



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### List of issues in relation to the sixth periodic report of Kenya\*

1. The State party is requested to submit in writing the information requested below (preferably not exceeding 10,700 words) by 29 March 2024.

#### A. General information

2. Please provide information on the number of cases in which Covenant provisions have been invoked or applied directly by domestic courts and on the nature of those provisions, including examples thereof. Please provide information on the measures taken by the State party to raise the awareness of judges, lawyers and public officials of Covenant rights. Please provide information on the measures taken to implement the 2016 National Policy and Action Plan on Human Rights and related policies and their impact on the enjoyment of economic, social and cultural rights. Please provide information on how the legislature was involved in the implementation of and follow-up to the previous concluding observations<sup>1</sup> and in the development of the sixth periodic report.<sup>2</sup>

3. Please provide information on measures taken to provide the Kenya National Commission on Human Rights with the mandate to deal with economic, social and cultural rights. Please provide information on the measures taken to prevent and punish harassment and threats against human rights defenders protecting economic, social and cultural rights, particularly those related to the environment. Please provide information on the measures taken and their impact in effectively investigating all reported cases of human rights violations against human rights defenders pursuing economic, social and cultural rights issues, including information and statistics on reported cases, investigations, prosecutions, convictions and sanctions imposed, and on the reparations provided to the victims.

4. With reference to the Committee's previous concluding observations, and in the light of the information on economic partnership agreements in the sixth report of the State party,<sup>3</sup> please provide information on any human rights impact assessments conducted in the framework of the European Union – Kenya interim economic partnership agreement and measures taken to address the potential impact of the agreement on the enjoyment of economic, social and cultural rights.

5. Please provide information on the measures taken to collect comprehensive and comparative data relevant to assessing the extent to which Covenant rights are realized in the State party. In this regard, please provide information on data collected through the 2019 Kenya Population and Housing Census and the Survey on the Socioeconomic Impact of COVID-19 on Households, including statistical information for the assessment of the level of enjoyment of Covenant rights by disadvantaged and marginalized individuals and groups.

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\* Adopted by the pre-sessional working group at its seventy-second session (6–10 March 2023).

<sup>1</sup> [E/C.12/KEN/CO/2-5](#).

<sup>2</sup> [E/C.12/KEN/6](#).

<sup>3</sup> *Ibid.*, paras. 26–35.



6. Please provide information on the assessment of the National Action Plan on Business and Human Rights, including the regulatory framework in place to ensure that all business entities, in both the private and public sectors, respect and perform due diligence with regard to economic, social and cultural rights in all their activities. Please include information on the impact of large investment projects on the environment and, in particular, information on the effective implementation of laws and other measures related to human rights and on environmental impact assessments conducted before such projects are launched. In this regard, please provide information on the extent to which the communities concerned participate in human rights and environmental impact assessments of large investment projects. Please provide information on the measures taken to implement court judgments and orders in relation to environmental liability cases.

7. Please provide information on measures taken by the State party with regard to the mitigation of climate change, including specific measures, and their impact, to meet the nationally determined contributions for reducing emissions that the State party has set itself under the Paris Agreement. Please also provide information on the progress made in reducing per capita greenhouse gas emissions and on targets that the State party has set for further reductions. With respect to climate change adaptation policies and measures, please provide information on:

(a) How the State party assesses the impacts of climate change on the enjoyment of economic, social and cultural rights, particularly for marginalized and disadvantaged individuals and groups;

(b) Whether the State party has developed or plans to develop a national adaptation plan, with an adequate allocation of all required resources, to address the impacts of climate change on, inter alia, economic, social and cultural rights;

(c) Measures taken to strengthen preparedness for and the response to natural disasters, disaster risk reduction measures and measures taken to adopt a strategy to this end, with an adequate allocation of financial resources;

(d) Which institutions are tasked with the development and implementation of climate change adaptation measures and policies for slow-onset impacts in different area, such as agriculture, housing and health, and how the coordination among the institutions responsible for disaster preparedness and management is ensured.

