

TREATY BODY MONITOR

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Key facts¹

| Ratification | Reservations | Other core treaties ratified |
|--------------|---------------|------------------------------|
| 1976 | Article 10(2) | ICERD, ICCPR, CRC, CAT |

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

Information submitted to the Committee

State report

On 7 September 2006, Kenya submitted its initial report to the Committee on Economic, Social and Cultural Rights (the Committee).² The State acceded to the *International Covenant on Economic, Social and Cultural Rights* (the Covenant) in 1976. In paragraph 18 of its report, the State explains the reason for the three-decade delay in submitting its periodic reports to the Committee, by referring to various forms of political, social, and economic challenges experienced over the last 30 years. It points out that in the past, the political system was ‘not conducive to a culture of human rights’, as it faced major difficulties during transition from one-party rule to a multi-party democracy.³

The 44-page State report provides general and statistical information on Kenya, and addresses its implementation of, and its adherence to the Covenant. The report speaks repeatedly of the numerous challenges Kenya is facing, that eventually hinder the swift and complete implementation of the Covenant. Mostly in the context of explaining the lack of implementation, the report refers altogether 25 times to the draft constitution that allegedly contained comprehensive provisions on all rights stipulated in the Covenant. In its report, the State fails to mention solutions other than those contained in the draft constitution. This draft constitution, however, was rejected by 57 percent of the voters at the constitutional referendum on 21 November 2005.⁴

List of issues

After having studied the report, on 12 December 2007, the Committee provided its list of issues to the State.⁵

The Committee asked for more information on a wide range of issues, including corruption and domestic implementation of the Covenant. The Committee mainly posed questions on points, which had not, or had only marginally been addressed in the State report. The Committee generally solicited more data, particularly disaggregated data, information on specific cases, and more detail on information supplied in the State report. Most issues raised concerned the implementation of provisions stipulated in Articles 10, 11, and 12 of the Covenant.

On 24 October 2008, the State submitted predominantly comprehensive and concise replies to the list of issues.⁶ During the interactive dialogue, however, the Chairperson of the Committee remarked that the written responses were only provided in English.

NGO information

11 individual non-governmental organisations (NGOs)⁷ and two coalitions of NGOs⁸ submitted written reports to the Committee.⁹

² E/C.12/KEN/1, available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

³ Paragraph 18, *Ibid*.

⁴ E/C.12/KEN/1, p 11, available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

⁵ E/C.12/KEN/Q/1, available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

⁶ E/C.12/KEN/Q/1/Add.1, available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

⁷ Center for Economic and Social Rights, Centre on Housing Rights and Evictions (COHRE)/Hakijamii Trust, IPAS Africa Alliance, Global initiative to end all corporal punishment of children, Hakijamii Trust, Kenya Human Rights Commission KHRC, World Organization against Torture (OMCT), Center for Reproductive Rights/Federation of Women Lawyers Kenya (FIDA Kenya), FIDA Kenya/International Women's Human Rights Clinic.

⁸ Coalition of Non-Governmental Organizations on Economic, Social and Cultural Rights/Kenya Human Rights Network (K-Hurinet), Kenyan CS Coalition for ESCRs.

⁹ The NGO reports are available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

Altogether four national NGOs gave oral presentation to the Committee at a meeting between NGOs and the Committee on 3 November 2008, and at an informal meeting with six members of the Committee on 6 November.

Key issues raised comprised domestication of the Convention, poverty, geographic, ethnic, and gender inequalities, legal discrimination, corruption and lack of enforcement of anti-corruption legislation, internally displaced people (including those displaced after the recent social violence in connection with the election), , , self-determination, high unemployment rate, and lack of access to social security. Further topics brought to the Committee's attention by the NGOs were right to housing and force evictions, access to water and sanitation, and the right to education. Amongst other suggestions, NGOs asked the Committee to focus in the State review particularly on the domestication of the Convention, discrimination, social security, strategic measures to combat poverty, corruption and the prosecution of high ranking officials, the promotion of employment, and on progressive rights, including health and other rights.

