns of women, girls and children, youth and elderly with disabilities.



134. An inter-agency coordinating committee has been established to facilitate the effective implementation of the disability agenda in Kenya including the commitments made at the 2018 Global Summit. Kenya co-hosted the Global Disability Summit with Government of the United Kingdom and International Disability Alliance in July 2018. The overall aim of the summit was to galvanize global efforts to address disability, inclusion and generated sustainable commitments from Governments, donors, civil society and private sector.
135. Sections of the Constitution of Kenya (2010) and legislation that used derogatory language when referring to persons with intellectual or psychosocial disabilities are yet to be revised, pursuant to the National Action Plan on implementation of the recommendations of the Committee on the Rights of Persons with Disabilities.

### Protection of Rights of Older Persons

**Concluding observation: Kenya should expedite the enactment of the draft Older Persons Bill of 2015 and the National Policy on Older Persons.**

136. The Older Persons Bill 2015 was renamed the Care and Protection of Older Members of Society Bill, 2018. The bill is currently before the Senate and has undergone two readings. This bill seeks to give effect to Article 57 of the Constitution, to provide a framework for the care of older members of society and to establish a framework for the empowerment and protection of the elderly and the maintenance of their well-being, safety and security.
137. Further, Kenya has commenced the ratification process for the Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons in Africa. The National Policy on older Persons and Ageing, 2014 provides a comprehensive framework to address the unique challenges that older persons in Kenya face, and recognition of their rights, as distinct right holders and participants as per Article 57 of the Constitution. The policy also provides a coordinated and harmonized mechanism for implementation of outlined interventions by the older persons and stakeholders. The policy identifies 10 thematic areas and intends to strengthen the areas to cater for the ageing; Older Persons and the Law, Poverty and Sustainable Livelihood, Health, HIV and AIDS, Family, Community and Culture, Food Security and Nutrition, Infrastructure, Education, Training and ICT, Employment and Income Security, Social Protection and Services, and other Cross Cutting Issues.
138. The policy is being implementing under the Government's flagship National Safety Net Program popularly known as '*Inua Jamii*' Cash Programme. The Programme is a cash transfer system that is aimed to utilize Kshs. 12 Billion every year. The '*Inua Jamii*' incorporates beneficiaries of Cash Transfer such as Orphans and Vulnerable Children, Older Persons Cash Transfer, Persons with Severe Disabilities Cash Transfer and Hunger Safety Net Programme. The objective of *Inua Jamii* is to uplift the lives of poor and vulnerable citizens of Kenya through regular and reliable bi-monthly Budget allocations which dictates the number of persons to be included in the cash transfer program. Due to insufficient budgets, the number of persons under the program is limited. Measures in place aimed at improving enrolment and registration of beneficiaries to the Cash Transfer Programs including the Older Persons Cash Transfer Program are; Decentralization of the Single Registry in all the 290 constituencies; Decentralization of the Grievance and case management system in the 290 constituencies and Introduction of the Toll-free line-1533 for reporting any grievances under the program



139. The introduction of digital registration has helped address the challenge of double or multiple registrations into the cash transfer programs. Payments under the program have also been channeled to four banks namely Kenya Commercial Bank, Co-operative Bank of Kenya, Equity Bank and Post Bank creating accountability. The first two withdrawals per payment cycle are free of bank charges for the beneficiaries.

140. The Government through its Ministry of Labour and Social Protection has developed a communication strategy and beneficiary outreach strategy with the aim of increasing awareness and sensitization on the cash transfer programs. Some of the platforms used include use of print media, local radio stations and social media. With regard to administrative measures to ensure that older persons live a quality life grievance and Crisis Management platform has been established via toll free number 1533, and Social Development Officer and Children welfare officer at county and sub-county report to the Welfare Committee once the money has been released. Further intervention includes the training of persons aged 50 years in preparation of retirement.

**Measures in place to address the difficulties in enrollment and accessing registration of pay points for cash transfer programs including creating awareness of these programs**

141. To ease access to administrative issues the Ministry responsible for social protection has increased the number of pay points from 2 to 4 banks; Equity, Co-operative Bank, KCB and Postbank; An memorandum of understanding has been signed with the banks to issue the cards to the individual in the households; A Beneficiary Outreach Strategy is in place to reach all eligible members.; and Beneficiary Welfare Committees have been established countrywide. They act as intermediary between the beneficiaries and the execution agency. Their members are elected after every two years. The Welfare Committee has to vet all identified caregivers.

**Table 6: Number of Persons who have Received Support from Cash Transfer Programs Since 2016**

PROGRAMME	Number
CT-OVC	379,00
PWSD	44,000
OPCT -(65 YEARS AND ABOVE)	523,000
70 YEARS AND ABOVE	65.000
HSMP	102,00

Source: Ministry of Labour and Social Protection

**Comply with the Commission's State Reporting Guidelines under the Maputo Protocol.**

142. The GOK has adhered to this recommendation and has submitted the Initial Report under the Maputo Protocol in Chapter 3 of this Report. The National Gender and Equality Commission in collaboration with the State Department of Gender have developed a score card for the evaluation of the implementation of the Protocol in order to improve the reporting process under the treaty. The score card at the time of preparing this report was undergoing stakeholder validation.

## Article 19: Equality of the People

143. The Constitution of Kenya highlights equality as an important national value and principle of governance. GOK has put in measures to implement these constitutional provisions: The National Policy on National Values and Principles of Governance provides broad guidelines to government, non-state actors and citizens to develop action plans to mainstream National Values and Principles of Governance (which includes the principle of equality), as provided for in Article 10 of the Constitution, into their day-to-day programmes and activities, and ultimately ensure that the shared values become a way of life for the people of Kenya. A National Values and Principles of Governance Training Manual has also been developed. The Manual operationalises core concepts and methods of delivery as well as provide customized material to the Kenyan situation for reference and further research.

**Kenya should implement the Endorois decision, as non-implementation further contributes to discrimination and marginalization of these communities. In line with this, the Government should also ensure that the Task Force includes CSOs and the Endorois Community**

144. In September 2014, the Government established a Taskforce on the Implementation of the African Commission decision on the Endorois case<sup>21</sup>. The taskforce was mandated to study the decision of the African Commission, examine potential environmental impacts on the surrounding Lake Bogoria, examine the practicability of restitution of Lake Bogoria and the surrounding area to the Endorois Community taking into account that Lake Bogoria is classified as a World Heritage Site by the United Nations Economic, Social and Cultural Organization (UNESCO); and assess the amount of compensation payable to the Endorois Community for losses suffered and for settlement of royalties owed from existing economic activities on and around Lake Bogoria. Unfortunately, due to budgetary constraints, the Taskforce did not complete its mandate and its term was not extended.

145. However, despite these challenges, the Government remains committed to honor the decision of the African Commission in the Endorois Case. Out of the seven recommendations issued in this decision, the GOK in collaboration with the Baringo County Government has implemented four namely; Ensuring that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle, Payment of royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve, registration of the Endorois Welfare Committee and Engaging in dialogue with the Complainants for the effective implementation of these recommendations.

146. The above is a reaffirmation of the Kenya government's commitment to fulfilling its obligations under all regional and international human rights mechanisms. Noting that the government is primarily responsible for the promotion and protection of human rights for all in Kenya, it is thus incumbent upon the State to address any issues concerning its people in an all-inclusive and holistic manner. Any strategy must take into consideration the States' own internal infrastructural processes, budget and national ethos. Importantly, any strategy to implement decisions must be weighed against other existing policies, constitutional provisions, environmental, political and security impacts.

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<sup>21</sup>Gazette Notice no. 6708 of 26<sup>th</sup> September 2014, available at [http://kenyalaw.org/kenya\\_gazette/gazette/volume/MTA3Nw--/Vol.CXVI-No.115/](http://kenyalaw.org/kenya_gazette/gazette/volume/MTA3Nw--/Vol.CXVI-No.115/)

**Concluding Observation: Include information on human rights abuse against indigenous peoples, especially on the communities aforementioned and measures taken by the Government to investigate and punish the perpetrators;**

147. All allegations on human rights abuses /violations are investigated by the government. There are several platforms for reporting these abuses, including the KNCHR, IPOA and the Internal Affairs Unit of the police.

**Concluding Observation: Ensure political participation of all indigenous Communities**

148. Kenya has a viable constitutional basis for every Kenyan to participate in decision making processes including in the political arena. Article 10 of the Constitution provides for national values and principles of governance, clearly setting out the right of the people to participate in the affairs of government. On this basis, the principles of devolution outline participation of the people in decision making as the hallmark of democracy. Article 1 of the Constitution recognizes the sovereign power of the people and which are delegated to be exercised on their behalf through representatives.

149. Article 56 (a) exhorts the State to develop affirmative action programmes designed to ensure that minorities and marginalized groups participate and are represented in governance and other spheres of life. Article 100 of the Constitution provides for the promotion of representation of marginalized groups. To this end, The Representation of Special Interests Group Law (Amendment) Bill 2019 was introduced in the National Assembly in July 2019, to promote the representation of marginalized groups in Parliament. The proposed legislation is currently undergoing stakeholders' consultations and public participation.

**Concluding observation: Take urgent measures to address indigenous peoples' specific needs in relation to land, education, health, employment and access to justice, and further ensure that affirmative action policies and measures adopted in this respect effectively and adequately benefit them.**

150. The Constitution recognizes that indigenous people form part of marginalized communities who must be protected through specific affirmative action designed to ensure that they enjoy their human rights and fundamental freedoms on an equal footing with others. The GOK has set up a number of affirmative action programmes designed to aid the minorities and marginalized groups in terms of access to water, health services, employment, education and infrastructure. Access to justice is also guaranteed in Article 48 of the Constitution for all persons. Free primary Education and free day secondary education has enhanced access to education. Further the government has begun the process of introducing universal health coverage. Devolution is promoted, as a strategy for balanced social and economic development. Social protection programs are implemented in all constituencies of the country. Cash transfers are now available to all citizens over 70 regardless of gender, region or ethnicity.

151. The Indigenous Peoples Planning Framework is invoked in cases where indigenous peoples are present in, or have collective attachment to any project lands. The Plan is prepared so that the development process fully respects the dignity, human rights, economies, and culture of indigenous peoples.

## **Article 20: Right of peoples to existence and self determination**

152. The Constitution establishes a comprehensive framework for constitutional democracy in Kenya, where all sovereign power belongs to the people. The people of Kenya exercise their sovereignty through free and fair elections of their representatives once every five years. Elections are held under the management of an Independent Electoral Commission created under Article 248(2) (c) and in accordance with the Elections Act. Kenyans elect leaders to govern them at the national and county levels. The devolved system of Government introduced by the Constitution in 2010 has played a major role in: increasing the peoples' participation in the way they are governed; widening the scope of development with most functions being devolved to the county government; ensuring the equitable sharing of national and local resources; protecting the rights of minorities and marginalized communities; and promoting social and economic development and access to public services throughout Kenya.

