

## Advocacy Brief on Priority Areas for Consideration by the Human Rights Committee

Thematic areas	Summary of prioritized recommendations to the HRC
<p><b>RIGHTS OF MARGINALISED COMMUNITIES AND MINORITY GROUPS</b></p> <ul style="list-style-type: none"> <li>• <i>KCCPR</i></li> <li>• <i>Amnesty International</i></li> <li>• <i>KNCHR</i></li> </ul>	<ul style="list-style-type: none"> <li>• That the government implements the decision in <i>CEMIRIDE (on behalf of the Endorois Community) versus The Government of Kenya</i> in accordance with the recommendations of the African Commission on Human and Peoples’ Rights.</li> <li>• That the government institutes an implementation and reparations framework for all recommendations emanating from state-sanctioned inquiries and commissions impacting on historical land injustices for marginalized communities.</li> <li>• That the enactment of the legislation on community land is undertaken without further delay to provide the legal framework for the use, transfer and management of community land in line with the Constitution.</li> <li>• That the government of Kenya up-scales administrative efforts to avail any document of identification to all eligible Kenyans, especially minority and marginalized communities.</li> <li>• That the government of Kenya publishes the rules and regulations to the Citizenship and Immigration Act, 2011 without further delay to prescribe an application process for registration of stateless persons as citizens and introduce non-discriminatory procedures for registration of persons.</li> <li>• That the government of Kenya fully implements the recommendations issued to it by the African Committee of Experts on the Rights and Welfare of the Child in the case of <i>IHRDA and Open Society Justice Initiative (OSJI)(on behalf of children of Nubian descent in Kenya) v Kenya</i>.</li> <li>• That the government of Kenya through the National Museum of Kenya develops operational guidelines for research and documentation of intangible cultural heritage in line with the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage.</li> <li>• The state should therefore commit more funding locally for HIV /AIDS budget and ensure that ARVs are available at the community-level health facilities and are freely accessible to all persons suffering from HIV-AIDs.</li> <li>• The Government should repeal all legislation that is discriminatory including sections 162,163 and 165 of the Penal Code and Sexual Offences Act, notably the ambiguity surrounding section 6 on the nature of indecent acts, which contradict the spirit and provisions of the Constitution.</li> <li>• Work with LGBT and human rights organizations to encourage people to report hate crime and ensure that the victims have access to redress, including access to justice, compensation and offer psycho-social support for victims of such crimes.</li> <li>• Create and implement a public awareness campaign about the unacceptability of violence towards LGBT people and</li> </ul>

	<p>introduce ongoing training for all levels of police, prosecutors, magistrates, judges and court officials on homophobia, transphobia, human rights obligations in relation to sexual orientation and gender identity, and on efficient and impartial investigation and prosecution of violent attacks against LGBT I individuals.</p> <ul style="list-style-type: none"> <li>• The State should also develop comprehensive guidelines on health rights of LGBTI persons and their access to HIV/AIDS prevention, care and treatment measures.</li> <li>• The government should fully operationalize the Persons with Disabilities Act and the Constitutional provisions on the rights of persons with disabilities. The state should implement Article 54 of the Constitution and all of its provisions and in particular should ensure the progressive implementation of the principle that at least 5 % of members in public and elective office are persons with disabilities.</li> </ul>
<p><b>PROTECTION OF REFUGEES AND ASYLUM SEEKERS</b></p> <ul style="list-style-type: none"> <li>• <i>KCCPR</i></li> </ul>	<ul style="list-style-type: none"> <li>• The state should adopt a Refugees Policy that clarifies the legal status of refugees outside of camps, respects their freedom of movement, right to work and avails durable solutions for refugees.</li> <li>• Allow for the immediate resumption of registration of newly-arrived asylum-seekers in Dadaab.</li> <li>• The state should support actors working on family tracing and reunification through closer engagement or partnerships with them and through the promotion of awareness creation on these services.</li> <li>• The state must capacitate the Department of Refugee Affairs to effectively take over registration and refugee status determination from UNHCR, setting up a system that adequately gives effect to its obligations under the Refugees Act, conforms to international standards but is also agreeable to other Government departments.</li> <li>• The state should clarify when a situation of emergency or situations in the interests of national security exist and the scopes of the relevant derogations to justify the raids made in response to instances of insecurity.</li> <li>• The state should improve border management practices that facilitate access to asylum and the protection of asylum seekers while addressing other state concerns such as re-opening the Kenya-Somalia border, re-establishing the reception and transit centres in Liboi and Dadaab. These centres should have the capacity to conduct vulnerability screening for unaccompanied minors. The State should establish a refugee protection unit within the police force to deal exclusively with refugee protection.</li> </ul>
<p><b>ACCESS TO EFFECTIVE REMEDIES</b></p> <ul style="list-style-type: none"> <li>• <i>KCCPR</i></li> <li>• <i>KNCHR</i></li> <li>• <i>Amnesty International</i></li> </ul>	<ul style="list-style-type: none"> <li>• The Government should enact a comprehensive anti-discrimination law that consolidates all the legal provisions on equality and freedom from discrimination as well as provide for sanctions and remedies. and undertake a review of all legislation and policy in order to (i) assess compatibility with the rights to equality and non-discrimination, as defined under the international instruments to which Kenya is party and the Constitution of Kenya 2010; and (ii) amend, and where necessary, abolish, existing laws, regulations and policies that conflict or are incompatible with the right to equality.</li> <li>• The state should support actors working on family tracing and reunification through closer engagement or</li> </ul>