Committee members were highly appreciative of the work and input of NGOs and stressed the importance of the information provided. However, some members asked for clarification regarding the provenance of specific data, and emphasised the necessity to provide well-founded data and statistics if it is to be used by the Committee.

Themes and issues

Ms Martha Karua, Minister for Justice and Constitutional Affairs, led the 14-head delegation of Kenya. She was supported by a high-level delegation consisting of the Minister of Justice, the Minister of Medical Services, the Minister of Labour, and the Minister of Gender, Children and Social Development, as well as two ambassadors and the Permanent Secretary at the Permanent Mission in Geneva. Further, the delegation was made up of representatives of the Ministry of Foreign Affairs, the Ministry of Justice, and other ministry officials.¹⁰

In her extensive opening remarks, Ms Karua highlighted the significance of the appearance of Kenya before the Committee. She admitted forthright Kenya's shortcomings in implementing the provisions of the Covenant, but pointed also to the progress it is making in becoming a 'human rights State'. Challenges faced by Kenya, as pointed out by Ms Karua, included health issues, the housing situation, food security, the high unemployment, and generally weak institutions. She expressed hope that a more modern constitution would provide especially more effective judicial instruments, law enforcement, and generally a sound basis for the implementation of human rights. She mentioned the underlying twin-challenge facing the Government, namely to embrace the diversity within the Kenyan population while at the same time developing means to build a national character. Ms Karua also presented a number of more up to date and relevant figures. She also elucidated the interrelation of various issues and some pressing challenges.

The Chair of the Committee, Mr Texier, interrupted Ms Karua's lengthy presentation, and opened the floor to the questions by the Committee regarding the State report. The Kenyan delegation was during the question round, and particularly before replying clearly startled by the intensity, thoroughness, and persistence with which Committee members encountered and questioned the State report, and also by the range of issues raised. The tone of some Committee members was distinctively sharp, and the subsequent reaction of Ms Karua and the rest of the delegation were at times defensive.. For example, Ms M. Nzomo, Permanent Representative to the UN, who led the delegation on the second day, dismissed several comments of

¹⁰ The list of members of Kenya's delegation is available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

Committee members (especially regarding information given by NGOs) as ‘incorrect’, and refuted outright a number of criticisms.

Status of the Convention in domestic law

On the central issue of domestication the Convention into national law, the Committee expressed its dissatisfaction with the explanations given in the State report and in the written replies to the list of issues. The over-used argument that the rejected draft constitution contained relevant provisions was declared by several Committee members to be ‘unconvincing’ and ‘completely insufficient’. Mr Eibe Riedel suggested that the Kenyan Parliament could implement the provisions of the Convention regardless of Kenya being a dualist State, the one justification given by the State for its lack of implementation. Committee member Mr Walid Sa’di voiced serious doubts regarding the willingness of the Kenyan Government to promote the implementation of human rights covered by the Covenant. Numerous Committee members enquired about the practical status of the Covenant, and strongly recommended the Kenyan Government to advance quickly with the domestication of the Covenant.

Ms Karua admitted that the current Constitution is ‘inadequate’, and insisted that the Government has tried to change the Constitution for several decades. Committee member Ms Maria Virginia Bras-Gomes reminded the delegation of its obligation to respect, protect and fulfil the rights laid down in the instrument. She underscored that no excuse can justify this obligation not having immediate effect.