## **B. Issues relating to the general provisions of the Covenant (arts. 1–5)**

### **Right to freely dispose of natural wealth and resources (art. 1 (2))**

8. Please provide information on the implementation of the status of the Indigenous Peoples Planning Framework, including information on cases where it has been invoked. Please provide information on the implementation of national guidelines for free, prior and informed consent with regard to the protection of indigenous people's rights. Please provide information regarding the recognition of traditional territories and the granting of collective titles under the Community Land Act, 2016 and the Forest Conservation and Management Act, 2016. Please provide information on the measures taken to comply with the following decisions of the African Commission on Human and People's Rights: (a) decision 276/2003 on the case of the Endorois Welfare Council versus Kenya; and (b) decision 006/2012 on the African Commission on Human and People's Rights versus Kenya with regard to the Ogiek indigenous peoples, including information on the steps taken to ensure their effective participation and monitoring mechanisms.

### **Maximum available resources (art. 2 (1))**

9. Please provide updated information on the evolution of the following, covering the past 10 years:

(a) The proportion of the population living below the nationally defined poverty line;

(b) Levels of inequality, before and after taxes and transfers, if possible defined as the ratio between the total income of the richest 10 per cent of the population and the total income of the poorest 40 per cent and as the ratio between the assets owned by the richest 10 per cent of the population and the assets owned by the poorest 50 per cent;

(c) The economy, in particular through the annual variations of gross domestic product (GDP), GDP per capita and the level of public debt in proportion to GDP;

(d) The proportion of public revenue generated through taxes and as a percentage of GDP, the proportion of public revenue obtained through direct and indirect taxes, the corporate tax revenue rate and the percentage of total revenue generated from personal tax collected on the incomes of the richest 10 per cent of the population, as well as provide an evaluation of the amount of tax evasion and tax avoidance and the fiscal cost of the main tax benefits;

(e) Public expenditure as a percentage of GDP and, within total public expenditure, the proportion of the public budget allocated to social spending, including social security, food, water and sanitation, housing, health and education;

(f) The proportion of the public budget allocated to defence;

(g) Any fiscal policies adopted in response to the coronavirus disease (COVID-19) pandemic.

#### **Non-discrimination (art. 2 (2))**

10. With reference to the Committee's previous concluding observations, please provide information on measures taken to adopt a comprehensive anti-discrimination law prohibiting direct, indirect and multiple forms of discrimination on all grounds and providing effective remedies for the victims, including within judicial and administrative procedures.

11. With reference to the Committee's previous concluding observations, please provide information on the measures taken to decriminalize sexual relations between consenting adults of the same sex and ensure that no one is discriminated against in accessing health care, other social services or other rights as a result of their sexual orientation or gender identity. In this regard, please provide information on the results achieved through the actions described in the report of the State party on LGBTI lesbian, gay, bisexual, transgender and intersex persons<sup>4</sup> and explain how those actions have addressed the social stigmatization, negative stereotypes and prejudice they face.

12. Please describe the measures taken to ensure that refugees and asylum-seekers can exercise their economic, social and cultural rights, including access to employment and social services, and the results achieved. Please provide information on the process of obtaining an exemption to the requirement that refugees and asylum-seekers must reside in "designated areas", as outlined in section 8 (1) (p) of the Refugees Act (2021), the criteria used to exempt refugees and asylum-seekers and a summary of the number of refugees and asylum-seekers who have been exempted from this requirement. Please also include statistical data on access to employment, social security benefits, housing, health-care services and education for refugees and asylum-seekers.

13. Please provide information on the impact and results of the initiatives on internally displaced people in of the report of the State party.<sup>5</sup> Please also explain how the State has involved internally displaced persons in designing and implementing the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012).

<sup>4</sup> Ibid., paras. 61–65.

<sup>5</sup> Ibid., paras. 20–25.