## **Article 21: Right to free disposal of wealth and natural resources**

153. The Government is in the process of strengthening the legal, policy and institutional frameworks that govern the exploitation, management, utilization and conservation of minerals; and, natural resources for maximum economic benefit of the country and local communities:

**Concluding Observation: Implement measures to transform artisanal gold miners into formalized operators by adopting Artisanal Mining policies to regulate artisanal mining, thereby promoting miners in that sector to make reasonable contribution to sustainable development, economic growth and poverty alleviation in the country;**

154. The mining sector in Kenya is mainly regulated by the Constitution, the Mining Act, 2016, regulations and the Mining and Minerals Policy, 2016. The Mining Act, 2016 outlines the regulation and formalization of all mining in Kenya. Artisanal and small-scale mining operations are recognized under the Mining Act which outlines procedures for ensuring safe operations. The Artisanal operators are protected under the Act, which highlights how mining activities can be undertaken in safer environments while allowing them greater opportunity to benefit from minerals within their lands. The Cabinet Secretary has prescribed regulations for the protection, health and safety of artisanal mining operations as well as on the sale of minerals. The law establishes County Offices, headed by a representative of the Director of Mines. The office is responsible for granting, renewing and revoking artisanal mining permits, maintaining a register of artisanal miners and maintaining fair-trade. The Office provides training facilities and assistance necessary for effective and efficient artisanal mining operations and facilitates the formation of artisanal association groups or cooperatives for the miners.

155. The Mining and Minerals Policy, 2016 provides a framework to enable the country obtain maximum benefits from its future mineral deposits. The Policy comprehensively addresses the gaps that have existed in the mining sector and provides a basis for reviewing the sector's legal framework and ad hoc regulations. It further aligns the country's mining sector with the aspirations of Kenya Vision 2030, the provisions of the Constitution of Kenya and the African Union Mining Vision, 2009 which aims at positioning mining as a key driver of Africa's socio-economic development.

156. The government has endeavored to remove barriers that hold back the development of artisanal and small-scale mining, particularly, lack of access to finance, recognized mineral rights, inadequate technical capacities and incentives to operate legally. The artisanal and small scale miners are assisted to obtain fair market prices through control of illicit dealings in minerals through appropriate licensing and provision of market information and training, facilitating access to credit through various means such as cooperative savings, pooled equipment leasing arrangements, government supported concessional lending schemes and assistance in obtaining finance and business training skills, setting up a minerals licensing system under the new mining legislation that will offer specific mineral titles suited to small scale mining expressly reserved for Kenyans using simplified application procedures, facilitating access to land for artisanal and small scale Kenya has in place legislation and regulations that govern the mining sector.

**Concluding Observation: Put in place a legal framework regarding its natural resources with clear penalties for illegal practices so as to eradicate illegal mining activities in the country**

157. The legal framework to protect natural resources especially the mining activities had been catered for under the Mining Act, 2016. This Act of Parliament provides the legal basis for issuance of mining permits and licenses and any illegal activity devoid of that is an offence under the Act. Section 147 provides grounds for suspension and revocation in instances where the mineral right holder commits an offence under the Act.

## **Article 22: Right of Peoples to Economic, Social and Cultural Right to Development**

158. Under the 'Big Four Agenda' (2018 to 2022) the GOK dedicates its resources and time to improving the living standards of Kenyans, grow the economy and enhance food security. The Agenda was conceptualized on the basis that to accelerate the achievement of our Vision 2030 aspiration, the government would need to take a new approach to the medium-term planning, and focus to those issues that would have the greatest impact on the well-being of our people. The main agenda items are: food security, manufacturing (mainly focusing on job creation in this area), affordable universal health care and affordable housing.

159. Under the food security and nutrition agenda, the government will deliver on a 100% food security and nutrition commitment. It seeks to achieve this by increasing large scale production of staple foods, a move that will see 700,000 new acres of maize, potatoes, and rice being put under cultivation in a private/public partnership. The crops will be grown under irrigation, to solve the problem of erratic rains, which affect several farmers across the country. The move is expected to increase, by a significant amount, the level of crop production in the country. By 2022, it is expected that maize production will increase by 27 million bags, and potatoes by 0.9 million tons.

160. Other interventions include: The Agricultural Sector Transformation and Growth Strategy (ASTGS) 2019-2029 prioritises the commercialization of agriculture as a strategy to grow the economy and reduce poverty; The Kenya Livestock Insurance Programme (KLIP) which so far covers 8 counties in the ASAL areas and provides a subsidized government funded insurance scheme to cushion farmers against livestock sub-sector risks. So far 90,600 Tropical Livestock Units and 18,012 households have been covered. In 2018 Kshs. 88 million (USD 880,000) was paid to 6,286 households and; The 'Regional Pastoral Livelihoods Resilience Project (RPLRP,

2014- 2019) covers 14 ASAL Counties and aims to develop and implement regional approaches that enhances livelihoods resilience of pastoral and agro-pastoral communities in the Arid and Semi-Arid lands (ASALs) of Kenya.

161. Under Universal healthcare the government will increase the healthcare cover from the current 36% to 100% by the year 2022. In the blueprint, the government has identified a number of ways to help achieve this target. Top among them include: increasing the budget allocation and spending of the health sector by up to KES 12 billion by 2021, overhaul of the NHIF to extend its services to more Kenyans, deployment of the free maternity programme across private and missionary hospitals, and ensuring there is at least one hospital with CT scan capability in every county.

162. With regard to affordable housing, availability of proper houses is another issue affecting many Kenyans. To ensure every Kenyan has access to comfortable houses, the government plans to build at least 500,000 low-cost houses in a partnership scheme with the private sector. Apart from offering low-income Kenyans with access to housing, the scheme will help to create over 300,000 jobs, while providing a good market for local manufacturers and suppliers. The government also plans to make mortgage more easily accessible to Kenyans, thus making it easier for them to borrow or extend their mortgage loans.

**Concluding Observation: Provide adequate housing for the urban and rural population as well as improve the existing urbanization pattern in identified developing and approved urban areas of the country.**

163. The Constitution under article 43(1) (b) provides that every person has the right to accessible and adequate housing and to reasonable standards of sanitation. Vision 2030 and the revamped National Housing Policy 2016 establish the need for decent and affordable housing for all Kenyans. The GOK has defined the delivery of 500,000 affordable housing units to the lower and middle-income communities as one of the prioritized areas under the 'Big Four Agenda'. Currently Kenya's housing deficit stands at 4.5 million and the plan is to build 50,000 housing units per year as a way of meeting the deficit by the set target year.

164. The construction of the houses has already commenced, covering major urban areas across the country. The houses are being built using affordable building materials, efficient construction technologies and use of environmentally friendly building materials and techniques. Park Road affordable housing programme project is ongoing. Park Road is the first development promoted by Government under the Affordable Housing Program. This integrated human settlement project is located in the Ngara area of the City of Nairobi, and will consist of 1,370 units.

165. The Gok while acting as an enabler, partner, and catalyst in the housing delivery process is collaborating with the private sector who have a role to play in the sector. For example; through the 2016 Finance Act, developers were given a major tax incentive after Parliament approved a reduction of Corporation tax from 30% to 15% for developers who construct a minimum of 400 housing units in a year. The move was meant to bridge the housing gap and support construction of decent and low-cost housing. Players in the housing sector, such as, developers, landowners, financiers, manufacturers of building materials, and cooperatives societies are encouraged to develop innovative and practical solutions that will see the timely delivery of affordable and accessible housing for the people.



166. The government scrapped the National Construction Authority (NCA) and the National Environment Management Authority (NEMA) levies. All these are meant to boost housing developments. Further, the National Government is also encouraging Counties to invest in social housing to cater for the influx of people moving to the County headquarters from the rural areas in search of jobs and business opportunities.
167. To mitigate the high building costs of building materials 93 Appropriate Building Materials and Technologies (ABMT) centers have been established to lower construction costs and improve quality and speed of construction. 15 more centres to be constructed countrywide by 2022. ABMT refers to processes, materials, elements and tools that are compatible with the local socio-cultural, economic as well as physical and ecological environment of an area. The ABMT's overall objective is to facilitate/coordinate collaborative research and documentation; technology incubation and enterprise development; and technology transfer, capacity building training and dissemination to facilitate efficient and cost-effective housing delivery. The ABMT co-ordination at the County level is undertaken by the County Directors of Housing.
168. In this regard Government has promoted the use of Interlocking Stabilized Soil Blocks (ISSB) technology due to its high appropriateness, local availability of soils, small scale application and potential to address poverty and housing affordability challenges facing majority of Kenyans. When properly utilized, ISSB technology has the potential to reduce construction costs by up to 50%, create sustainable employment, transfer skills, conserve the environment and raise living standards. The government has promoted the use of these blocks in all 47 counties on ISSB application, production and construction processes as well as maintenance procedures.
169. The Government of Kenya, in collaboration with UN-HABITAT and other stakeholders, initiated the Kenya Slum Upgrading Programme (KENSUP) in 2004. This is an ongoing project whose objective is to improve lives and livelihoods of people working and living in slums through various initiatives and interventions which aims to improve the lives of at least 10 million slum dwellers by the year 2020.
170. **Slum upgrading projects:** 462 housing units and associated infrastructure including a primary school, police station, market stalls, shopping centre and 2 nursery schools in Mavoko under construction at 93% while 10 classrooms constructed at Mukhaweli Primary School in Bungoma. In addition, 15 wells in various slums, improved in Lamu County and Kibung'a market in Tharaka Nithi slums constructed.
171. Implementation of Kenya Informal Settlement Improvement Project (KISIP): Kericho, Nakuru, Kisumu, Uasin Gishu, Embu, Kitui, and Kilifi counties benefited from installation of infrastructure projects as follows: 83km access roads; 84 high masts floodlights; 38km of sewer line; 2,876 sewer connections; 50km of pipeline; 3500 water connections; and 14 ablution blocks.
172. National Police and Kenya Prison Services housing units are ongoing as follows: Kakamega Main Prison (60) - 60%; Narok Police Station (60) - 85%; Kapenguria Main Prison (60) - 55%; Bondo AP Lines (60) - 55%; Police Training College, Loresho (72) - 70%; Eldama Ravine AP Camp (60) - 60%; Ndaragwa Police Post (60) - 50%; Meru Main Prison (60) - 90%; and Kitui AP Border Patrol (60) - 70%. The overall completion percentage as at December 2019 was 75%.
173. **Civil Servants Housing Scheme:** 250 housing units have been constructed in Kisumu while 620 housing units are ongoing in Kiambu (200), Embu (220) and Machakos (200) at average



completion level of 85%. A total of 496 Civil Servants have been facilitated to own housing through mortgage from the Civil Servants Housing Scheme. In addition, land documentation is ongoing in preparation for design of 1,350 units in Murang'a (150No.); Kakamega (150No.); Nyeri (150No.); Kisii (150No.); Mombasa (200No.); Garissa (100No.); Nakuru (150No.); Uasin Gishu (150No.); Meru (150No.). An average of 10% of works has been undertaken.

174. **Policy and legislation:** Measures taken to ensure the right to housing include, the review and development of legislation and policies, as follows: the National Housing Policy of 2016, the Slum Upgrading and Prevention Policy of 2016, The National Urban Development Policy of 2016, the amendment of the Urban areas and Cities Act by Parliament in October 2017, approval of the Sectional Properties Bill 2018 in February 2019 by the Cabinet, the National Housing Bill 2019 and the Housing Levy on the Finance Act 2018 among others.
175. The provision of affordable housing in Kenya has been greatly hampered by the high cost of land particularly in urban areas. This situation is further exacerbated by the ever-expanding populations in the cities. The government is addressing this situation by releasing the large tracts of public land to realize the housing agenda for the low and middle-income earners.

