



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-third session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

KENYA

1. The Human Rights Committee considered the second periodic report of Kenya (CCPR/C/KEN/2004/2) at its 2255th and 2256th meetings (CCPR/C/SR.2255 and 2256), on 14 and 15 March 2005. It adopted the following concluding observations at its 2271st meeting (see CCPR/C/SR.2271) held on 24 March 2005.

A. Introduction

2. The Committee welcomes the second periodic report of Kenya. It regrets, however, that the report was submitted more than 18 years late and does not contain sufficient information on the effectiveness of measures taken to implement the Covenant, nor on practical measures designed to implement Covenant guarantees. The Committee commends the delegation's efforts to provide answers to its questions, both in writing and orally, as well as the commitment that the next periodic report of the State party will be submitted on time. It welcomes the reopening of a long-interrupted dialogue with the State party.

B. Positive aspects

3. The Committee welcomes the fact that the State party's new draft constitution includes a proposed Bill of Rights that is inspired by international human rights standards and seeks to remedy present deficiencies in the protection of fundamental rights, including gender disparities. It hopes that a Bill of Rights in full conformity with the Covenant will be adopted soon.

4. The Committee welcomes the establishment of the independent Kenya Human Rights Commission in 2003 and expresses the hope that the Commission will be endowed with sufficient resources to enable it effectively to discharge all of its mandated activities and to operate in accordance with the Paris Principles.

5. The Committee appreciates the State party's circumspection in legislating on the pending Suppression of Terrorism Bill, a draft of which was made available for comments to civil society stakeholders, and its intention to balance security concerns with human rights concerns in the adoption of this bill. In this context, the State party is invited to take into account pertinent considerations set out in the Committee's general comment No. 29 on derogations during states of emergency and general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant.

6. The Committee welcomes the information that Kenya has now prohibited all forms of corporal punishment of children, and notes that implementation of the prohibition should be accompanied by public information and education campaigns.

7. The Committee welcomes the Criminal Law (Amendment) Act 2003, which prohibits courts from accepting confessions unless they are made in court.

C. Principal subjects of concern and recommendations

8. The Committee notes that the Covenant has not been incorporated into domestic law and that the provisions of international human rights instruments, in particular the Covenant, are not in practice invoked in courts of law. It stresses that implementation of Covenant guarantees and the possibility of invoking the Covenant before domestic courts do not depend on the State party being a party to the first Optional Protocol to the Covenant.

The Committee invites the State party to take appropriate measures to allow Covenant rights to be invoked in the domestic courts.

9. The Committee notes with concern that because of, inter alia, widespread corruption, the access of citizens to domestic courts and to judicial remedies is limited in practice. The frequent failure to enforce court orders and judgements is an additional cause of concern (article 2 of the Covenant).

The State party should ensure that all individuals subject to its jurisdiction have equal access to judicial and other remedies.

10. The Committee notes with concern that systemic discrimination against women persists in Kenya, both in law and practice. This includes a low level of representation of women in Parliament and in public office, despite recent progress in this area; inequalities in claiming property rights; the discriminatory practice of "wife inheritance"; and inequalities in the law of succession or inheritance. In addition, the continued application of some customary laws, including the permissibility of polygamous marriages, undermines the scope of the non-discrimination provisions in the Constitution and other legislative texts (articles 2, 3, 23, 24 and 26 of the Covenant).

The State party should take urgent measures to address the absence of constitutional protection against discrimination in relation to women and gender disparities, and intensify its efforts to ensure their protection, whether through the National Commission on Gender and Development or otherwise. The draft bill that would eliminate inequality of spouses with regard to marriage, divorce, devolution of property and other rights should be adopted without delay. The State party should prohibit polygamous marriages.

11. The Committee is disturbed by the fact, acknowledged by the delegation, that domestic violence against women remains a recurrent practice in Kenya and that women do not benefit from adequate legal protection against acts of sexual violence - another widespread phenomenon (articles 7 and 10 of the Covenant).

The State party should adopt effective and concrete measures to combat these phenomena. It should sensitize society as a whole to this matter, ensure that the perpetrators of such violence are prosecuted and provide assistance and protection to victims. The draft Family Protection (Domestic Violence) Bill should be enacted as soon as possible.