**Equal rights of men and women (art. 3)**

14. Please provide information on the following:

(a) Measures taken to monitor and address the underemployment, occupational segregation and overrepresentation of women in the informal economy in the State party;

(b) Legal and administrative measures taken to address the gender pay gap and promote equal conditions of work between women and men, including statistical data on the evolution of the gender pay gap in the State party over the last five years;

(c) Impact and results achieved in the implementation of community awareness-raising and capacity-building initiatives by the State Department for Gender and Affirmative Action in promoting and facilitating women's rights to access, use and control over land and integrating the principles of equality and inclusion in the administration of land;

(d) In the light of the information on the representation of women at the decision-making level in the report of the State party,<sup>6</sup> please provide further information on the measures taken to ensure compliance with the two-thirds gender representation policy for elected or appointed offices, including additional statistical information on gender representation in selected high-level positions in the public sector and the judiciary, disaggregated by age, sex, ethnicity, disability, county and rural/urban region, over the last five years;

(e) Impact and results achieved in the implementation of the Uwezo Fund, the Youth Enterprise Development Fund and the Women Enterprise Fund in promoting the economic empowerment of women, in particular young women, women living in rural areas and women with disabilities.

**C. Issues relating to the specific provisions of the Covenant (arts. 6–15)****Right to work (art. 6)**

15. In the light of the information on the COVID-19 pandemic and employment rates in the report of the State party,<sup>7</sup> please provide information on the measures taken from the outset of the pandemic to prevent a sharp increase in the unemployment rate, including impacts on job losses among women and men. In this regard, please provide information on statistical data collected through the Economic Survey 2022 carried out by the Kenya National Bureau of Statistics on unemployment trends and rates of formal and informal employment, disaggregated by county, rural/urban area, sex, age, ethnicity, disability or any other relevant indicators, over the last five years. Please provide information on the measures adopted and their impact on the implementation of the National Employment Policy and Strategy, including its monitoring and compliance mechanisms, key performance indicators and the participation of civil society, the private sector and academia in its design and implementation.

16. In the light of the information on government procurement opportunities in the report of the State party,<sup>8</sup> please provide information on measures taken to monitor and enforce the 30 per cent quota of the Access to Government Procurement Opportunities programme, including statistical information on the tenders awarded, disaggregated by county, age, sex, ethnicity, disability and type of industry, over the last five years.

17. In the light of the information on unemployment and underemployment in the report of the State party,<sup>9</sup> and with reference to the Committee's previous concluding observations,<sup>10</sup> please provide information on the following:

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<sup>6</sup> *Ibid.*, paras. 74–81; see also annex, tables 2 and 3 (the annex to the report may be accessed from the web page of the Committee (<https://www.ohchr.org/en/treaty-bodies/cescr>)).

<sup>7</sup> E/C.12/KEN/6, para. 92.

<sup>8</sup> *Ibid.*, paras. 93–97; see also annex, table 4 (the annex to the report may be accessed from the web page of the Committee (<https://www.ohchr.org/en/treaty-bodies/cescr>)).

<sup>9</sup> E/C.12/KEN/6, paras. 82–92.

<sup>10</sup> E/C.12/KEN/CO/2-5, paras. 27–28.

(a) The impact and results of implementing the Public Service Internship Programme, including statistical information on the number of programme participants and insertion and retention rates in the labour market, disaggregated by county, rural/urban area, age, sex, ethnicity and disability;

(b) The impact and results of the implementation of the Presidential Digital Talent Programme, including statistical information on the number of programme participants, disaggregated by county, rural/urban area, age, sex, ethnicity, disability and level of success, in labour market insertion and retention;

(c) The impact and results of the implementation of the Ajira Digital programme, including statistical information on the number of programme participants, disaggregated by county, rural/urban area, age, sex, ethnicity, disability and level of success, in labour market insertion and retention;

(d) The impact of the measures taken to implement the Go Blue initiative in Kenya, including statistical data on the rates of job opportunities created, disaggregated by county, rural/urban area, age, sex, ethnicity and disability;

(e) The impact and results of the implementation of the National Youth Service programme, including statistical data on the rates of job skill training provided, disaggregated by county, rural/urban area, age, sex, ethnicity and disability;

(f) Measures taken and their impact on the implementation of the national Industrial Training and Attachment programme, including information on the enrolment and completion rates of students, the number of technical and vocational training centres established per constituency, the number and type of vocational training offered and monitoring and quality compliance mechanisms;

(g) Measures taken and their impact in facilitating the establishment of small and medium-sized enterprises and the promotion of entrepreneurship, including sole proprietorships, as well as the number of small and medium-sized enterprises, including sole proprietorships, registered in the last five years.