Poverty

The delegation invoked poverty in response to numerous questions posed by Committee members. The delegation described poverty as one of the major obstacles to taking effective measures in improving living standards and providing basic amenities more comprehensively. Ms Karua outlined that although poverty levels fell by 10 percent before 2007, they have risen again due to the post-election violence in 2008. Government recovery strategies and economic growth are hoped to reduce poverty. In response to concrete questions regarding the revenue from specific industries such as tourism, a member of the delegation revealed information showing that shockingly little benefits are gained from tourism. For this reason, the Government is now reviewing tourism policies to ensure that the bulk of the benefits will be realised by the Kenyan people and not outside operators. Another tangible measure to meet the challenge of extreme poverty is the introduction of a Constituency Development Fund to expedite rural and grassroots development by alleviating poverty among the rural poor. Ms Karua stressed that Kenya’s national development strategy, *Vision 2030*, seeks to secure the socio-economic rights of the poor and marginalised by focusing national development efforts on the elimination of poverty.

Food

Estimates indicate that 56 percent of the population lacks access to adequate food. The Government has introduced a number of measures to tackle the issue, including strategies for revitalising agriculture, reforming the agricultural sector, and mechanisms like the Early Warning System Network, which enables the Government to adequately respond to food emergencies. Further, the Government established an Arid Resource Management project, which monitors food security in arid areas. The Government has also put into force the National Disaster Committee, which ensures reliable and timely distribution of relief food. Despite these measures, vulnerability and food insecurity, which are exacerbated during extended periods of drought, continue to be a threat.

Labour

Different aspects of the situation of labour in Kenya were addressed during the session. The Committee expressed concern about social security, pension, and the integration of workers in the informal sector into the

formal sector, as well as more generally the efforts to regularise the informal sector. They also touched on topics related to inequality, the rights of the child, forced labour, minimal wages, the integration of objectives of the International Labour Organization (ILO) into Government policies, and the freedom of association.

On labour-related issues, the Committee recommends in its concluding observations that Kenya intensify its efforts to achieve higher levels of employment, regularise the situation of informal sector workers, take special measures to increase employment opportunities for vulnerable groups, facilitate the work of labour inspectors, and establish a data collection system to monitor unemployment and informal sector employment.¹¹

Unemployment

The Committee expressed great concern about the high rates of unemployment and the overall situation of the labour market in Kenya. The State report notes that over 470,000 jobs were created as of 2004. A member of the Committee asked what difficulties the Government faces in collecting data, and also requested more recent figures. Committee members repeatedly asked for information on how the Kenyan Government intends to improve the situation, in particular with regard to regularising the informal sector and providing social security to all members of society. Committee member Mr Daode Zhan voiced his disbelief of the apparent difficulty faced by the Kenyan Government to collect and provide relevant data and statistics on the number of unemployed in the formal and the informal sectors. Ms Bras-Gomes pointed at an apparent implementation gap as regards labour rights, despite of new laws that were adopted in 2007. Almost all Committee members asked for more detailed figures and were dissatisfied with the information made available. Ms Karua noted that Kenya has a high rate of unemployment in unfortunate conjunction with low labour force productivity. In order to mitigate the effect of these two factors, Kenya has expedited the settlement of trade disputes to promote industrial harmony. The Committee provided various figures, as requested by the Committee.¹²

According to Ms Karua's assessment, several dimensions characterise the unemployment challenge in Kenya, including a high population growth that does not match the creation of viable economic opportunities. Currently persons under the age of 30 comprise 72 percent of the unemployed, while persons under the age of 24 constitute 51 percent. This is a big risk factor for both the youth and the prosperity of the economy. In addition, rural-urban migration, extensive underemployment, and the general mismatch between emerging jobs and the skills available on the market also contribute to wider unemployment challenges for the State.

Export Processing Zones (EPZs)

Some Committee members showed interest in learning about the approximately 40 EPZs in Kenya as, according to information they were given, these are generally exempted from health and security standards. In this context, Ms Wilson asked how the Government defines the term 'working place'. According to the *ad hoc* definition given by a member of delegation, all places where workers can be found are considered working places. Under the new *Occupational Health and Safety Act*, the Occupational Health and Safety Department has access to the EPZs, and has been conducting inspections since 2003.