**Concluding Observation: Ensure urban and rural-level infrastructure, including roadways and water distribution;**

#### **Urban infrastructure**

176. During the last four decades, Kenya has witnessed a rapid rate of urbanization estimated at five per cent, which has seen the urban population rise from eight per cent at Independence (1963) to the current figure of over 34 per cent. It is projected that half of the Kenyan population will be urbanized by 2030. This has given rise to challenges such as inadequate infrastructure and services; poor housing; low access to water, environmental degradation, high rates of unemployment, increasing incidence of poverty, and inequality.
177. To address the situation various legislative, institutional and policies measures have been taken: The County Governments Act 2012; The Urban Areas and Cities Act 2012, Amended 2016; Housing Act; Building Surveyors Bill 2017; Urban Areas and Cities Amendment Bill 2017; Nairobi Metropolitan Area and Transport Authority Bill 2017 .
178. The Urban Development Committee was constituted to consider all matters relating to urban development and regulations; investment and urban planning policies. The Committee provides technical assistance in terms of information, research, policy analysis, and resource development for County Governments across a range of policy issues targeting the growth of urban areas as engines of county economy.
179. Major milestones of the Committee include;
- i. Development of the County Spatial Planning guidelines in collaboration with Ministry of Lands and Physical Planning. Some Counties have started to prepare County Spatial Plans while others have completed and launched;
  - ii. Development of a framework to guide and assist County Governments in the establishment of institutional structures for the management of urban areas, as envisaged in Urban Areas and Cities Act;

- iii. Creation of forums for sharing of emerging issues and best practices, including modalities for prioritization and promotion of urban areas as engines of socio-economic growth;
- iv. Provision of a platform for review and mainstreaming of on-going urban development programmes, within respective county integrated development plans (CIDPs);
- v. Provision of a framework for the review and mainstreaming development partner's engagement and support to county Governments on urban development and management issues;
- vi. Capacity assessment of Counties in planning and training;
- vii. Investment in urban safety through street lighting by most counties;
- viii. Knowledge sharing activities by Counties through peer to peer exchange.

### **Road infrastructure**

**180.** Without good road development, movement is critically impeded occasioning delay in the ferrying of produce and other goods to the market, which in turn invariably hamper economic development. Socio-economic benefits associated with these development of reliable roads includes; facilitation of trade due to increased competition and better and diverse products, improvement of movement of people and goods and increased employment opportunities. Investments in the road sector benefit the whole society by providing access to territory and allowing poverty alleviation to take place. Consequently, the road network creates and stimulates positive synergy and enhances social cohesion and integration by giving citizens the same opportunities.

**181.** In Kenya, the main authorities for the management of road infrastructure are the Kenya Urban Roads Authority (KURA) a State Corporation under the Ministry of Transport and infrastructure established by the Kenya Roads Act, 2007. Its core mandate is management, development, rehabilitation and maintenance of national urban trunk roads. KURA has facilitated the construction of Upper Hill-Mbagathi link road in Nairobi County running a distance of 11km at a cost of Kshs. 1.2 billion (Approx. USD 12Million), Nairobi Eastern Missing link roads and Non-Motorized Transport Facilities in Nairobi running a distance of 17.2 km at a cost of Kshs. 5.5billion. Others include: Construction of Bitumen Standards of Meru Bypass Roads in Meru covering a distance of 23km at a cost of 2.9 billion, a 5.2km Kisii Bypass (Phase 1) at a cost of Kshs. 448 million, and construction of Kangundo Road-Greater Eastern Bypass in Nairobi at a cost of Kshs. 1.1billion. We also have improvements and rehabilitation of roads such as: Argwings Kodhek, Ole Dume, and Gitanga Road in Kiambu running a distance of 8 km at a cost of Kshs. 78 million, rehabilitation and upgrading of Upper Hill Roads (Phase II) in Nairobi covering 6.5 km at a cost of Kshs. 2.2 billion among others.

**182.** On the other hand, the Kenya Rural Roads Authority (KeRRA) is a State Corporation established through the Roads Act, 2007. It is tasked with providing quality, safe and efficient rural road network hence engaged in the construction, maintenance and management of the rural road network for sustainable socio-economic development. The Authority has finalized a number of projects including: the 57 km Butere-Sidindi, Butere (Bukolwe) -Musanda - Bungasi -Sigomere-

Ugunja'road in Kakamega County; the 28 KM Mundere –Rwanda road in Busia county; the 50Km Musikoma-Buyofu-Mungatsi road in Bungoma County

183.The Kenya National Highway Authority (KenHA) is in charge of major highways. In the 2013/2014-2017/2018 period the Kenya National Highway Authority (KenHA) registered the following achievements:

- i. Northern Corridor Transport Improvement Project (NCTIP): Completed projects included the reconstruction works for Timboroa – Eldoret (73km), rehabilitation of Kericho – Namarari (76 km), Mau Summit – Kericho (58 km), Nyamasaria – Kisian (Kisumu Bypass) (22 km), rehabilitation of Eldoret – Webuye (60 km) and Webuye – Malaba (62 km) road sections.
- ii. Lamu Port South Sudan Ethiopia Transport Corridor (LAPSSET): four lots were completed namely: Isiolo – Merille River (136 km); Merille River – Marsabit (121 km); Marsabit – Turbi (121 km) and Turbi – Moyale (127 km).
- iii. East Africa Road Network Project (EARNP): a total of 137 km was done through construction of Modika – Nuno (23 km) and upgrading of Voi – Mwatate – Taveta (114km) roads.
- iv. Kenya Transport Sector Support Project: 132.3 km out of the targeted 222 km of roads were constructed or rehabilitated. These included: construction of interchanges at Nakuru/Nyahururu turnoff at 94% complete, rehabilitation of Kisumu – Kakamega (47km) at 77% complete and Bachuma Gate – Maji ya Chumvi (53km) at 82% complete.
- v. Other major Programmes and projects completed include: Nairobi Southern bypass (30km) was completed, construction of 19km of phase one of Dongo-Kundu bypass (Miritini-Mwache Kipevu link road) was completed, Port Reitz/Moi International Airport road was completed to aid in decongestion major Cities.

184.In Kiambu County the authority started rehabilitation and improvement of Thika-Kiambu road tender number KeNHA/2223/2019 running 68km. Another project is the dualling of Mombasa-Kwa Jomvu-Mariakani (A8) road, which links the Port of Mombasa with neighbouring countries including Uganda, Rwanda, Burundi and the Democratic Republic of Congo.

185.In Nairobi KeNHA is rehabilitating James Gichuru Road junction-Rironi (A8) Road. The road located in Nairobi and Kiambu counties is 25.3km long and is being rehabilitated at a cost of Sh16.4 billion (Approx. USD 164 Million). The project, which is fully financed by the government, commenced in August 2017 and it is expected to be completed in November 2020.

186.The Kshs. 17 billion Nairobi Western Bypass, which facilitates efficient communication around the Nairobi region, will be completed in the next 39 months. Others road networks include the second carriageway along Athi River-Machakos turnoff (A8) road which is 57.1 percent complete.

187.The Mombasa-Nairobi Standard Gauge Railway (SGR) was launched in 2017. The line which reached Suswa in 2019, is expected to revolutionize transport of bulk cargo to the East Africa

nation's hinterland and neighboring countries. The Railway, once completed will stimulate investments and economic growth in the region

188. The provision of clean and safe water to Kenyans is a priority of the Government given that it is an enabler of the big four Agenda which are food security, affordable housing, manufacturing and affordable healthcare. On this basis the draft National Water Policy provides an opportunity of guiding the achievement of sustainable management through the development and use of water resources. Kenya has seen development of dams throughout the country. Among these is the Keroka Water project (currently operational) funded by the African Development Bank and the GOK at a cost of Kshs. 430 million (Approx. USD 4.3 Million) thus benefiting 60,000 people.

189. The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2019, proposes to establish a framework for the preservation of human dignity and for the promotion, monitoring and enforcement of economic and social rights. The proposed legislation requires national and county Government to formulate legislation, policies and other measures to promote the realization of socio-economic rights as enshrined in Article 43 of the Constitution. The performance of county government will be monitored by the KNCHR.

## **Article 23- Right to National and International Peace and Security**

190. Over the years the world has witnessed a surge in terrorist attacks and violent extremism. These attacks have impacted on national and international peace and security. Kenya has on several occasions become a victim of terror attacks. Lives of innocent civilians and security officers have been lost and property destroyed. The Government's engagement as part of the African Union Mission in Somalia (AMISOM) has yielded significant success. The engagement has degraded the capacity of Al-Shabaab to carry out large-scale attacks in Kenya and elsewhere.

191. The Government's counter terrorism effort has delivered a sharp reduction in the number of fatalities, attacks and attempts by terrorist entities. The Government has increased its focus on preventing and reducing the motivations underlying radicalisation and recruitment into terrorism. The National Strategy to Counter Violent Extremism is bearing fruit. This strategy is addressing radicalisation by combining the efforts of diverse actors including the state, civil society, the private sector, and religious organisations to protect our democracy.

192. With regard to peace in the region the government has been actively involved in the peace process in South Sudan on a bilateral and multi-lateral basis. While the situation remains unresolved, it is the Governments desire to have a stable and peaceful South Sudan because the future and prosperity of the country is intertwined with that of the neighbours.

193. To address issues which have historically led to political differences and violence during election periods in the country and impacted negatively on peace and prosperity of the country, His Excellency the President and the main opposition leader, Raila Odinga launched the Building Bridges Initiative (BBI) on March 9th 2018. The two leaders agreed to embrace each other and unite the country that was suffering from highly contentious elections, ethnic antagonism and lack of national cohesion that not only impacted on the security of the country but also economic development.

194. The BBI is an initiative that seeks to cure political issues that have faced the country since independence. The BBI initiative has put Kenya back on a trajectory of hope, unity and political and economic functionality, which are main ingredients for a peaceful and prosperous country. The BBI has provided the country with an opportunity to take stock of the gains made since the promulgation of the Constitution of Kenya in 2010 as well as the pitfalls that the country has encountered with a view to engaging in further reforms that will foster inclusivity, stem ethnic antagonism and advance our national ethos.
195. In 2018, H.E President Kenyatta formed the Taskforce on Building Bridges to Unity Advisory Committee with a mandate to consult citizens, leaders, institutions, civil society, the private sector, the religious sector, and other stakeholders to recommend solutions to the incessant political tensions in the country which have impacted negatively on the security and economic development of the country. The Taskforce visited all 47 Counties, and received views from an inclusive group of citizens from every Constituency that paid attention to gender, ethnic and religious diversity, youth, elders, persons living with disability, civil society, and the public and private sectors. The Face of Kenya was reflected in this process. The Taskforce heard from more than 400 elected leaders and has made a raft of recommendations.
196. Kenya faces incessant inter-communal conflicts and other criminal acts, including cattle rustling and poaching, which are sustained by an inflow of illegal small arms and light weapons as well as marauding bandits operating across the border. The Government has built a well-coordinated multi-agency approach to ensure public safety and security. Investments have been made in better equipment, training, and working tools. The Government has increased the number of police officers.
197. The Private Security Regulation Act No 13 of 2016 provides for the regulation of the private security industry, and a framework for cooperation with National Security Organs. For better protection of the people the Government has increased the numbers of police officers. The ratio of police to the population is 1 officer for 380 citizens, better than the prescribed UN ratio of 1 officer for every 450 citizens.
198. The National Cohesion and Integration Bill 2017 seeks to amend the National Cohesion and Integration Act to provide for, *inter alia*, a comprehensive definition of hate speech. This is meant to ensure harmonious relationship among communities.

## **Article 24: Right to a general satisfactory environment favorable for development**

199. Environmental degradation is a serious concern for the Kenyan Government. Destruction of the environment is directly linked to climate change. The survival and socio-economic wellbeing of Kenyans is in the long run intertwined with the environment. Kenya has therefore put in place policy, legal and administrative measures to ensure that its natural and artificial resources are exploited sustainably and responsibly in accordance with the international obligations. To this end Kenya has increased the use of geothermal energy to provide power while reducing carbon emissions. Indeed, Kenya is now ranked among the world's top ten countries that have made significant investments in renewable energy, much of it in the development of geothermal resources. The GOK plans to increase geothermal energy production to over 5,000 MW by 2030.