<ul style="list-style-type: none"> <li>• <i>Equal Rights Trust</i></li> </ul>	<p>partnerships with them and through the promotion of awareness creation on these services.</p> <ul style="list-style-type: none"> <li>• Kenya should demonstrate its ability to adhere to its obligations under the Rome Statute and cooperate with the ICC. The Human Rights Committee should strongly urge the Government of Kenya to refrain from political protectionism. The government should desist from subverting the process of the ICC.</li> <li>• The government should also establish a credible local judicial mechanism to deal with the middle and low-level perpetrators of the post-election violence and also to address the needs of the victims of the post-election violence, who have not yet received any justice or compensation.</li> <li>• The state should take all measures to ensure protection of witnesses, particularly the witnesses of the 2007- post election violence and their families from harassment and intimidation. The Witness Protection Agency should be capacitated to effectively undertake witness protection.</li> <li>• There is a legitimate framework in regards to the TJRC, thus the government should harmonize all existing frameworks designed to address priorities such as land issues, equitable distribution of resources, marginalization, and facilitate the appropriate environment for national dialogue and redress through those existing mechanisms<sup>1</sup>.</li> <li>• Immediately establish an independent and transparent national reparations programme to provide full reparations, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition for victims of human rights violations, including victims of post-election violence. Such reparations programme should be prioritized including by annual line-item allocations through the national budgetary process.</li> <li>• The government should increase the budgetary allocation for the National Legal Aid Awareness Program (NALEAP) to enhance access to justice for the vulnerable and poor communities. The government needs to adopt additional measures to ensure that justice is accessible to all within the Republic.</li> </ul>
<p><b>PREVENTION OF FORCED EVICTIONS</b></p> <ul style="list-style-type: none"> <li>• <i>KCCPR</i></li> <li>• <i>KNCHR</i></li> </ul>	<ul style="list-style-type: none"> <li>• That the enactment of the Evictions and Resettlement Guidelines Bill 2011 is undertaken without further delay to provide the legal framework, including guidelines for evictions that accord with the Constitution and internationally accepted standards; and provide for protection against inhumane and unlawful evictions.</li> <li>• The State should now put a moratorium on evictions and demolitions until such a time that clear guidelines, policy and legislation will be in place.</li> </ul>
<p><b>PROHIBITION GENDER BASED VIOLENCE</b></p> <ul style="list-style-type: none"> <li>• <i>Amnesty</i></li> </ul>	<ul style="list-style-type: none"> <li>• The state should take immediate steps to ensure that police and judicial officials understand women’s right to live free from violence and deal appropriately and sensitively with victims reporting violence and ensure that survivors of gender-based violence receive prompt and appropriate healthcare and other forms of support they need.</li> </ul>

<sup>1</sup> The National Cohesion and Integration Commission subject to submissions made in this report, The National Land Commission, The Commission on Revenue Allocation, The National Gender and Equality Commission among others.