Inequality and the situation of vulnerable groups

The Committee members showed great interest in the situation of certain vulnerable groups in Kenya, namely women, children, ethnic minorities, people with HIV/AIDS, and non-nationals such as refugees. Especially with respect to discrimination and differentiating measures, the Committee was adamant in questioning the delegation about specific cases and confronting the representatives with information obtained from NGOs. The delegation rejected many of the criticisms, and denied several times the existence of grievances.

¹¹ E/C.12/KEN/CO/1, available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm

¹² From 2003 to 2007, the number of jobs created in the country totalled 2,376,700. The breakdown was: 486,900 jobs created in 2003; 474,300 jobs created in 2004; 469,000 jobs created in 2005; 471,800 jobs created in 2006; and 474,700 in 2007.

In the concluding observations, the Committee gives five recommendations that refer to Article 10 of the Covenant, covering the issues of domestic violence, female genital mutilation (FGM), trafficking of women and children, child labour and prostitution, and HIV/AIDS orphans.

Women

Committee members drew on information provided by NGOs stating that women's property rights are being violated continuously as women, according to traditional customary rules, do not hold property rights. The Committee also raised the issue of polygamy and other traditionally accepted customs, as the ramifications of such practices usually affect directly basic rights of women. Ms Karua acknowledged the concerns expressed, yet explained that people cannot easily be prevented from acting in accordance with their traditions. Men and women theoretically have same rights in Kenya, but lack of awareness means that a large number of women do not claim their rights.

Ms Bras-Gomes noted that according to information from 2003 provided by Human Rights Watch, women in Kenya earn on average half as much as men. Moreover, information from 2007 provided by a United States agency shows that the average income of women is two thirds of that of men. The head of delegation refuted both pieces of information.

On the subject of FGM, the delegation confirmed the extremely high rate of women and girls who undergo this procedure (over 90 percent in the North East Province). The delegation said that a public education campaign on FGM is being carried out through public forums organised by provincial administrations and radio programmes. This campaign encourages girls to undertake alternative rites of passage, and educates them about themselves and their bodies. Committee member Ms Virginia Bonoan-Dandan reminded the delegation that the main target of the education should be the perpetrators of FGM rather than the children. In this sense, she underlined, there is a need for education and awareness-raising of adults. Ms Karua made it clear that the *Children Violence Act* officially criminalises FGM, yet suggested that it may be better to sensitise the public than criminalise the act. She claimed that the number of cases of FGM has decreased considerably, and assured that the Kenyan Parliament is sensitive to the issue.

Ms Barbara Elaine Wilson from the Committee was not convinced by the delegation's responses to some of the issues raised concerning the violation of rights of women. With respect to sexual and reproduction rights, Ms Nzomo stated that in the framework of a reproductive health policy, youth-friendly clinics are being set up, and contraceptives are supplied free of charge. The budget for this initiative was not disclosed, but the delegation assured that money is specially allocated to it by the Government. Furthermore, a law to legalise abortion is in the pipeline, but religious groups that are against this practice might make it difficult to go forward with the proposal.

Children

The delegation corrected numbers mentioned by the Committee and clarified that the number of children involved in commercial sexual practices in Kenya totals 30,000. The delegation affirmed that this is a very high number and assured that the Government is committed to eliminating child prostitution. The 2001 *Children's Act* criminalises the involvement of children in commercial sexual practices. Despite adoption of legislation protecting children, enforcement of existing laws is lacking. Nevertheless, the Government is committed to taking effective enforcement measures, specifically focused at hotels and villas, which allow children into their premises for commercial sex. In addition, trafficking in children and in persons is under review; a bill formally criminalising such acts has been presented to the Parliament.

One Committee member Mr Rzeplinsky addressed the issue of birth registry, recounting that despite the existence of legislation, births are not always recorded because of obstacles having to do with discrimination against children born out of wedlock or children of non-Kenyan fathers. This was refuted by the delegation.

A further concern brought to the table was the nutritional status of children. The Government admits that this is highly problematic, as figures available show that the situation is grave and the number of children suffering from malnutrition is on the rise.