200. The Climate Change Act 2016 establishes a national climate change council chaired by the President. The Council provides a coordinating mechanism which among other things ensures the mainstreaming of climate change function by the county and national Government.
201. The Environmental Management and Co-ordination (amendment) Act, 2015 no. 5 of 2015 amended the principal Act to provide for much comprehensive coverage on the matters of environment and cater for emerging trends on the environmental area hence such legislation will ensure realisation of the right to a healthy environment.
202. Ministry of Environment and Natural Resources Environment Action Plan Preparation guidelines 2016 were developed with the aim of guiding the development of the Environmental Action Plans at both the County level and the National level and subsequently helping integrate environmental concerns into development. Environmental Action planning involves assessment and profiling of environmental concerns and designing strategic interventions to address such concerns. The plan looks to protect the environment from human settlement in protected areas, protection of water bodies among other environmental issues.
203. Kenya environmental Sanitation and Hygiene Policy 2016–2030 marks a milestone in the country’s movement towards universal access to improved sanitation and a clean and healthy environment in the wake of the new Constitution of Kenya 2010. The policy takes full cognisance of the devolution of most sanitation functions and services to the 47 County Governments vide the Fourth Schedule of the Constitution of Kenya 2010.
204. The Water Act 2016 is an Act of Parliament to provide for the regulation, management and development of water resources, water and sewerage services through this Act it would ensure clean and adequate water is available to all citizens and through the sewerage services it would ensure a better system of waste disposal this would ensure a clean and healthy environment to realise this right.

## **Article 25: Duty to Promote Awareness of the Charter**

205. Kenya continues to promote human rights awareness through various initiatives. GOK, through the Office of Attorney General and Department of Justice and the Ministry of Devolution conducts civic education in all 47 counties educating the people on their rights under the Constitution, regional and international human rights treaties, which includes the Charter. Other human rights institutions, Kenya National Commission on Human Rights, Commission on Administrative Justice and The National Gender and Equality Commission continue to provide human rights education to the people of Kenya.

## **Article 26 Independence of the Courts**

206. Kenya is a constitutional democracy based on the rule of law and the principle of separation of powers. The independence of the judiciary is sacrosanct and is further straightened by the Constitution which provides for the appointment of judges, security of tenure, the term of office, the appointment of judges and process of dismissal. Further the independence of the judiciary is further boosted by the enactment of the Judiciary Fund Act, 2016. The Act provides a legislative framework to implement article 173 of the Constitution. The objectives of the Fund are to safeguard the financial and operational independence of the Judiciary, ensure accountability for funds allocated to the Judiciary and ensure that the Judiciary has adequate resources for its functions. The Fund is used to defray the administrative expenses of the Judiciary; for the



acquisition and proper maintenance of buildings, grounds and other assets of the Judiciary; and for any other purpose provided for in the Constitution and any other written law.

207. It is noted that the budget allocated to the Judiciary has decreased over the years. This challenge is not unique to the judiciary alone but other Government ministries, judiciary, constitutional commissions and even parliament. Kenya is currently experiencing a huge budget deficit attributable to the financing of its development projects and other socio-economic endeavors such as the Agenda 4. To this end, austerity measures have been introduced and all public entities are required to reduce spending, particularly on recurrent expenditure. In the meantime, the Government has put in a number of strategies to bridge the deficit gap. It is expected, with time upon maturity of the projects at hand, the budget allocation shall increase.

**Table 7: Judiciary Annual Budget 2014-2020**

<b>Kenya's Judiciary Budget as Share of National Budget</b>			
<b>Year</b>	<b>Judiciary budget (Kshs. Billion)</b>	<b>National budget (Kshs. Billion)</b>	<b>Share</b>
2014/2015	17.49	1,581.0	1.11%
2015/2016	16.69	2,001.6	0.83%
2016/2017	17.31	2,264.8	0.76%
2017/2018	17.56	2,287.9	0.77%
2018/2019	14.46	2,556.6	0.57%
2019/2020	17.3	3,000.08	0.57%

### **Articles 27, 28 and 29: Duties of the Individual**

208. **Payment of Taxes:** As stipulated in the Finance Act 2019, it is the duty of the individual to pay taxes. Those who fail to pay, shall be liable to pay the principal tax, penalties and interest thereon as if it were tax due and payable by that person.
209. **National Solidarity:** In order to foster national solidarity, Article 10 of the Constitution advocates for national values and principles of governance that bind all. In furtherance of this, Public Service (Values and Principles) Act was enacted to give effect to the provisions of Article 232 of the Constitution regarding the values and principles of public service.

### **Cooperation with the Commission**

**Concluding Observation: Kenya Government should invite the Commission and its Special Mechanisms to undertake a promotional mission to the country.**

210. Kenya in its obligatory stature is willing to abide by the set mechanisms in the African Charter and African Commission that will enhance the promotion and protection of human rights and fundamental freedoms. Kenya is therefore open to any request for invitation by the African Commission and its Special Mechanisms to undertake any activity that will cement implementation of decisions and recommendations given by the Commission.

**Concluding Observation: Provide, in its next periodic report, up-to-date statistics and data on all relevant sectors as well as on activities of institutions with a human rights mandate.**



211. The importance of providing up- to -date data and statistics of measures taken by States to implement their human rights obligations cannot be overemphasized. We have in this report endeavored to provide as much information, including statistical data to provide a basis wherein our performance of our human rights obligations can be assessed.

#### **Activities of institutions with a human rights mandate**

- 212. The Kenya National Commission on Human Rights** was established through an Act of Parliament known as the Kenya National Commission on Human Rights Act, 2011 pursuant to Article 59 (4) of the Constitution. In the period under reference, The Commission embraced public education and awareness creation thus trained a total of 12, 390 members of the public; of which 2,000 were university students from various public and private institutions on targeted human rights issues. 326 public officers and 392 members from the Civil Society organizations benefited and 230 prison inmates were trained. The Commission was able to publicize its complaint lodging and handling mechanisms. It also had an opportunity to offer legal advice to the prison inmates on various issues.
- 213. The National Gender and Equality Commission** is established pursuant to Article 59 (4) of the Constitution and the National Gender and Equality Commission Act, 2011. In 2017/2018 the Commission reviewed 23 Bills and 11 Policies to assess compliance with Article 27 of the Constitution on equality and inclusion. The Commission also issued 152 advisories to public institutions and agencies on adherence to the principles of equality and inclusion. Such institution entailed: Office of the President, the National Treasury, Public Service Commission, Governors in all the Counties, all the County Assemblies, all the County Public Service Boards, the National Assembly, the Senate, Ministries, Departments and Agencies and the general public. The Commission in partnership with other stakeholders conducted a 2-day capacity building on equality and inclusion at the county level to grassroots women leaders from Isiolo, Busia, Narok, and Kirinyaga Counties reaching 214 women leaders out of whom 25% were young women and 4% were women with disabilities. The training was designed to equip and empower women on their role in development. NGECE also conducted an audit to provide a baseline on potential of the equalization fund in promoting access to social economic rights in 8 marginalized counties namely; Kwale, Tan River, Isiolo, Kilifi, Marsabit, Garissa, Wajir and Samburu. The audit focused on water, health and road sectors. The audit recommends for the operationalization of the Equalization Fund to enable marginalized groups reap the intended benefits enshrined in the Constitution. In addition, there is need for a stronger monitoring and evaluation mechanism and improved data management system at the county level to enhance accountability to citizens.
- 214. The Commission on Administrative Justice** is also known as the Office of the Ombudsman. This is an autonomous Constitutional Commission established via Article 59 (4) of the Constitution and the Commission on Administrative Justice Act, 2011. The Employment and Labour Relations Court sitting in Nairobi on Friday, 29<sup>th</sup> November 2019 issued a judgment declaring that the decisions and orders of the Commission on Administrative Justice are legally binding.
- 215. Government Ministries, Departments and Agencies;** In a bid to promote the Right to Health, the Ministry of Health rolled out on a pilot basis the Universal Health Coverage in four counties. The Counties Kisumu, Machakos, Nyeri, and Isiolo all of which were selected due to

high prevalence of communicable and non-communicable diseases. To promote the right to education, the Ministry of Education in 2019 introduced government programme on 100% transition from Primary to Secondary Schools. To promote the right of freedom from discrimination the Ministry of Public Service and Gender developed a Diversity Policy. To promote the right to food and food security, Ministry of Agriculture, Livestock and Fisheries introduced the Fertilizer Subsidy Programme. The Programme enabled farmers' access fertilizers inputs at affordable prices in order to increase agricultural production and productivity. During the period July 2015-June 2018 a total of 486,426 MT was subsidized against a target of 600,000 MT.

**‘PART B’**

**INITIAL REPORT ON THE PROTOCOL TO THE AFRICAN CHARTER  
ON HUMAN AND PEOPLES’ RIGHTS ON THE RIGHTS OF WOMEN IN  
AFRICA (MAPUTO PROTOCOL).**

## INTRODUCTION

**216.** Accession to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), in October 2010 greatly reinforces Kenya's national legislative framework on the protection and promotion of gender equality and empowerment. While Kenya placed reservations on Articles 10 (3)<sup>22</sup> and 14 (2) (c)<sup>23</sup> of the Protocol, the rest of the provisions of the Protocol are directly applicable before national courts as stipulated by article 2(6) of the Constitution<sup>24</sup>. The GOK recognizes the important role played by women in society and has thus put in place the necessary measures to ensure the full protection and respect of women's rights. This Part of the Report therefore highlights the legislative, policy, judicial, institutional and other measures taken to ensure the attainment of equality between women and men and elimination of all forms of discrimination against women.

**217.** For greater clarity, Part B of this Report should be read with reference to Part A, since information on the overall promotion and protection of the rights of all persons, are already canvassed under the various articles of the African Charter. To emphasize this point, where information is provided in the Report on the African Charter on the general protection of the people, the legislative, policy, institutional or administrative measures taken are not repeated here. By way of example, the National Cohesion and Integration Commission safeguards rights for all, across a range of areas such as employment, provision of services by public authorities. The protection covers both men and women and is already provided in the 12<sup>th</sup> and 13<sup>th</sup> Report of the African Charter.

**218.** The legislative, and institutional frameworks put in place to promote, enforce and monitor equality and non-discrimination in Kenya include:

### **Legislative Framework** (*refer also to article 2 on the report of the African Charter*)

The Constitution enumerates several specific gains for women in the areas of citizenship, equal rights during and after marriage, elimination of gender discrimination in relation to land matters, gender equity in the political sphere particularly with regard to appointed positions and recognition of women as a vulnerable group in need of extra-legal protection,

- a) The Marriage Act, 2014 provides for equal rights between men and women in marriage,

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<sup>22</sup>Protocol to the African Charter on Human & People's Rights on the Rights of Women in Africa, Article 10 (3) requires state parties to take measures to reduce military expenditure significantly in favour of spending on social development and the promotion of women.

<sup>23</sup> Protocol to the African Charter on Human & People's Rights on the Rights of Women in Africa, Article 14 (2) ( c) provides for medical abortion in cases of sexual assault, rape, incest, and where continued pregnancy endangers the mental and physical health of the mother or life of the mother or foetus,

<sup>24</sup>Any treaty or convention ratified by Kenya shall form part oof the law of Kenya under this Constitution.

- b) The Kenya Citizenship and Immigration Act, 2011 provides for legal equality between the sexes in respect of acquisition of citizenship through marriage and through birth,
- c) The Employment Act, 2007, provides significant protection from discrimination in all aspects of employment.
- d) Prohibition of Female Genital Mutilation Act to protect women and girls from all forms of Female Genital Mutilation Protection against Domestic Violence Act, 2015.