18. Please provide information on the measures taken to promote and facilitate the job placement and retention of persons with disabilities, particularly women with disabilities. Please provide information on the implementation of the employment quota for people with disabilities in the public and private sectors under the Persons with Disabilities Act (2003, revised 2013), the measures taken in cases of non-implementation, the number of affirmative action orders and the enforcement thereof. In this regard, please provide updated information on the results achieved through the educational assistance programme of the National Council for Persons with Disabilities, including data on the number of people who have been enrolled in, have been retained and have completed the programme, as well as the level of labour market insertion and retention of persons with disabilities, disaggregated by county, region rural/urban, sex, age, disability, ethnicity or any other relevant indicators. Please provide information on the measures taken and their impact on the implementation of the Inclusive Data Charter Action Plan 2021–2025, including its results.

#### **Right to just and favourable conditions of work (art. 7)**

19. Please provide up-to-date information on the measures taken to bring minimum wages into line with the cost of living, how minimum wage reviews are conducted and whether the minimum wage is high enough to guarantee a decent living for workers and their families. Please also indicate whether the minimum wage applies to all workers in the State party's jurisdiction, including refugees and asylum-seekers.

20. Please indicate what measures have been taken to combat labour exploitation, particularly in the agricultural and construction sectors, in domestic labour and in special economic zones. Please provide statistics on labour and occupational safety and health inspections, including prosecutions in cases involving labour exploitation and forced labour, as well as concrete examples of redress and remedies granted. Please provide information on the impact and results of the National Policy on Elimination of Child Labour in the prevention, identification, withdrawal, rehabilitation and reintegration of children involved in all forms of child labour in the State party. Please indicate whether there is legislation specifically

prohibiting sexual exploitation, forced labour and trafficking in persons and provide updated statistical information on the reported number of persons trafficked, the most common types of exploitation identified, the number of investigations, prosecutions, convictions and penalties and remedies provided over the last five years.

21. Please provide information on measures taken and means of enforcement to ensure that all workers, including domestic workers, are free from physical and mental harassment, including sexual harassment. Please provide statistical information on trends of harassment in the workplace, disaggregated by sex, age, county, disability, ethnicity or any other relevant indicators, including the most common types of workplace harassment and measures in place to provide protection and assistance to victims. Please provide detailed, up-to-date information on the steps taken to combat discrimination and to establish effective mechanisms for monitoring compliance with labour legislation and regulations applying to domestic workers. Please provide information on existing inspection mechanisms and measures taken to prevent domestic workers from being abused and exploited by their employers and to effectively protect their right to just and favourable conditions of work.

22. In the light of the information on migrant domestic workers abroad in the report of the State party,<sup>11</sup> please provide information on the measures taken to ensure the protection of migrant domestic workers abroad in the framework of bilateral labour agreements, particularly with regard to provisions contained in article 7 of the Covenant. In this regard, please provide information on: (a) how the State party ensures appropriate, effective and independent labour inspection of working conditions of migrant workers abroad; (b) measures taken when the State party is not in a position to monitor the just and favourable working conditions and treatment of migrant workers abroad; (c) actions taken when the assurances provided for under the bilateral agreements are not fulfilled in practice; and (d) measures taken to raise public awareness about actions on migrant domestic workers abroad in the report of the State party.<sup>12</sup> Please indicate the steps taken to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, according to the State party's commitment under the universal periodic review.

#### **Trade union rights (art. 8)**

23. Please provide information on the guarantees that have been put in place to ensure that both public and private sector workers can exercise their right to strike, including the measures adopted to ensure that there are no undue restrictions on the right to strike, and to bring legislation into line with article 8 of the Covenant. Please provide information on the measures implemented and their impact on preventing and addressing anti-union discrimination cases and acts of interference, including enforcing mechanisms and procedures under the Labour Relations Act, 2007.