Another point that was given attention to by the Committee was child labour and homelessness amongst children. Apparently, provisions to prevent both do exist in Kenyan legislation, leading Ms Bras-Gomes the question why implementation is so difficult. Ms Wilson pointed to the duty of teachers to denounce cases of child labour and enquired what exactly is being done with perpetrators.

The Committee touched upon the dilemma that the *Children's Act* provides for basic education, but people have to pay for their children's school uniform, transport, and other such costs. The Committee expressed its concern that this results in children from very poor families being disadvantaged. The Committee enquired about what is being done to help poor families ensure that their children can frequent school. The delegation subsequently provided extensive information on the number of schools and the different measures taken to guarantee schooling for everyone.

People with HIV/AIDS

The delegation was persistent in denying that discrimination, in particular against women and children with HIV/AIDS, occurs or is otherwise an issue of concern. As part of the significant steps undertaken by the Government to progressively implement the rights enshrined in the Covenant, the national HIV prevalence rate was reduced from 13.6 percent in 2002 to about 7 percent in 2004.

The legislative and policy measures enacted by the Government include a *HIV and AIDS Prevention and Control Act* which aims at, *inter alia*, guaranteeing the right to privacy of the individual, outlawing discrimination in all its forms and subtleties against persons with or perceived or suspected of having HIV and AIDS.

According to the delegation, women in Kenya can have voluntary HIV/AIDS tests, and these have contributed to the reduction of HIV/AIDS transmission to the child. Health workers are being trained to deal with cases of transmission from mother to child, which contributes to the reduction of negative stigma associated with women with HIV/AIDS. These women, the delegation assured, are able to deliver in hospital and clinics in the country without discrimination.

Still, AIDS prevalence has increased. This can be attributed to sexual behaviour of the population, the head of delegation said. Nevertheless, the Government is attempting to take preventive measures.

Refugees and internally displaced persons (IDPs)

The Committee expressed strong concern about the situation of other vulnerable groups, and in particular about discrimination against and negligence of non-nationals, refugees, and IDPs. The Committee voiced worries that refugees in Kenya might not enjoy human rights protections, and requested more information and comments on this. Access to health care for refugees, specifically pregnant women and children, was of special interest to Committee member Mr Andrzej Rzeplinski. He pointed out that information presented by NGOs contradicts the State report; the latter claims that refugees are provided with all basic services. He requested information on the procedures if no facilities are available.

The delegation said that no refugees are turned away from the borders of Kenya. Both education and health facilities are available in refugee camps. These institutions had been provided with the help of the international community. The services in refugee camps might not be adequate, but they are provided in the best possible way given limited means. The delegation also said that services for refugees are not optimum, but equal to others across the country, and some of the institutions in the refugee camps are better than the facilities provided for the host communities.

Ms Dandan urged the delegation to address the ‘humanitarian disaster’ that a large number of IDPs might be facing. The delegation was also asked to provide precise numbers of IDPs. A member of the delegation responded that the figures are very uncertain, as the number increased after the post-election violence, but not all IDPs could be registered as they might have found shelter at the homes of relatives in remote rural areas. IDPs who came to the camps set up by the Government are given a little money, and are being integrated in the host communities or settled back into the regions where they came from.

The delegation said that the resettlement of IDPs in the labour market is ongoing. Some of those affected have been granted transfers. Most of the people who went to IDP camps came from the agricultural sector, and the Government, through the National Resettlement Fund, is working on resettling these people back on their farms.

Housing

A strong emphasis was given to the situation of land allocation and housing, as well as sanitation, water, and infrastructure. The Committee inquired if Kenya is planning further urbanisation, and raised numerous issues concerning illegal urban settlements and initiatives to provide adequate housing. Several Committee members drew repeatedly on information presented by NGOs on forced evictions, gentrification of slum-areas, and the unfair distribution of land. The standard argument used by Ms Karua in response was based on the fact that Kenya is a developing country with little means to meet challenges such as the shortage of housing facilities.