### **Institutional Framework**

- a) The Ministry of Public Service and Gender (State Department of Gender) is mandated to coordinate gender mainstreaming in national development planning and promote equitable political and socio-economic development for women, men, girls and boys.
- b) Anti- FGM Board has the mandate to safeguard against violation of female mental or physical integrity through the practice of FGM and to design, supervise and co-ordinate public awareness programmes against the practice of FGM.

**Articles 2, 8, 9 &12: Equality/ Non-discrimination.** *(Refer to information provided on article 2 and 3 of the Report on the African Charter)*

219. A study conducted in 2015<sup>25</sup> on the equality and inclusion index in the different sectors found that the Labour Force Participation Index stood at 64 per cent, Gender Equality Index at 38 per cent, Health Index at 67 per cent while the Education Index stood at 61 per cent. These results provide an important baseline for monitoring equality, and inclusion for National and County Governments focusing on employment, political representation, social protection and education.

### **Access to justice**

**220.** Access to justice and equal protection and benefit of the law are prevalent provisions of the Constitution as well as various legislations. *(Refer to article 3, 7, and article 5: paragraph 55 and 56 of the report on the African Charter).*

### **Political participation**

**Concluding observation: Implement the Constitutional principle of the Political Parties Act, that not more than 2/3rd majority shall belong to the same gender, so as to guarantee equal opportunities in the political spheres, particularly for women.**

<sup>25</sup>KIPPRA and NGEK (July 2017) 'Status of Equality and Inclusion in Kenya, 2015' available at <https://www.ngekenya.org/Downloads/Equality%20and%20Inclusion%20PPP%20%2005072017%20Main.pdf>

221. With regard to the equal opportunities of all persons in all spheres, the Constitution is clear that *“Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres”*. Most importantly, it is a constitutional imperative that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender (article 81). Additionally, article 97(1) outlines that there should be 47 women who represent each of the 47 counties and 12 nominated members representing special interest groups including women, youth and persons with disabilities. Article 98 also outlines the composition of the Senate which ensures that 16 women are nominated by political parties. The Political Parties (Amendment) Act 2016: compels political parties to comply with the two-thirds gender principle in their governance structures. Public funding of political parties is incumbent upon compliance. As a result, the women constitute 40% of office bearers of political parties in Kenya.
222. These provisions bode well for Kenyan women who, historically, have been disempowered by cultural and societal dynamics. Through this platform a large number of women have been appointed to various positions in the executive, judiciary and parliament. However, the country still faces challenges with regard to the equality of women and men, particularly in the representation of women in political representative positions. While women performed better in the 2017 elections, as compared with 2013, the numbers still fall short of the constitutional two-thirds gender requirement. In the National Elections held in August 2017, 23 women were elected to the National Assembly up from the 16 elected in 2013, 47 women representatives, and 6 nominees by political parties (the total number of women in the National Assembly stands at 76). The number is still short by 41 seats to make 117 or one-third of the 349 MPs; 290 elected, 47 woman representatives and 12 nominated members.
223. The Constitution of Kenya (Amendment) Bill prepared in 2015, was expected to cure the imbalance in the gender composition of elective offices in Kenya to ensure there is equity in the political positions by not allowing one gender to hold more than two-thirds of elective positions. Unfortunately, the proposed legislation has been rejected by Parliament three times.
224. The poor performance of women in Kenya’s political arena can be attributed to two major factors: the Kenya’s patriarchal culture and the electoral system. Kenyan politics requires an enormous outlay of social capital, yet the processes of economic, cultural and political capital accumulation still favour men more than women, irrespective of ethnic, religious and class divides.
225. The Representation of Special Interests Group Law (Amendment) Bill 2019 was introduced in the National Assembly in July 2019, as an endeavour to get more women and other special groups in Parliament. The object sets to amend several provisions of electoral and related laws to give effect to article 100 of the Constitution on the promotion of the representation in Parliament of women, PWD, Youth, ethnic and minorities and other marginalized communities. The Bill outlines the following proposals: political parties to be required to nominate more women before elections; political parties required to ensure that at least a third of its candidates for parliamentary and county assembly elections are of either gender; The Independent Electoral and Boundary Commission ( IEBC) is barred from accepting lists of candidates from political parties

that do not meet the gender rule and; as an incentive for political parties to ensure more women, youth and persons with disability win elective seats, the bill proposes that 20 per cent of the political parties cash be distributed according to the number of the special interest groups elected.

226. Other interventions include; **The Election Laws (Amendment) Act enacted in 2016** further facilitates women's participation in the electoral process
227. Various counties have prepared County Participation Acts to facilitate public participation in county Government policy processes and service delivery. These consultative forums have witnessed an increase in the number of rural women participating and contributing in public fora convened by county Governments to discuss the County Integrated Development Plans (CIDPs), county annual budgets and county sector plans, among other county activities. The Kenya Policy on Public Participation is before Parliament. The policy sets out standards for the exercise of public participation in Kenya in line with constitutional human rights principles.
228. **The County Assemblies Forum (CAF)**, the coordinating body of the 47 County Assemblies of the Republic of Kenya is mandated to support the County Assemblies in performing their three core functions; law making, oversight, and representation, by providing an avenue for coordination, capacity development and networking amongst the 47 Assemblies, the executive arm, and the national Government. The Forum has developed a National Curriculum on Leadership for female Members of the County Assemblies (MCAs), aimed at strengthening capacity of MCAs to influence on matters of gender equality.
229. **The Trailblazers Programme**, an initiative of the State Department for Gender, is a programme aimed at recognizing women trailblazers that have excelled in different fields including shaping the women's movement. The Trailblazers are recognized annually and the platform is used to mentor other women across generations on various aspects of leadership and other development concerns.
230. **The Democracy Trust Fund**, formed through collaboration between the Government of Kenya and Non-State Actors and launched in 2018, targets women over the age of 18 years who are interested in seeking political office by providing financial support especially during campaigns. It is hoped that these efforts will encourage more women to seek political office. In *National Gender and Equality Commission v Majority Leader, County Assembly of Nakuru and 4 others; Jubilee Party and another (Interested Parties) [2019] eKLR* NGEC successfully challenged the decision of the Nakuru County Assembly to de-whip nominated members of the assembly as chairpersons and vice-chairpersons in different committees in the house.
231. Training interventions have been made to build the capacity of women to pursue representative positions. A national training curriculum for women aspirants in political leadership has been developed by the Kenya School of Government to build the capacity of the women leaders vying for various political positions in the 2022 general elections. Similarly, the implementation of Transformative Leadership Program for County Women Executives is underway at Kenya School of Government.



232. In collaboration with the County Assemblies Forum (CAF), the National Gender and Equality Commission developed a training curriculum for women members of County Assemblies to enhance their representation role, oversight, budgeting and legislative functions. The curriculum was disseminated in all the 47 counties.

233. In 2018, the National Gender and Equality Commission (NGEC) developed a Legislative Handbook on Principles of Equality and Non-Discrimination which guides legislators at the National and County Levels in the review of policy and legislation and in overseeing the formulation and implementation by state and non-state agencies of appropriate programmes, plans and actions towards full realization of gender equality and inclusion of special interest groups in the society.

### **Public and Private Sector**

234. With regard to the Public Service: As at April 2019, there were 27,165 women employed in the Public Sector by the Public Service Commission. This was an increase from the 26,313 women in the public sector as of June 2018.

235. Additional measures in place to promote equal opportunities in appointive positions include the development of the Diversity Policy for the Public Service, 2016. This policy establishes strategies for attracting the diverse groups into the public service as well as measures aimed at creating an environment that is conducive and respects diversity.

236. A survey conducted by the NGEC 2018 of 61 private companies revealed that there were 131 women serving on boards of directors, 6 were chairpersons, 9 were chief executive officers of registered companies listed on the national stock exchange and 16 companies that complied with the constitutional requirement of not more than 2/3<sup>rd</sup> of the membership shall be of the same gender.

237. The GOK, through the National Gender and Equality Commission, developed a guideline on Mainstreaming Principles of Equality and Inclusion in Business for private sectors in Kenya. The guide book is designed to create awareness by the private sector institutions of their constitutional obligations and responsibilities in businesses. The National Gender and Equality Commission (NGEC) pays attention to selected indicators and dimensions to determine institutional levels of mainstreaming principles of equality and inclusions in business sector such as the National Government Affirmative Action Fund Regulations 2016, The Affirmative Action Social Development Funds Regulations, Protection against Domestic Violence Act, 2013 and Statutory Miscellaneous Amendment to the Procurement Act.

238. General awareness-raising projects on equality matters have been conducted in schools for target group of teenagers and young adults. The awareness of children and young people is raised in regard to equality issues, and they are motivated to get to know gender-atypical professions and not to be guided by stereotypical roles when choosing their career.

239. To enhance women's rights in the workplace, the Breastfeeding Mothers Bill, 2017 was tabled in Parliament for debate. The Breastfeeding Bill requires employers to provide a suitable area within the workplace for a woman to breastfeed.

## **Education** (*Refer to article 17 of the report on the African Charter*)

240. In the education sector, Kenya continues to enhance and sustain measures to eliminate gender disparities in access to, retention, transition, performance and quality in education for women, men, girls and boys. The Basic Education Amendment Act, 2016 establishes the Sanitary Towels Programme which places the responsibility of providing free, sufficient and quality sanitary towels on the Government to reduce the number of girls missing school during their menstrual cycle or eventually dropping out of school. Re-entry policy to address dropout cases of young mothers who conceived while in school.

## **Articles 3, 4 & 5: Protection of women from violence**

241. Protection of women from violence encompasses a broad list of rights and obligations including the right to life, integrity and security of the person, right to dignity as well as elimination of harmful cultural practices. The Bill of Rights in the Constitution guarantees a wide range of rights and fundamental freedoms. It recognises a number of general principles that are of importance to gender equality and elimination of violence in the country. Article 29 of the Constitution provides that every person has right to freedom and security of their person which includes the right not to be subject to any form of violence from either public or private sources, and any form of torture whether physical or psychological or cruel, inhuman or degrading treatment. Article 53 (d) obligates the state to protect children from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour; and Article 55 (d) provides for the protection of the youth from harmful cultural practices and exploitation. The measures undertaken by Kenya are also prioritized in Kenya Vision 2030 and the 5-year Medium Term Plans of the Vision. The Vision further expresses the Government's commitment to undertake deliberate efforts to "prohibit retrogressive cultural practices and social ills as well as improve access to essential services" and this commitment is advanced in the current, third Medium Term Plan 2018-2022.
242. In addition, various policy and legislative measures to guide interventions around violence against women in Kenya have been put in place. They include:
243. **The Sexual Offences Act** which expands the definition of sexual offences and limits the requirement of burden of proof for victims. Sexual Offences (Medical Treatment) Regulations (2012); is particularly significant as it provides the legal basis for access to free medical treatment for victims of sexual violence in public health facilities and authorize the filling in and production of medico-legal documents (P3 Form and Post Rape Care Form) by nurses and clinicians in addition to doctors. This addresses the persistent delay in filling in of P3 Forms and production of medical evidence in court. Further, the regulations outline the procedure for handling of forensic evidence among the police, medical personnel and Government Chemist to safeguard the integrity of the evidence. It is noteworthy that most cases of sexual violence are lost due to mishandling of evidence between the police and health facilities.
244. **Counter Trafficking in Person Act 2010:** to implement Kenya's obligations under the United Nations Convention against Transnational Organized Crime particularly its Protocol to

Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; to provide for the offences relating to trafficking in persons and for connected purposes.