12. The Committee remains concerned that, despite the recent legal ban on female genital mutilation (FGM) of children (section 14 of the Children Act (2001)), the practice of FGM persists, particularly in rural areas of the country, and that there is no legal prohibition of FGM for adults (articles 3 and 7 of the Covenant).

The State party should increase its efforts to combat the practice of FGM, including through prohibition of FGM for adults, and, in particular, step up the awareness campaign launched by the Ministry of Gender, Sports, Culture and Social Services.

13. While welcoming the fact that no one sentenced to capital punishment has been executed in Kenya since 1988, the Committee notes with concern that there is a large but unspecified number of individuals under sentence of death, and that the death penalty applies to crimes not having fatal or similarly grave consequences, such as robbery with violence or attempted robbery with violence, which do not qualify as “most serious crimes” within the meaning of article 6, paragraph 2, of the Covenant.

The State party should consider abolishing the death penalty de jure and acceding to the Second Optional Protocol to the Covenant. The State party should remove the death penalty from the books for crimes that do not meet the requirements of article 6, paragraph 2. It should ensure that the death sentences of all those on death row whose final appeals have been exhausted are commuted.

14. The Committee expresses concern about the high maternal mortality rate prevalent in the country, caused, inter alia, by a high number of unsafe or illegal abortions (article 6 of the Covenant).

The State party should adopt measures to improve access to family planning services for all women. It should review its abortion laws, with a view to bringing them into conformity with the Covenant.

15. While it notes with appreciation the recent awareness campaigns and the activities of the National AIDS Control Council, the Committee remains concerned about the extremely high rate of deaths resulting from AIDS, and the unequal access to appropriate treatment for those infected with HIV (article 6 of the Covenant).

The State party should take measures to ensure that all those infected with HIV have equal access to treatment.

16. The Committee is concerned about reports of extrajudicial killings perpetrated by police units (“flying squads”) or other law enforcement personnel. While noting the delegation’s intention to address this issue, it deplors the fact that few instances of unlawful killings by law enforcement officials have been investigated or prosecuted, and that de facto impunity for such acts continues to be widespread (articles 2, 6 and 7 of the Covenant).

The State party should promptly investigate reports of unlawful killings by police or law enforcement officers and prosecute those found responsible. The State party should actively pursue the idea of instituting an independent civilian body to investigate complaints filed against the police.

17. The Committee notes with concern the differential between the time in which those accused of having committed an offence must be brought before a judge (24 hours) and the time limit that applies to a person accused of a capital offence (14 days); the latter is incompatible with article 9 (3) of the Covenant. It is further concerned that most suspects do not have access to a lawyer during the initial stages of detention.

The State party should ensure that those accused of the capital offence of murder fully benefit from the guarantees of article 9 (3) of the Covenant. It should further guarantee the right of persons in police custody to have access to a lawyer during the initial hours of detention.

18. The Committee is concerned at reports that police custody is frequently resorted to abusively, and that torture is frequently practised in such custody. It is especially concerned at the information about the extremely high number of deaths in custody provided by the delegation. While noting the delegation’s explanations in this respect, it remains disturbed by reports that law enforcement officials responsible for acts of torture are seldom prosecuted, and that forms for the filing of complaints (so-called “P3 forms”) can only be obtained from the police themselves. While welcoming the power given to the Kenya Human Rights Commission of unrestricted access to places of detention, it is concerned that such access is sometimes wrongfully denied by the police (articles 2, 6, 7 and 9 of the Covenant).

The State party should take more effective measures to prevent abuses of police custody, torture and ill-treatment, and should strengthen the training provided to law enforcement personnel in this area. It should ensure that allegations of torture and similar ill-treatment, as well as of deaths in custody, are promptly and thoroughly investigated by an independent body so that perpetrators are brought to justice, and that complaint forms are available from a public body other than the

police. In particular, High Court judgements in such cases should be enforced without delay. The Committee recommends that the State party provide it with detailed information on complaints filed in connection with such acts and on the disciplinary and criminal sanctions imposed during the past five years. The State party should enforce the law requiring that access to places of detention be given to the Kenya Human Rights Commission.