An expert of the delegation announced that the Government is aiming to increase the number of housing units to 50,000 by 2030. He elaborated that forced evictions are on hold, while the Government is looking for alternatives for those living in informal settlements. The Government hoping to reduce building costs for houses designated for people currently living in informal settlements, thus speeding up the process of transition from informal settlements and slums to adequate housing.

Ms Karua stressed that Kenya has ensured the right to housing. The Government has created a specific Ministry for Housing, developed a National Housing Policy, and upgraded informal settlements under the Kenya Slum Upgrading Programme. Despite these measures, challenges remain; poverty is the biggest obstacle for the Government.

Allegations concerning forced evictions without notice and the gentrification of slum areas disregarding the poor were dismissed by the delegation as ‘untrue’. Information claiming that in some slums there is continuously no sanitation and no water supply was similarly refuted.

Mr Ariranga Govindasami Pillay was particularly persistent, and presented data showing that 70 percent of the Kenyan population lives in informal settlements or slums. Mr Pillay wished to know how the Government defines a slum. Mr Pillay insisted that he received information demonstrating that forced evictions continued in 2007, and that thousands of families have been displaced and left homeless. This led the Committee to comment that the issue of homelessness, to its disappointment, was not dealt with in the State report.

Other issues

A topic repeatedly touched upon in different contexts was **culture and national identity**. The Committee members were interested in knowing how the Government promotes nation-building, sustainable national peace and freedom, and how it intends to create a national identity and common culture. Ms Karua and Ms Nzomo made clear, however, that the Government has a very different stance on this issue. According to their explications, all members of Kenyan society are regarded as indigenous, and the more than 42 ethnic groups are equal in every sense. Ms Nzomo insisted that there is no good reason to create a single and common national culture in a country like Kenya, and mentioned more than once that the common ground should be seen in the uniting official language, Swahili.

Mr Texier, and Mr Riedel addressed Kenya's **reservation to Article 10(2)** of the Covenant strongly recommended its removal. The delegation declined to comment on this Article at this time, given the issues facing the country. The delegation assured that the Committee's request will be considered in positively, but forewarned that Kenya is a developing, 'challenged' and 'troubled' country.

The Committee repeatedly drew attention to the issue of **corruption**, and requested information about measures taken to combat corruption. Mr Rzeplinski highlighted that certain institutional structures might lead to, or at least facilitate corruption. He referred specifically to Kenya's judicial system in which there are approximately 300 high judges, which seems disproportionate given a population of approximately 33 million. The written replies to the list of issues cover the problem of corruption extensively, and Ms Karua admitted that corruption is a 'huge challenge'. However, she assured that the perception of corruption in Kenya emanates largely from past cases, and that recent anti-corruption measures have proved effective.

The Committee also engaged the delegation in discussion on the following themes: education, criminalisation of the transmission of HIV, high child mortality rates, primary health care for indigenous peoples, and land reform.

Conclusions and next steps

Ms Nzomo, the acting head of delegation, thanked the Committee and described the session as a 'useful exercise'. She promised on behalf of the Government that Kenya would perform better next time, stressing that this was the first time that Kenya appeared before the Committee. She welcomed offered support and advice in all areas where Kenya has fallen short, and asserted that the welfare of the citizens is taken very seriously. She assured that the Government has undertaken everything it can, and that it was committed to meet the challenges that lie ahead.

Mr Texier, the Chair of the Committee, responded to these concluding remarks only very briefly and expressed the hope that the next review would be on schedule.

Concluding observations were published on 19 November 2008. The principal subjects of concern, suggestions, and recommendations cover the whole range of issues discussed during the session. Altogether 27 concrete recommendations were given.¹³

In the concluding observations, the Committee requests the State to submit its 2nd to 5th periodic reports in a single document by 30 June 2013.

Last revised and updated: 2 December 2008.

¹³ E/C.12/KEN/CO/1, available at www2.ohchr.org/english/law/cesscr.htm

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