**245. National Steering Committee on Counter Trafficking in Persons:** to monitor the implementation of the Act. A National Plan of Action has been developed as a measure to respond to the situation.

**246. The Prohibition of Female Genital Mutilation Act adopted in 2011** to protect women and girls from all forms of female genital mutilation. The Act applies a wide range of perpetrators and imposes relatively severe penalties. Through concerted efforts of government and non - state actors, the sustained campaign against the practice has resulted to the decline of FGM from 32 per cent in 2003 to 21 per cent in 2014. Various measures have also been taken to enhance prosecution of FGM cases. These include the creation of a special unit in the office of the Director of Public Prosecution to handle FGM, child marriage and GBV related cases. The unit is made up of 20 prosecutors and in the past two years a number of people have been charged and prosecuted for contravening the Prohibition of FGM Act.

**247.** In the financial year 2016/2017, the Office of the Director of Public Prosecution (ODPP) registered 95 new cases on female genital mutilation and related offences. In the financial year 2015/2016, 166 were registered, hence in total, the ODPP prosecuted 261 cases. Out of the 261 cases, there were 16 convictions, 8 acquittals, 5 withdrawals and 232 still pending trial. In the financial year 2017/2018, they handled 346 cases on female genital mutilation. Out of the 346, there were 34 convictions, 10 acquittals, 22 withdrawals and 280 pending trial.

**248.** The National Policy on the Abandonment of Female Genital Mutilation was also adopted and the establishment of the Anti-FGM Board has scaled up the campaign to end the practice. FGM content has also been included in the school curriculum.

**249.** Other on-going initiatives include capacity building programmes that target key stakeholders, for example, training of law enforcement officers and community elders as champions of girl rights, use of role models in areas of high prevalence of FGM as well as exchange programmes between different communities to share best practices.

**250.** Research undertaken has largely informed the review of the National Policy on the Elimination of Female Genital Mutilation which was adopted in 2019 and other programmes. Among the emerging issues noted out of the research is the increasing trend in medicalization of FGM which has led to the production of a training manual 'Stopping Medicalization of FGM' that targets medical personnel. Research has also revealed that girls are increasing being cut at a younger age and that with the enactment of the prohibition of FGM legislation, the practice has gone underground.

**251.** The involvement of elders in the fight against FGM has brought on board more men in the fight against FGM who have become champions for the protection of the rights of girls and their education. Moreover, the provision of Alternative Livelihoods for reformed circumcisers has enabled certain communities to abandon the FGM practice.

252. Efforts to end harmful cultural practices have been boosted by the high level political commitment by His Excellency the President of Kenya. These commitments are translated within the Nairobi Summit on ICPD25 National Commitment to: “End Female Genital Mutilation by strengthening coordination in the area of legislation and policy framework, communication and advocacy, evidence generation, and support cross border collaboration on elimination of FGM by 2022” and the Government of Kenya has developed a framework of implementation of the acceleration to end FGM.
253. The Government of Kenya in collaboration with the Federal Democratic Republic of Ethiopia, Federal Republic of Somalia, United Republic of Tanzania and Republic of Uganda have signed a regional declaration to end cross border FGM. The regional action plan to end FGM is anchored under four strategic pillars of the declaration namely improved legislation and policy framework; coordination and collaboration; communication and advocacy; and evidence, research and data.
254. In March 2019, Kenya through Plan International launched ‘Girl Get Equal Campaign’ that aims at putting girls and young women first in redefining leadership and to give them a voice in ending abuse against them, harassment and negative stereotyping. The campaign involves boys and men as strong allies as part of important vessels to achieving success of the campaign over her life and the world around her. Efforts to end harmful cultural practices have also been boosted by the launch of the AU Campaign on Ending Child marriage in Kenya.
255. With regards to domestic violence, Kenya has enacted the Protection against Domestic Violence Act, 2015 which is a comprehensive legislation that offers protection and relief for women victims of gender-based violence. The Act has expanded the *loci standi* for GBV cases and outlines the process for obtaining protection orders. Since the entry into force of the Act, a number of prosecutions and convictions relating to gender-based violence against women have been undertaken. For example, between 2015 and 2016 there were 4,299 newly prosecuted cases of sexual and gender-based violence and 871 convictions.
256. The Witness Protection Agency provides a framework and procedures for providing special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies. The Agency enables women to report violence incidences without fear of retaliation.
257. The Kenya Government has also adopted a National Policy for the Prevention and Response to Gender Based Violence and an action plan for its implementation. Various programmes have also been undertaken such as the development of a three-year joint programme between the Government and various partners to comprehensively address Gender Based Violence under the five pillars of Prevention, Prosecution, Protection, Programming and Partnerships.
258. In addition, 11 Gender Based Violence Recovery Centres have been established within health facilities across the country to facilitate access to comprehensive care services to survivors. These have enhanced collection of evidence and facilitated justice to the survivors.

259. Kenya has also embarked on a nationwide campaign dubbed “*Jitokeze*” (Speak out) that aims at breaking the silence on gender based violence. The campaign has been bolstered by the establishment of a national gender based violence toll free helpline service which augments the efforts to protect women and girls from violence. Another campaign dubbed ‘keeping the promise’ seeks to engage the community and secure their commitment to protect women and girls from all forms of violence.
260. Kenya has enacted The Computer Misuse and Cybercrimes Act of 2018. The law is expected to curb cybercrimes and computer related offenses to enable timely and effective detection, prohibition, prevention, response, investigation, and prosecution of computer and cybercrime. This law is critical given the rise in internet and mobile technologies facilitated new trends in Violence against Women & Girls (VAWG) moving what is often seen as offline VAWG to online spaces such as Facebook, Twitter, Instagram among others.
261. Moreover, awareness of women’s and human rights through the commemoration of 16 Days of Activism against GBV has been ongoing. Other initiatives include the creation of a national information system to capture and feed Sexual and Gender Based Violence (SGBV) data in the following sectors: health, National Police Service, Office of Director of Public Prosecution and the Judiciary.
262. Kenya has made notable gains in the protection of women and girls from violence and harmful practices. However, a lot needs to be done to eliminate all forms of violence against women and girls. One major challenge faced is family honour, culture of silence as well as negative gender norms and power dynamics which play a powerful role in perpetuating violence against women and girls. Violence against women is perpetuated and entrenched in patriarchal notions that make it an uphill task that requires concerted efforts at different levels including coordinated efforts bringing different state and non-state actors together.
263. The implementation of the National Policy on Prevention and Response to Gender-Based Violence (2014) has been affected by inadequate financial resources to establish prevention and response mechanism for GBV. This also applies to the GOK/UN-GBV programme which will require adequate resourcing by state and non-state actors as envisioned in the project document for effective implementation. As a priority, focus will be on strengthening GBV data management for informed policy decisions and programming at the National and County Government levels.

## **Articles 6-7: Rights relating to marriage**

264. The rights within marriage as stipulated in the Protocol have been incorporated in the Constitution by guaranteeing equal rights in marriage and giving equal legal recognition in marriages including polygamous marriages. The Government of Kenya has facilitated enactment of legislation to implement these provisions. This led to the passing of the Marriage Act 2014, which recognizes four different marriage types, namely Civil, Christian, Islamic, and Customary marriages. Polygamy is a deeply entrenched cultural practice recognized under both

African customary and Islamic law. All registered marriages under the Act have the same legal status. Prior to the enactment of the Marriage Act, customary marriages were not regulated by law, thus rendering them informal and uncertain as their legitimacy could only be confirmed and formally recognized through court judgments and rulings. Women, have lost their property, companionships and other marriage benefits due to evidentiary difficulties involved in proving the existence of a customary marriage before the passing of the Act. There are cases where women married under customary law have been denied the right to inherit the estate of their deceased spouses due to the difficulty of proving the existence of such unions.

265. It is up to adult couples to freely choose, from the very onset, the kind of union they prefer. Those adults who choose voluntarily to contract a monogamous marriage cannot later contract another marriage, unless in the event of divorce or death. Similarly, no one in a polygamous marriage can contract a monogamous marriage. A polygamous marriage can later be converted into a monogamous one, as long as at that time there is only one wife.
266. The Constitution is also clear in Article 45(2) that the right to marry can only be guaranteed to adults. It goes on to define an adult as someone of 18 years and above. The Marriage Act and the Sexual Offences Act also restrict the legal age of marriage at 18 and parties must freely consent to the union. Child marriages are prohibited by the two pieces of legislation and their provisions have been invoked to prosecute persons who perpetrate the practice. For instance, in *Constitutional petition 40 of 2011 on the Council of Imam and Preachers of Kenya, Malindi & others vs the Attorney General and 5 Others (2015) Eklr.*, Constitutional Petition 40 of 2011 the High Court held that the petitioners perpetrated a crime in allowing the marriage of a minor despite the recognition of such marriages by the Islamic religion.
267. Parties to a marriage are entitled to equal rights at all times including at the dissolution of the marriage (Article 45 (3) of the Constitution). Section 7 of the Matrimonial Property Act 2013 provides that upon dissolution of a marriage, parties are entitled to a share of the property equal to their contribution whether monetary or non-monetary. Under Section 2 of the Act, contribution is defined to include non-monetary contribution and includes domestic work and management of the matrimonial home, child care, companionship, management of family business or property and farm work.
268. However, the courts have since the passing of the Act favoured distribution on the basis of actual contribution. In the case of *Federation of Women Lawyers (FIDA) and Another vs Attorney General (2018) eKLR, (Petition No. 164B 2016)* challenging the constitutionality of Section 7 of the Matrimonial Properties Act in that it offend constitutional provisions. The High Court of Kenya, by its decision delivered on the 14<sup>th</sup> May 2018 declared that the fact that the Constitution recognizes equal worth and equal importance of parties in a marriage does not guarantee a 50-50 sharing of wealth. The beneficial share of each spouse as the law on the division of matrimonial property stands in Kenya ultimately depends on the parties' proven respective proportions of the financial contributions either direct or indirect towards the acquisition of the property. In exercising judicial discretion, the outcome of the case will highly depend on the facts and evidence presented to court as regard the nature of contribution of either spouse towards the acquisition of matrimonial property. Jurisprudence set herein is that the



Courts will evaluate the contributions made towards acquisition of the property and make a just and equitable distribution of the property or properties. The courts have taken the view that; *...at the dissolution of the marriage each partner should walk away with what he/she deserves. What one deserves must be arrived at by considering her/his respective contribution whether it be monetary or non-monetary. The bigger the contribution, the bigger the entitlement. Where there is evidence that a non-monetary contribution entitles a spouse to half of the marital property then, the Courts should give it effect. But to hold that Article 45(3) decrees an automatic 50:50 sharing could imperil the marriage institution...’.*

**Article 14: Health and Reproductive Rights** (refer also to article 16 on the report on the African Charter)

269. With regard to the protection of women in polygamous unions the Matrimonial Property Act, 2013 now ensures that properties of all wives in unions are safeguarded. Section 8 of the Act provides that if the parties in a polygamous union divorce or the marriage is otherwise dissolved, the matrimonial property acquired by the man and the first wife before the man married another wife shall be retained equally by the man and his first wife only. On the other hand, matrimonial property acquired by the man after he marries another wife shall be regarded as owned by the man and the wives taking into account the contribution made by the parties. The law allows a wife in a polygamous marriage to hold her matrimonial property separate from the other wives. Kenya recognizes the importance of providing equitable and affordable healthcare at the highest affordable standards to all its citizens. The Government has put in place various policy and programmatic frameworks aimed at enhancing access to health services as a critical component of women’s empowerment, hinged on the Constitutional right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care (Constitution of Kenya Article 43(1) (a)). These frameworks include;

- i. **The Community Health Policy and the Sessional Paper No. 2 of 2017** on the Kenya Health Policy 2014-2030 which specifically ensures **free maternity service**. This has resulted to more safe deliveries with 61 percent of births being performed by skilled health providers. The Government has undertaken measures to eliminate payments for primary and maternal health services in public facilities. As a result, the number of deliveries in health facilities increased by 23.1% between 2014 and 2018 (Economic Survey, 2019)
- ii. **The Kenya Health Sector Policy (KHSP) 2012 – 2030** which focuses on two key obligations of health namely; contribution to economic development as envisioned in the Vision 2030 and realization of fundamental human rights as enshrined in the Constitution of Kenya. The policy focuses on ensuring equity, people centeredness and participatory approach, efficiency, multi-sectoral approach and social accountability in delivery of health care services. It takes into account the functional responsibilities between the two levels of government (county and national) with respective accountability, reporting and management lines.