<p><i>International</i></p> <ul style="list-style-type: none"> <li>• <i>KNCHR</i></li> </ul>	<ul style="list-style-type: none"> <li>• The government should adequately address the factors contributing to violence against women, including taking action to eliminate negative stereotypes and harmful practices affecting women, improving access to education, job creation schemes, and financing for women’s businesses so that women can improve their working conditions.</li> <li>• The state should carry out awareness creation to sensitize the communities practicing FGM communities about the law and also ensure prosecution of perpetrators to deter this harmful cultural practice.</li> </ul>
<p><b>RIGHT TO LIFE</b></p> <ul style="list-style-type: none"> <li>• <i>TRIAL</i></li> <li>• <i>IMLU-ICJ</i></li> </ul>	<ul style="list-style-type: none"> <li>• The State party shall take actions to ensure that allegations of extrajudicial killings and enforced disappearances are <i>ex officio</i>, promptly, impartially and effectively investigated and to ensure that alleged perpetrators are tried by a competent ordinary court.</li> <li>• The government should abolish the death penalty in line with international human rights standards as it is an unacceptable derogation of the right to life. There is an urgent need for the State’s leadership in education, creating awareness, and taking the bold step to abolish the death penalty.</li> </ul>
<p><b>PROHIBITION OF TORTURE</b></p> <ul style="list-style-type: none"> <li>• <i>IMLU-ICJ</i></li> <li>• <i>KNCHR</i></li> </ul>	<ul style="list-style-type: none"> <li>• The government should enact anti-torture legislation ensuring that all acts of torture and cruel, inhuman and degrading treatment or punishment are punishable by appropriate penalties taking into account their grave nature, with specific provisions that outlaw and penalize torture and other forms of violence against children and which contains child-friendly enforcement provisions and mechanisms</li> <li>• The state should develop and implement a policy on absolute prohibition of torture, particularly in places of detention and adequately resource the Kenya National Commission on Human Rights and the Independent Police Oversight Authority to monitor instances of torture in prisons and police stations.</li> <li>• The government should ratify the Optional Protocol to the Convention against Torture as well as other International and regional Instruments for the protection and promotion of human rights</li> <li>• The State should ratify the Convention for the Protection of All Persons from Enforced Disappearances.</li> </ul>
<p><b>PROHIBITION OF ARBITRARY DETENTION</b></p> <ul style="list-style-type: none"> <li>• <i>KCCPR</i></li> <li>• <i>IMLU-ICJ</i></li> <li>• <i>KNCHR</i></li> </ul>	<ul style="list-style-type: none"> <li>• The government of Kenya should stop the extraordinary renditions of suspects to other nations based on suspected terrorist activity. Any emerging legislation on terror should ensure justice while safeguarding the rights of persons subject thereto and provide a framework that would curb the issue of extraordinary renditions. The government of Kenya should also internally investigate terrorist acts before extraditing suspects to other nations.</li> <li>• Provide for effective remedies and reparations to those subjected to extraordinary renditions.</li> <li>• Ensure that all counter-terrorism measures comply with its international obligations under the human rights treaties, including the ICCPR.</li> <li>• In the implementation of the constitution, the state should not forget the rights of those in detention and should ensure speedy enactment of requisite legislation under Article 51(3) as well as adequate budgetary allocation to</li> </ul>

	<p>penal reforms, with the specific aim of easing congestion in prisons and bringing prison conditions to the Standard Minimum Rules for the Treatment of Prisoners.</p>
<p><b>SLAVERY, SERVITUDE AND FORCED LABOUR IN PRACTICE</b></p> <ul style="list-style-type: none"> <li>• <i>KCCPR</i></li> <li>• <i>KNCHR</i></li> </ul>	<ul style="list-style-type: none"> <li>• Kenya should ratify ILO Convention 183 and 103. Additionally, it should domesticate the conventions that it has ratified, in particular, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The government should ensure that there are fair labour practices in all sectors, in particular EPZs and the cut-flower industry.</li> <li>• The government should expedite the review of the existing labour laws to enhance mechanisms of accountability and fortify protections for certain vulnerable persons. Additionally, labour laws need to conform to international law and regulations, especially labour regulations and conventions. The government should put in place enforcement procedures to ensure compliance with the revised labour laws in both the public and private sectors.</li> <li>• The state, through the Ministry of Foreign Affairs (MFA), should liaise with various departments and embassies to establish a framework that clearly assists in the documentation and registration of Kenyans abroad. Additionally, there needs to be further scrutiny and investigation of local agencies prior to registration and their applications for renewal to ensure that they do not propagate labour rights violations. The government should also create awareness on the importance of Kenyans reporting to the Kenyan embassies in the countries of employment.</li> <li>• The state should ensure the protection of all of its citizens against counter-trafficking by enforcing the Counter-Trafficking in Persons Act. and in particular, it should create and fully operationalize the Advisory Body and the Trust Fund and create awareness of the Act amongst the Public and Law enforcement officers.</li> </ul>
<p><b>RIGHT TO PRIVACY</b></p> <ul style="list-style-type: none"> <li>• <i>KCCPR</i></li> </ul>	<ul style="list-style-type: none"> <li>• The government should enact the Data Protection Bill 2012 without further delay, so as to ensure that peoples' private information and communication are not accessed arbitrarily.</li> <li>• The government should amend the proposed NIS Bill 2011 so that it conforms to international standards on peoples' right to privacy. More specifically, the bill should clearly outline the limitations to sections 19(3) and 31(10), as they are not explicit and could be subject to abuse.</li> </ul>
<p><b>FREEDOM OF OPINION, EXPRESSION, ASSEMBLY AND ASSOCIATION</b></p> <ul style="list-style-type: none"> <li>• <i>KCCPR</i></li> <li>• <i>KNCHR</i></li> </ul>	<ul style="list-style-type: none"> <li>• The state should review existing laws and institutional frameworks pertaining to media regulation and ensure conformity to constitutional and international standards on freedom of expression. This would include: ensuring the independence of the Media Council of Kenya and Communications Commission of Kenya from state control; reviewing the powers of the Communications Commission of Kenya to impose content restrictions; promoting media self-regulation and deleting provisions on registration or education requirements for journalists.</li> <li>• The government should carry out thorough, independent and impartial investigation into the cases of extrajudicial killings, acts of intimidation and harassment of journalists and human rights defenders, the result of which must be made public, in order to bring all those responsible before a competent, independent and impartial tribunal and apply</li> </ul>