19. While taking note of efforts made by the State party to improve conditions of detention and to ease prison overcrowding through passage of the Community Service Orders Act, the Committee continues to be concerned at the situation in prisons, particularly in the areas of sanitation and access to health care and adequate food. It is concerned at the extreme overcrowding of prisons, which was acknowledged by the delegation and which, combined with sanitation and health-care deficiencies, may result in life-threatening conditions of detention (articles 7 and 10 of the Covenant).

The State party must guarantee the right of detainees to be treated humanely and with respect for their dignity, in particular their right to live in hygienic facilities and to have access to health care and adequate food. The State party's next periodic report should include detailed information on measures taken to address the problem of prison overcrowding.

20. The Committee remains concerned about reports of serious dysfunctions in the administration of justice, owing primarily to the lack of human and material resources as well as the slow pace of proceedings. While the Committee appreciates recent Government measures such as the adoption of the Anti-Corruption and Economic Crimes Bill and its implementation, and the establishment of the Kenya Anti-Corruption Commission, which led to the resignation or the suspension of many High Court and Court of Appeal judges, it notes that allegations of judicial corruption persist, a situation that seriously undermines the independence and impartiality of the judiciary (articles 2 and 14 of the Covenant).

The State party should give priority to its efforts to combat corruption in the judiciary and to address the need to provide increased resources to the administration of justice.

21. The Committee is concerned that only individuals facing a capital murder charge currently benefit from a legal assistance scheme, and that those charged with other capital or non-capital offences, however serious, do not benefit from legal aid (article 14, paragraph 3 (d), of the Covenant).

The State party should facilitate the access of individuals to legal assistance in all criminal proceedings where the interests of justice so require. The envisaged expansion of the legal aid scheme should be pursued actively.

22. While noting the delegation's explanations on the issue, the Committee remains concerned about reports of the forcible eviction of thousands of inhabitants from so-called informal settlements, both in Nairobi and other parts of the country, without prior consultation

with the populations concerned and/or without adequate prior notification. This practice arbitrarily interferes with the Covenant rights of the victims of such evictions, especially their rights under article 17 of the Covenant.

The State party should develop transparent policies and procedures for dealing with evictions and ensure that evictions from settlements do not occur unless those affected have been consulted and appropriate resettlement arrangements have been made.

23. The Committee notes with concern that large public political meetings are subject to a prior notification requirement of at least three days under section 5 of the Public Order Act, and that public demonstrations have not been authorized for reasons that appear to have nothing to do with the justifications listed in article 21 of the Covenant. Additional matters of concern are that no remedy appears to be available for the denial of an authorization, and that unauthorized meetings are at times broken up with violence (article 21, paragraph 2, of the Covenant).

The State party should guarantee the right of peaceful assembly and impose only those restrictions that are necessary in a democratic society.

24. The Committee is concerned about the extremely low age of criminal responsibility, namely 8 years (paragraph 190 of the report), which cannot be considered compatible with article 24 of the Covenant.

The State party is urged to raise the minimum age of criminal responsibility.

25. The Committee is concerned about allegations of trafficking of children and instances of child prostitution, as well as the State party's failure to prosecute and punish trafficking offences that have come to the authorities' knowledge and to afford adequate protection to victims (articles 8 and 24 of the Covenant).

The State party should adopt specific anti-trafficking legislation, including for the protection of the human rights of victims, and actively investigate and prosecute trafficking offences. It should implement policy across Government for the eradication of trafficking and for the provision of support to victims of trafficking.

26. While noting the efforts undertaken by the State party to address the issue of child labour, the Committee expresses its concern at the prevalence of the phenomenon in Kenya, especially in the commercial agricultural sector (articles 8 and 24 of the Covenant).

The State party should intensify its efforts to combat and reduce the incidence of child labour.

27. The Committee notes with concern that section 162 of the Penal Code continues to criminalize homosexuality (articles 17 and 26 of the Covenant).

The State party is urged to repeal section 162 of the Penal Code.

28. The Committee sets 1 April 2008 as the date for the submission of Kenya's third periodic report. It requests that the State party's second periodic report and the present concluding observations be published and widely disseminated in Kenya, and that the third periodic report be circulated for the attention of the non-governmental organizations operating in the country.

29. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit within one year information on the follow-up given to the Committee's recommendations in paragraphs 10, 16, 18 and 20 above. The Committee requests the State party to include in its next periodic report information on its remaining recommendations and on the implementation of the Covenant as a whole.