- iii. **The National Adolescent Sexual Reproductive Health Policy 2015** allows for girls to access correct information regarding their sexuality and the enhanced provision of high-quality post-abortion care services to adolescents. It strengthens and scaled up social protection for vulnerable adolescent girls to delay sexual debut as well as improve mental health and educational outcomes. The Assisted Reproductive Technology Bill, 2016 proposes to provide a comprehensive and coordinated framework for assisted reproductive technology. The legislation once enacted will prohibit certain practices in connection with assisted reproductive technology; to establish an Assisted Reproductive Technology Authority and make provision in relation to children born of assisted reproductive technology processes.
- iv. **The Menstrual Health Management Programme** is a three-year Menstrual Health Management Program launched in May 2018 by the County First Ladies Association. The program is in partnership with Kenya Red Cross and African Cotton Industries focused in all the 47 counties with the aim of empowering 1 million girls and 1 million boys. It is anchored on school retention for girls through a focus on provision of hygienic sanitary towels and dignity packs. This project also intended to promote sustainable infrastructure through: creation of job opportunities by showcasing the demand for cotton production for local sanitary towel manufacturers; the adoption of this information to the supply of sanitary towels; eco-friendly management and disposal of sanitary towels through local employment.
- v. **The Health Insurance Subsidy Programme (HISP):** The Programme is an initiative of both the County and National Governments aimed at contributing to better quality of life, poverty alleviation and human development through meeting population health needs; removing financial barriers to health care and reducing incidence of catastrophic health expenditures that will be realized by Consolidating and expanding social health subsidy mechanisms with view of achieving Universal Health Coverage (UHC). The model is designed to provide quality and affordable health care. This project targets about 21,530 households of which 17,612 households have been registered to access health services from the hospital of their choice. The County Governments have initiatives on UHC to enhance accessibility and affordability of medical services so as to ensure no one is left behind.
- vi. **Linda Mama:** Linda Mama's<sup>26</sup> formerly Free Maternity Services goal is to "achieve universal access to maternal and child health services and contribute to the country's progress towards reduction of maternal and child mortality." Linda Mama covers all the 47 counties, 2,400 public health facilities serving 400,000 pregnant women.
- vii. **Beyond Zero Campaign,** an initiative of Kenya's First Lady, Her Excellency Margaret Kenyatta, was launched in 2014 to address the high rates of Maternal and Child Mortality and HIV burden. The Campaign aims to contribute to the acceleration of economic and social development in Kenya by eliminating preventable deaths of mothers and children and decreasing social inequities to essential health services through policy prioritization, resource allocation, improved service delivery and promoting individual health seeking

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<sup>26</sup>Kiswahili for "protect the mother."

behaviours and practices. The Campaign has so far helped in establishing and maintaining mobile clinics in all 47 counties, boosting deliveries in health facilities, inspired counties to increase resource allocation e.g. by building mother and child health facilities and referral centres and held medical safaris in 5 counties among others.

**Articles 13, 15, 16 & 17: Economic, Social Welfare Rights** *(Refer to the report on the African Charter for additional information on economic and social rights)*

270. Economic, Social and Cultural Rights are clearly articulated in Kenya's Constitution. The Constitution provides progressive measures of transforming the social and economic structures making them more equitable as well as the Kenya vision 2030 which are based on the principles of macroeconomic stability; continuity in governance reforms; enhanced equity and wealth creation opportunities for the poor among others. The priority set within the Vision is in alignment with the principles of the protocol and further reinforce the gender equality and women's empowerment.
271. The Government of Kenya recognizes that structural inequalities are the drivers of risks and vulnerabilities that drive poverty and inequalities. To ensure, the right to economic welfare there has been indeed milestones investment in women through various programmes geared towards enhancing the capacity of and opportunities for the poor and vulnerable in order to improve and sustain their lives, livelihoods, and welfare, and enable income-earners to earn a reasonable level of income through decent work. Some of these measures include transformative social protection such as conditional cash transfers and public works programmes among others which aims to enhance incomes and capabilities as well as address concerns of social injustice and exclusion.
272. The Government of Kenya, in partnership with the Private Sector and UNICEF Kenya has piloted a responsive work environment in support of lactating mothers and pregnant women by providing them with a resting room. These lactation corners illustrate the structural models for enhancing social protection for breastfeeding mothers to ensure they stay within the formal labour market.
273. The Ministry of Health has since 2010 put in place the Better Business Practices (BBP). The aim of this is to improve maternal and infant nutrition through workplace support for breastfeeding female employees. An initiative spearheaded by Private Sector has now seen over 192 companies trained on BBP, more than 30 companies have committed to practice BBP principles. To date more than 17 companies have newly equipped lactation rooms.
274. On the right to food security which is one of the Government's big 4 agenda, women's right to food and nutrition continues to be upheld. Under the National Accelerated Agricultural Input Access Programme, female and child headed households are given preference when selecting resource poor farmers to be issued with the grant input package for cereal production. About 361,550 female farmers have been supported with the package and capacity building/training sessions. 461 marketing groups/cereal banks have been sensitized on the need for women and youth inclusion both at the management level as well as at the membership level.

275. Also put in place are programme targeting rural women. Some progress has been made such as provision of 322 tractors by 2016 by County Governments to assist in reduction in time required to prepare the land for planting, thus increasing crop yields, and ensuring good nutrition and food security, in line with Government's Big Four Agenda of ensuring food security and improved nutrition for better human development.
276. The Government's commitment to ensure the rights of women to sustainable development is demonstrated through the establishment of key programmes : The Women Enterprise Fund to provide affordable credit and business support to women for entrepreneurship development. Since inception up to December 2019, the Fund has disbursed up over Kshs. 17.6 billion (USD 17.6 million) to women across the country.
277. The *Uwezo* (Empowerment) Fund: to expand access to finances in the promotion of youth, women and Persons with Disabilities (PWDs) businesses at the constituency level for economic growth towards the realization of the goals of Vision 2030; generate gainful self-employment for youth, women and PWDs; and model an alternative framework in funding community driven development. Since inception in 2013 up to December 2019, the Fund has disbursed Kshs. 6 billion (USD 60 million) to youth and women and persons with disability.
278. The Kenya *Uwezo* Fund Bill 2019 seeks to consolidate the *Uwezo* Fund, the Women Enterprise Fund and the Youth Enterprise Development Fund into one Fund to enhance accountability and avoid duplications. Currently monies to the *Uwezo* funds were handled under the The Public Finance Management (*Uwezo* Fund) Regulations, 2014. The is currently before the National Assembly for discussions. The objectives of the Bill are to expand access to finances in promotion of youth and women businesses and enterprises at the constituency level for economic growth towards the realization of the goals of Vision 2030; to generate gainful self- employment for the youth and women; and to model an alternative framework in funding community driven development.
279. **National Government Affirmative Action Fund (NGAAF)** which aims at socio-economic empowerment of vulnerable women, youth, persons with disabilities, children and the elderly. Since NGAAF has disbursed to Counties a total of Kshs. 9,967,963,874.25 in form of grants to vulnerable members of the society.
280. In line with ensuring financial inclusion and access to economic measures that would normally leave women out, the Government has continued to implement the procurement opportunities program. This has been through the **Access to Government Procurement Opportunities (AGPO)**: The program is based on Article 55 on Affirmative action and the Public Procurement and Asset Disposal Act 2015 which is founded in Article 227 of the constitution on the fair, equitable, transparent and cost-effective public procurement of goods and services. This program ensures that 30 percent of public procurement in every financial year is allocated to women, youth and persons with disabilities. As of April 2019, beneficiaries had received Kshs. 32.2 billion (USD 319,549,580) since its inception.

281. The Government has also prepared the Women's Economic Empowerment Strategy aimed at building women's entrepreneurship and at the same time, initiated the development of a Women's Economic Empowerment Policy.
282. Further, in ensuring healthy and sustainable environment, two notable programmes is worth mentioning. The LPG Uptake Promotion; which is a safe, affordable, accessible and environmentally friendly cooking fuel that will be better for women as compared to options currently available in the rural areas and the Kenya National Domestic Biogas Program. This is part of the clean energy interventions program which aims to harmonize integration of agriculture and energy to reducing the burden of collecting firewood on women. So far, the program boasts of reduction of CO2 equivalent emissions (73,623 tonnes), savings on fuel wood (37,388 tonnes), savings on charcoal (13,460 tonnes), time-use (approximately 15 to 18 million, with a significant time saved for women and children per household fetching firewood and other biomass sources for cooking and heating), effort saved in cooking, warming food and water and cleaning cooking pots for about 7,700 households (over 15,000 women), study time for children (approx. 23,28021 children served with better reading light).
283. The GOK has taken a number of measures to support women's participation and leadership in environmental and natural resource management and governance; raised awareness about gender-specific environmental and health hazards including those related to consumer products, technologies, and industrial pollution; enhanced women's access to sustainable time and labour saving infrastructure such as access to clean water and energy, and climate-smart agricultural technology; and taken steps to ensure that women benefit equally from decent jobs in the green economy.
284. With regards to access to land, two critical pieces of land legislation are in place. These include The National Land Commission Act 2012 and the Land Registration Act 2012, which all entrench principles of gender equality in access to land and enshrine the rights of women to own land and property. This is a good boost to women access to and control over land and other natural resources, which has been a preserve of men and boys. This is an important step related to their participation in decision-making on the environment and as it relates to matters of agricultural productivity and food security and hence ensures gender equality and financial inclusion for women.
285. A case example of gender-responsive approaches to realizing the right of women to land is on indigenous women's land rights project focused on bridging the gap between formal and informal justice systems at the local level, with a particular focus on women's land rights. As a result of the project, there is a harmonization of traditional and statutory justice systems and the traditional chiefs require spousal consent for all land transactions.



## Article 10: The Right to Peace

286. The Government of Kenya recognizes that without peace there is no development. Kenya's initiatives is anchored on the constitutional values of gender equality, inclusion and participation and is aligned to the Sustainable Development Goals in particular Goal 5 on gender equality and 16 which seeks to promote peaceful and inclusive societies for sustainable peace and development as well as the principles of article 10 of the protocol. While women's contributions have historically been undervalued and underutilized, there is an increasing recognition of their roles in peace building and conflict resolution. Increasingly, Government, civil society organizations and development partners are prioritizing women's inclusion and active engagement in peace building at all levels. The inclusion of women in county peace committees and in strategic conversations about national and regional peace and security marks some of the key efforts.
287. A number of initiatives have been undertaken in Kenya on peace building which directly address the principles of this protocol under article 10<sup>27</sup>. Kenya has developed a National Action Plan on UN Resolution 1325 on Women, Peace and Security (KNAP). The resolution recognises the centrality of women's contribution to conflict prevention, peace keeping and peace building.
288. The KNAP is premised on a human security framework with the theme '*Kuhusisha Wanawake ni Kudumisha Amani*', (to involve women is to sustain peace). The plan comprehensively addresses the four pillars of the UNSCR 1325 resolution: Participation, Promotion, Protection and Relief and recovery. The plan provides an opportunity to initiate strategic actions, identify priorities and resources, and determine responsibilities and time-frames at a national and county level.
289. In furtherance of UNSCR 1325, the Government has established a National Steering Committee on the implementation of the Plan and a Secretariat is in place to coordinate and monitor the plan process. In addition, focal points have been appointed in all Government Ministries, Department and Agencies to ensure the Plan's activities are integrated across all sectors.
290. One of the action areas under the Action Plan that Kenya is implementing is building the capacity of women to engage in decision making roles in conflict prevention and improving the early warning response systems through the integration of gender perspectives. As a result, a Government led nationwide campaign on peace building has been undertaken.

