



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Eighty-first session

**LIST OF ISSUES PREPARED IN THE ABSENCE OF THE  
SECOND PERIODIC REPORT OF THE STATE PARTY  
DUE ON 11 APRIL 1986**

**KENYA**

**Constitutional and domestic legal framework within which  
the Covenant is implemented (art. 2 of the Covenant)**

1. What is the status of the Covenant in the constitutional and domestic legal framework? Can the Covenant be directly invoked before the courts? Have there been instances where this has occurred, and if so, with what result?
2. How does the Constitution protect the rights enshrined in the Covenant? What measures has the State party taken to bring its national laws into line with its obligations under the Covenant?
3. Does the State party intend to accede to the Optional Protocol?

**Provision of effective remedies; impunity (art. 2)**

4. Does the State party have in place a system for providing effective legal remedies, including compensation, to victims of human rights violations?

**Gender equality, discrimination (arts. 3 and 26)**

5. What restrictions, if any, apply to the right of women to equality in marriage, authority within the family, divorce and inheritance? What measures has the State party taken to remove any such restrictions?

6. Foreign men married to Kenyan women do not automatically acquire Kenyan citizenship, and Kenyan women who marry foreigners lose their Kenyan citizenship if they take up their husband's nationality. How is this treatment considered compatible with articles 3 and 26 of the Covenant?

7. Please explain the position of women in the economic and social life of the country, in particular the position of women in employment, higher education, the private and public sectors and in Government. What percentage of women hold senior positions in the private and public sectors respectively, and how is this assessed and monitored? Few women have been elected to the Kenyan Parliament. What measures has the State party adopted to encourage participation of women in the political system?

#### **Derogation from rights (arts. 4 and 5)**

8. What provision is made in the Constitution for derogation from Covenant rights? Is such derogation subject to parliamentary approval? Have any such provisions been invoked by the State party, and if so, when and to what extent?

#### **Right to life (art. 6); prohibition of torture (art. 7)**

9. The death penalty applies to the crime of "armed robbery with violence": how is this considered compatible with the requirement that the death penalty be applied only to the most serious of crimes (art. 6 (2))? How many offences carry the death penalty? Is the sentence of death mandatory in certain instances? How many death sentences have been handed down in the last five years, and what is the average length of time a prisoner spends on death row?

10. There have been numerous reports of suspects having been shot by police. Have these cases been investigated promptly by the State party, and what have been the results of investigations? What legal provisions govern the use of force by the security services? Do the police receive training directed at avoiding excessive force?

11. Please comment on allegations that the practice of police officers extracting confessions from suspects under torture is widespread. What mechanisms exist to protect the physical integrity of detainees? What mechanisms exist for detainees to complain about torture or other mistreatment? Have there been any prosecutions of police officers accused of mistreating detainees?

12. According to information before the Committee, there have been numerous cases of deaths in police custody. Have such cases been investigated and with what results?

13. Please provide information about the State party's laws which give effect to the prohibition of torture contained in article 7 of the Covenant. What measures have been taken to give effect to the recommendations of the report of the Special Rapporteur on the question of torture of the Commission on Human Rights?

14. Do exceptions exist to the general prohibition on abortion?

15. The Committee is aware of allegations that the practice of female genital mutilation (FGM) remains common, despite the legislative prohibition of FGM in the State party's legislation. Have any convictions resulted from this prohibition? What legal and educational measures is the State party taking to combat the practice of FGM?

16. Please comment on reports that violence against women is widespread, particularly violence within the family and sexual violence. What legal, social and other measures are in place to protect women from domestic violence, and to what extent do the victims of domestic violence have access to women's refuges and effective legal redress?

17. What steps have been taken to reduce overcrowding in the State party's prisons?

#### **Security of the person, freedom from arbitrary arrest (art. 9)**

18. Please provide detailed information about the laws, regulations and practice governing arrest and detention before trial.

#### **Right to a fair trial (art. 14)**

19. Please provide detailed information on the structure of the judiciary and the procedure for the nomination of judges. Is the Judicial Service Commission (JSC) independent from the Government? Do judges have security of tenure?

20. Please comment on allegations of widespread instances of judicial corruption. Have there been any formal investigations into judicial corruption and with what results? What measures have been adopted or are envisaged to combat judicial corruption?

21. Does a legal aid system exist, and if so, for what criminal charges is legal aid available?

22. The Kenyan Constitution makes provision for "Kadhis courts" whose jurisdiction extends to the determination of Muslim law in certain matters. Please provide information on the operation of these courts.

#### **Freedom from interference with privacy, family and the home (art. 17)**

23. Please provide information on the forcible eviction of residents of informal settlements, particularly in the Kibera region of Nairobi. What measures have been adopted to provide for the resettlement and compensation of persons who have been or will be evicted from informal settlements?

#### **Right to hold opinions and freedom of expression (art. 19)**

24. Please comment on reports that the system of issuing and regulating broadcasting permits and frequencies is manipulated for political purposes, to the detriment of the political opposition.

25. Publishers are required both to purchase a bond before printing any publication, and to deposit copies with a registrar within two weeks of publication. The bond fee was increased by 100 per cent in 2002. Please comment on the purpose and operation of these regulations, and on how they are considered consistent with the State party's obligations under article 19.

**Right to freedom of assembly and association (arts. 21 and 22)**

26. What restrictions are placed on the right to freedom of assembly and freedom of association?

**Protection of the family (arts. 23 and 24)**

27. What measures has the State party taken to enforce the provisions of the Child Act, which prohibit children of school-going age from taking up employment? Please comment on allegations that the incidence of child labour is increasing, particularly with regard to the recruitment of boys into the coffee and tea plantation industries in the Central Province.

28. What is the minimum age of marriage? Are forced marriages prohibited by law? What is the status of polygamous marriage under the State party's laws?

**Dissemination of the Covenant and the Optional Protocol**

29. Are all non-governmental organizations that engage in human rights monitoring in the State party's territory able to disseminate freely information about the provisions of the Covenant?

30. Has the State party taken any measures to educate public officials, law enforcement and judicial officers, the legal profession and the general public about the provisions of the Covenant?

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