	<p>penal, civil and/or administrative sanctions as provided by law;</p> <ul style="list-style-type: none"> <li>• The government should comply with Resolutions 119 (2007) of the African Commission on Human and Peoples' Rights on the Situation of Human Rights Defenders in Africa<sup>2</sup> and with all the provisions of the United Nations Declaration on Human Rights Defenders, in particular with its Article 1<sup>3</sup>.</li> <li>• Adopt, without further delays, and implement the Freedom of Information (FOI) law</li> <li>• The government should review existing mechanisms and institute checks and balances against abuse of police discretion in regards to peoples' right to peaceful assembly.</li> <li>• The government should at all times uphold the right of workers to form and join trade union and to demonstrate as provided for in the Constitution of Kenya at Articles 36 and 41 without any infringements.</li> </ul>
<p><b>PROTECTION AGAINST PROPAGANDA, DISCRIMINATION AND NATIONAL, RELIGIOUS, OR RACIAL HATRED</b></p> <ul style="list-style-type: none"> <li>• <i>KCCPR</i></li> <li>• <i>KNCHR</i></li> </ul>	<ul style="list-style-type: none"> <li>• The government develop a procedural mechanism involving the NCIC, the Police and the Attorney General's Office on how complaints under the NCI Act are to be investigated and prosecuted with requisite feedback channels.</li> <li>• The National Cohesion and Integration Commission (NCIC) has been mandated to investigate instances of hate speech and recommend prosecutions, however the law on hate speech is limiting, particularly in defining what constitutes hate speech. This impedes any meaningful investigations and prosecution. Given the gravity of this issue, a single comprehensive law prohibiting propaganda of war, incitement to discrimination, hostility or violence is urgently required, particularly as the country prepares for another general election.</li> </ul>
<p><b>ELECTORAL RIGHTS</b></p> <ul style="list-style-type: none"> <li>• <i>KCCPR</i></li> </ul>	<ul style="list-style-type: none"> <li>• The government should unequivocally state its policy on the election date in light of the High Court's decision in <u>John Harun Mwau and Others v. The Attorney General and Others</u>.</li> <li>• The government should ensure that the IEBC receives proper funding to effectively conduct free, fair, and transparent elections and put all measures in place to ensure that there are free and fair elections and that all eligible voters are able to do so in addition to ensuring that there is adequate security prior to, during and after the elections.</li> </ul>

<sup>2</sup>The resolution calls on calling on States to “take all the necessary measures to ensure to all human rights defenders an environment conducive to carrying out their activities without fear of any acts of violence, threats, reprisals, discrimination, pressure and any arbitrary acts by State or non-State actors as a result of their human rights activities” and to “ take specific measures to ensure the physical and moral integrity of their peoples, especially those of human rights defenders, to enable the latter to fully play their role in the promotion and protection of human rights”.

<sup>3</sup>everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”, as well as with Article 12.2 (“the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”).

	<ul style="list-style-type: none"><li>• The government should provide policy directions and enact necessary legislation to facilitate the realisation of the 2/3 gender principle; this should be done before the next elections. Notwithstanding the absence of such enabling legislation, the government should, in its administrative practices, adhere to the principle, particularly in respect of public appointments.</li><li>• The Office of the Registrar should issue notifications to the Independent Electoral and Boundaries Commission regarding members of Parliament whose conduct has contravened the Political Parties Act.</li></ul>
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