#### **Right to social security (art. 9)**

24. Please provide information on the measures taken to implement the National Hospital Insurance Fund (Amendment) Act, 2022, the status of the Social Assistance (Repeal) Bill, 2020 and the impact they have on the rights of persons eligible for benefits. In the light of the information on the right to social security in the report of the State party,<sup>13</sup> please provide statistical information on access to social protection schemes, including health insurance, disaggregated by sex, age, county, disability and ethnicity and other relevant indicators. Please provide statistical data on the impact and results achieved through the expansion of the National Social Security Fund and the National Health Insurance Fund, including the number of claimants under its coverage, disaggregated by age, sex, disability, county, rural/urban area, region, national origin, employment status and socioeconomic status.

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<sup>11</sup> E/C.12/KEN/6, para. 110 (a)–(h).

<sup>12</sup> Ibid.

<sup>13</sup> Ibid., paras. 111–122.

### **Protection of the family and children (art. 10)**

25. Please provide information on the measures taken to enact the Children Act (2022). In this regard, please provide information on the impact of measures taken to enforce the Children (Amendment) Bill, 2020. Please provide information on the measures taken and their impact on the implementation of the National Plan of Action for Children in Kenya 2015–2022 and the Protection against Domestic Violence Act, 2015 in protecting children and families, including information on support to victims and cases of domestic violence. In this regard, please provide information on the measures taken and their impact on the implementation of the National Policy on Rehabilitation of Street Families and in preventing the economic and social exploitation of street children. Please provide information on the incidence of child marriage and forced marriage in the State party, including the measures taken to eliminate such practices. Please also explain how the State party is taking action to combat and prevent female genital mutilation and inform the Committee about the steps taken to engage the communities concerned.

### **Right to an adequate standard of living (art. 11)**

26. In the light of the information on poverty in the report of the State party,<sup>14</sup> please provide information on the tangible impact of the measures taken to combat poverty and extreme poverty and how the recommendations made in the Comprehensive Poverty Report (2020) have addressed the needs of the most marginalized and disadvantaged groups. Please include statistical data on the incidence of poverty and extreme poverty for the past five years, disaggregated by sex, age, ethnicity, disability, county and rural/urban area.

27. Please provide information on measures taken and their impact on the implementation of the Community Land Act, 2016 and the National Land Use Policy, 2017, including in the area of compiling an inventory and registration of community land. Please provide concrete information on the impact and results achieved through the National Housing Policy (2016) and the Affordable Housing Programme in increasing the provision of adequate, affordable and culturally appropriate housing in the State party, including the status of the draft Housing Bill. Please provide information on the impact and results of the Kenya Slum Upgrading Programme. Please provide information on the measures taken and their impact in adopting a comprehensive normative and administrative framework on evictions, resettlement and compensation calculations, including guidelines and safeguards. Please provide statistics, disaggregated by year and rural/urban area, on the number of forced evictions carried out in the last five years.

28. In the light of the information on the right to food in the report of the State party,<sup>15</sup> and with reference to the Committee's previous concluding observations,<sup>16</sup> please indicate what impact the policies and strategies mentioned have had in addressing chronic food insecurity, chronic malnutrition and critical nutritional needs of children, particularly in arid and semi-arid areas, including information on how the various measures taken to ensure the right to adequate food have been linked, particularly during the COVID-19 pandemic. Please provide up-to-date statistical data on the incidence of child undernutrition and malnutrition, including overweight and obesity rates, particularly in rural, arid and semi-arid areas.

29. Please provide information on measures taken and their impact on the implementation of the Water Act, 2016 and the National Water Policy, 2018. In the light of the information on water and sanitation in the report of the State party,<sup>17</sup> please provide information on concrete measures taken to address inequalities in the availability, accessibility and affordability of safe drinking water sources and sanitation services in rural areas and informal settlements. Please also indicate what measures have been put in place to ensure the provision of water and sanitation services to vulnerable and marginalized groups, in particular during the COVID-19 pandemic.

<sup>14</sup> Ibid., paras.139–140.

<sup>15</sup> Ibid., para. 157.

<sup>16</sup> E/C.12/KEN/CO/2-5, paras. 43–44.