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<sup>27</sup> An example of this is the inclusion of women in the County Peace Committees as well as the Countering Violent Extremism conference.

291. **Gender sensitive, conflict analysis and early warning systems:** In efforts to empowering women on early warning information sharing on the possible emergence of conflicts and other threats to peace and security, the National Steering Committee on Peace Building and Conflict Management (NSC/PBCM) created an elaborate framework on early warning that has since engaged more than 4,000 women drawn from 6 regions in the country. This engagement has resulted in subsequent interactions with women and youth at the grassroots levels. The Government through the Ministry of Defense adopted a Gender Policy in May 2017 to guide the integration of gender and UNSCR1325 in all military operations, including in early warning system.
292. **Constitutional Commissions and citizen's engagement on peace and national cohesion:** The country has made progress in promotion of peace nationally, regionally and internationally by establishing institutional bodies like National Cohesion and Integration Commission (NCIC), Ethics and Anti-Corruption Commission (EACC), Kenya National Human Rights and Equality Commission, Kenya National Gender and Equality Commission. Regionally, Kenya has participated in various peace keeping missions and support operations like Somalia Peace Keeping Missions as well as the Karamoja cluster which encompasses cross border areas of Ethiopia, Kenya and Uganda, the program was initiated to reduce vulnerabilities and increase the resilience of communities affected by conflict and climate induced migration along the common borders. The National Cohesion and Integration Commission (NCIC) has enhanced the participation, leadership and empowerment of women in peace building initiatives in respect of the women, peace and security agenda.
293. **Participation of women in peace structures and activities at different levels:** Kenya seeks to establish effective peace and conflict structures throughout the country, the Government has put in place mechanisms to foster peace among warring communities through initiatives like joint Cultural Festivals.
294. Kenya is the chair of Inter- Country Quality Nodes on Peace Education in Africa and has signed treaties on cultural exchange programs with 51 countries hosting Kenya Missions. The treaties focus on promotion of cultural tourism, peace and human understanding among others.
295. As of November 2018, the total number of members in District Peace Committees was 4,505, out of which 29% are female and 71% are male (3,250 men and 1,300 women). Out of the total number of 301 sub-county peace committees in 47 counties 134 (45%) meet the constitutional threshold of 33% gender parity.
296. To promote partnerships and mutual cooperation, Kenya is participating in cross-border meetings and other tripartite arrangements such as IGAD/CEWARN. Bilateral, cross-border peace dialogues with neighbouring countries are held regularly to address conflict issues.

297. **The National Policy on Peace building and Conflict Management (2014)** further proposes a comprehensive framework for the management of conflicts and seeks to mainstream gender issues in conflict management with a specific focus on the empowerment and inclusion of women. There also exists a National Policy on Community Policing aimed at enhancing collaboration between Government policing agencies, local authorities and other organs in peace building efforts.
298. The Government has also developed a comprehensive National Strategy to Counter Violent Extremism which takes into account the complexity of the drivers of extremist violence and the critical role of women both as perpetrators, conciliators and builders of resilience in communities vulnerable to violent extremism. The Strategy provides for gender specific engagement strategy that will focus on capacity building, participation, protection, and engagement. The Government is also implementing a project dubbed ‘Engendering peace building initiative in Kenya’ which is focusing on training, reviewing, updating, automating and engendering of the National Conflict Early Warning and Early Response System (NCEWERS).

## **Article 11: Protection of women in armed conflicts**

299. Kenya has been affected by conflicts directly and indirectly. Being in the great Horn of Africa, Kenya has hosted refugees from war-torn countries for many years thus exposing it to indirect conflicts namely: resettlement of refugees resulting in economic and cultural tensions.
300. Internally, Kenya’s has experienced disturbance through communal conflicts that are driven by various factors: competition for natural resources, manipulation of political and ethnic identities especially during election periods; unresolved historical grievances touching on marginalisation of communities and more recently terrorism related to the existence of extremist militia groups such as the *Alshabaab*.
301. Kenya currently hosts refugees and asylum seekers, for instance as at April 2014, 555,980 refugees and asylum-seekers were being hosted in Kenya, including 357,392 in the Dadaab Complex, 147,773 in Kakuma and 50,815 in urban areas under the 2006 Refugees Act and the 2009 Refugees Regulations which specify that the Government shall ensure that specific measures are taken to ensure the safety of refugee women and children in designated areas. The Government of Kenya, UN Agencies, and international and local NGOs provide protection and basic needs for this population.
302. Kenya has taken measures taken to strengthen the capacity of security sector institutions on human rights and prevention of sexual and gender-based violence and sexual exploitation and abuse. The Government has worked and continues to work in collaboration with the International Peace Support Training Centre to support the training of military, the police and civilians on prevention of conflict related SGBV.

303. Training has been undertaken targeting sixty-eight (68) males and sixty-seven females (67) peace support operation personnel (military, police and civilians) on preventing sexual and gender-based violence in conflict contexts. There has been enhanced the capacity of 75 military officers deployed to AMISOM on preventing and responding to sexual and gender-based violence in Somalia. Additionally, the Government through the Ministry of Interior and Coordination of National Government has strengthened research and documentation through increasing its human resource capacity. This has strengthened institutional capacity for results-based reporting, regular joint missions, conflict analysis and documentation of project results. It has also resulted in improved gender sensitive reporting by ensuring disaggregation of data in briefs and reports and has largely informed policy and programmes on peace building and conflict prevention.
304. The girl-child and all children are protected from participating in conflict: Kenya has no child-soldiers. The prevention measures are in place through the relevant legislation and policies and elaborate statutory structures such as domestication of the African Charter on the Rights and Welfare of the Child through enactment and enforcement of the Children's Act, 2001. Recruitment into the army in Kenya is restricted to those of 18 years old and above.

## Articles 20-24: Rights of specially protected women's groups

305. Kenya is committed to ensuring that the rights, needs and aspirations of special interest groups including: Women, persons with disabilities and the marginalized groups are recognized and respected in the Constitution. Progressive steps had been made and continued to be taken by the Government of Kenya to ensure their rights are safeguarded.
306. Article 56 of the Constitution provides that the state should put in place affirmative action programmes designed to ensure that minorities and marginalised groups participate and are represented in governance and other spheres of life; are provided special opportunities in education and economic fields; are provided special opportunities for access to education; develop their cultural values, languages and practices; and have reasonable access to water, health services and infrastructure. Article 100 advocates for promotion of representation of marginalized groups. The article states that parliament shall enact legislation to promote the representation in parliament of women; Persons with disabilities; youth; ethnic and other minorities; and marginalised communities.
307. Further, the National Gender and Equality Commission (NGEC) has been mandated to monitor and promote mainstream issues of disability and elderly in governance structures in order to achieve substantive equality and inclusion at all levels. NGEC systemically addresses discrimination and human rights issues such as participation and marginalisation affecting persons with disability and older members of the society in accordance with Articles 27, 54 and 57 of the constitution and international commitments signed by Kenya.
308. **Older women:** The National Policy on Older Persons and Aging 2014 seeks to provide an environment that recognizes, empowers and facilitates older persons to participate in the society and enjoy their rights, freedom and live in dignity. The policy provides a comprehensive framework to address the unique challenges that older persons in Kenya face, and recognition of their rights, as distinct right holders and participants as per Article 57 of the Constitution. This policy recognizes that older persons are an important segment of the national population whose rights must be recognized, respected, protected and promoted. A draft National Plan of Action on the implementation of this policy has been generated. The Care and Protection of Older Members of Society Bill 2018 is designed to give effect to Article 57 of the Constitution; to provide a framework for the care of older members of society; to establish a framework for the empowerment and protection of the elderly and the maintenance of their well-being, safety and security. In addition, Draft Guidelines for Establishment and Management of Older Persons' Institutions have been developed.

309. **Women with disabilities:** The National Policy for Persons with Disabilities spearheads activities that enable inclusion of persons living with disabilities in Kenya. Within the public service there is a Disability Policy and Guidelines for the Public Service (2018). A National Plan of Action on the Rights of Persons with Disabilities 2015-2022 has also been developed. In addition, there is a Sector Policy for Learners and Trainees with Disability 2018 which ensures inclusivity of all learners in basic learning institutions including those in hard to reach places; Education Assessment and Resource Centres (EARCs) for assessment of children with special needs; and promotes the inclusion of children with special needs to regular schools. While there are targeted policies and programmes for persons with disabilities, challenges related to access to basic services, buildings, housing and transport remain a challenge. Women and girls with disabilities form a critical category of women facing multiple forms of discrimination based on their multiple identities.
310. **Widows:** the Government has put in place programmes and initiatives that embrace the experiences faced by widows especially in addressing discrimination, loss of property and lack of access to justice. Guided by the Ministry of Public Service and Gender, widows have organized themselves into groups that have benefitted through government available funds such as the *Uwezo* Fund, the Women Enterprise Fund and the National Government Affirmative Action Fund. Further, Kenya continues to mark the international Widows day since 2016 and the event is used to highlight the right of the widows.
311. In addressing intersectional discrimination, the Government will strengthen measures to support evidence generation on the extent, effects and gender implications of different inequalities, ensure compliance with constitutional and legal provisions against discrimination and develop targeted measures to deal with intersectional inequality.
- Conclusion:**
312. The Government of Kenya remains committed to its duty to improve the protection and promotion of all human rights and fundamental freedoms for all its citizens. It should be noted that while every effort is being made to present periodic reports that provide a comprehensive picture of measures taken to implement the charter, Kenya faces challenges in ensuring the submission of comprehensive reports to the Commission every two years as mandated by Article 62 of Charter. Our processes as ordained by the Constitution are very elaborate.
313. Firstly, the processes for the formulation of legislation, policies and other measures are considerably lengthy and take time, thus making it difficult to report meaningfully within the required timeframe. It is for this reason that our reports contain information covering a number of years in order to provide a more comprehensive picture of the implementation of the rights under the charter.



314. Secondly, while the Government has expended a lot of efforts to ensure the full enjoyment of human rights and fundamental freedoms in the country, Kenya faces increased reporting obligations, to the multiple international and regional human rights systems, with requests for the provision of data - both disaggregated and statistical- which is often difficult to obtain. Thus the establishment of the National Committee on International and Regional Human Rights Obligations discussed in paragraph 5 of the report, will play an important role in providing a comprehensive, coordinated and coherent approach to state reporting and follow-up.
315. To address challenges faced in the implementation of some of these fundamental rights and freedoms the Government of Kenya will continue to collaborate with development partners, international and regional bodies to ensure that all Kenyans enjoy their rights.
316. Nevertheless, even with the aforementioned challenges the Republic of Kenya will continue to strengthen its efforts to foster national cohesion and peace which are crucial prerequisites for the attainment of meaningful human rights for all.