<sup>17</sup> E/C.12/KEN/6, paras. 167–170.

**Right to physical and mental health (art. 12)**

30. Please provide information on the measures taken and their impact on the implementation of the Health Act, 2017 and the Kenya Health Policy 2014–2030 with regard to the accessibility, availability and quality of public health services throughout the State party, especially in rural areas and for the most disadvantaged and marginalized groups, including persons with disabilities, older persons, migrants, refugees and asylum-seekers. Please provide information on the measures taken to regularly monitor non-State providers and private actors in the field of health services in the State party. Please provide information on health indicators, including infant mortality, under-5 mortality, maternal mortality and immunization rates, the number of medical professionals by county and access to primary health-care facilities disaggregated by county and marginalized areas, such as informal urban settlements and arid and semi-arid land areas.

31. Please provide information on the progress made in improving access to sexual and reproductive health information and maternal health care, including through the universal health coverage scheme, for all women and girls in rural areas and in settlements for refugees and internally displaced persons, regardless of age, marital status or any other grounds. Please provide information in respect of teen pregnancy over the past five years and the measures taken to prevent teen pregnancy, including any age-appropriate sexual and reproductive health education programmes offered, for instance in schools, and their impact, including within the National Adolescent Sexual Reproductive Health Policy Implementation Framework and the Basic Education Curriculum Framework 2019.

32. With reference to the information on sexual and reproductive health in the Committee's previous concluding observations,<sup>18</sup> please provide information on the measures taken to guarantee access to sexual and reproductive health services for everyone and the steps envisaged to broaden the circumstances in which abortion is permitted, in line with the Committee's general comment No. 22 (2016) on the right to sexual and reproductive health, with a view to ensuring the compatibility of the relevant legislation with women's rights, including in the framework of the National Reproductive Health Policy 2022–2032.

33. With reference to the Committee's previous concluding observations on HIV/AIDS,<sup>19</sup> please provide information on the impact of the integrated prevention mechanisms and harm reduction practices and programmes implemented by the State party to prevent new HIV infections and comprehensive-care indicators, particularly among people who inject drugs, sex workers and persons deprived of their liberty, as well as mother-to-child transmission. Please provide information on the provision of health and medical services, including mental health services, to people detained in correctional facilities, including during the COVID-19 pandemic, disaggregated by sex, period of incarceration and types of service provided. Please also provide information on the harm reduction measures implemented for people who use drugs and for those who are dependent on controlled substances.

**Right to education (arts. 13–14)**

34. Please provide information on concrete measures taken to address the impacts of the COVID-19 pandemic on children's access to education, including specific actions to address the disproportionate effects on the most disadvantaged and marginalized children. Please provide updated statistical information on the enrolment, dropout and completion rates of public and private primary and secondary education students, disaggregated by age, sex, region, disability, income, ethnicity or other relevant indicators. Please provide information on the measures taken to regulate and monitor informal private schools or low-cost private schools and the steps taken to ensure transparency and accountability for all education providers in the State party. Please provide information on the measures taken to improve the availability and accessibility of education, particularly for children with disabilities, children in rural areas and refugees and asylum-seeking children, including recognizing schools in refugee settlements as national schools. In this regard, please provide information on the steps taken to prevent hidden school costs, particularly for children with disabilities.

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<sup>18</sup> E/C.12/KEN/CO/2-5, paras. 53–54.

<sup>19</sup> Ibid., paras. 55–56.



**Cultural rights (art. 15)**

35. With reference to the Committee's previous concluding observations,<sup>20</sup> please provide information on the measures taken and their impact on the implementation of the Huduma Kenya programme and other initiatives mentioned in the report of the State party on expanding Internet access, in particular for disadvantaged and marginalized people.<sup>21</sup>

36. Please provide information on the measures taken by the State party, including public funding, to ensure the realization of the right to participate in and enjoy the benefits of scientific progress and its applications, particularly for girls and women, persons with disabilities and disadvantaged and marginalized groups.

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<sup>20</sup> Ibid., paras. 61–62.

<sup>21</sup> [E/C.12/KEN/6](#), paras. 216–221.