



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination Ninety-second session

### Summary record of the 2531st meeting

Held at the Palais Wilson, Geneva, on Wednesday, 3 May 2017, at 10 a.m.

*Chair:* Ms. Crickley

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

*Combined fifth to seventh periodic reports of Kenya (continued)*

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*The meeting was called to order at 10.10 a.m.*

**Consideration of reports, comments and information submitted by States parties under article 9 of the Convention** *(continued)*

*Combined fifth to seventh periodic reports of Kenya (continued) (CERD/C/KEN/5-7 and CERD/C/KEN/Q/5-7)*

1. *At the invitation of the Chair, the delegation of Kenya took places at the Committee table.*

2. **Mr. Morara** (Kenya National Commission on Human Rights) said that, while the Government had taken several positive steps in the period since its previous dialogue with the Committee, the Kenya National Commission on Human Rights remained concerned at the absence of a comprehensive anti-discrimination law and the very limited definition of hate speech. Noting that measures were being taken to broaden the scope of hate speech beyond ethnicity and race and to amend the National Cohesion and Integration Act to bring it into line with article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, he called on the Government to move speedily to ensure that comprehensive and robust hate speech legislation was enacted ahead of the general elections to be held in August 2017. Doing so would send a strong State-sanctioned message that hate speech was harmful and would not be tolerated in any circumstances, irrespective of the influence or political leverage of the perpetrators.

3. The more robust and expanded definitions of marginalized groups and communities in Kenya contained in article 260 of the 2010 Constitution were encouraging, as was the establishment of several funds aimed at helping certain vulnerable sectors of the population. However, further steps needed to be taken to ensure that persons who had experienced discrimination as a result of past laws, policies and practices could be properly identified for remedial measures and support. The Government should also ensure that the resources allocated to provide victims with redress were properly distributed and that any acts of corruption or misappropriation of those funds were severely punished.

4. The legacy of colonialism still lingered in Kenya, not least in the areas of land ownership, urban planning and administrative county boundaries. The latter were mostly drawn along ethnic lines, which had led to the social, economic and political marginalization of persons not from the dominant ethnic community in a given county. Land matters continued to be a highly emotive and divisive issue that fomented ethnic tensions and conflict, while the effects of racial and ethnic discrimination and segregation were reflected as social discrimination in urban and spatial planning and development. Still today, the patterns of settlement established by the British colonialists were visible in Nairobi, since the districts inhabited by European expatriates benefited from vastly superior infrastructure and amenities compared to those occupied by Africans. As to land ownership, while the Government had taken certain important steps, such as reducing leasehold tenure from 999 years to 99 years, further action was needed to prevent issues of ownership, access and use of land from being used as excuses for entrenched racial or ethnic discrimination. To combat such discrimination, end the colonial era's sway over the country and move towards a more cohesive, inclusive and tolerant society, the Government should, inter alia, create mixed housing projects to enable low-, middle- and high-income households to live in the same neighbourhood; undertake comprehensive land reforms to address historical injustices and prevent racially and ethnically motivated conflict; and break the ethnic hegemony at the county level, including by imposing strict sanctions on counties in breach of the legal requirement to fill at least 30 per cent of vacant public-sector posts with candidates from ethnic minorities. Lastly, he urged the Government to ensure that the recommendations of the Truth, Justice and Reconciliation Commission were fully implemented so as to tackle the historical injustices that were at the root of ethnic and racial discrimination.

5. **Ms. Njau-Kimani** (Kenya) said that the Kenyan delegation was comprised of public officials from five different ethnic backgrounds. The Government respected the right of a particular group of persons to declare themselves an indigenous people; however, all Kenyan persons of African descent were considered indigenous to the country. That said,

the Government acknowledged that certain communities had been marginalized for, among others, historical and geographical reasons, and that affirmative action was required to address inequalities in certain areas.

6. The National Policy and Action Plan on Human Rights had now been adopted and, in coordination with the Kenya National Commission on Human Rights, the Department of Justice had provided training to public officials on its content and on human rights-based approaches to the planning, budgeting and implementation of development programmes. Moreover, human rights indicators had now been incorporated into the monitoring and evaluation of the medium-term plans of the Kenya Vision 2030 national development programme.

7. **Ms. Chweya** (Kenya), replying to questions raised by Committee members at the previous meeting, said that the country's vibrant and active civil society played an important role in promoting and protecting human rights and was involved in several government initiatives and task forces with a view to improving the human rights situation in the country. Non-governmental organizations (NGOs) were required to operate in a transparent manner and to submit reports and audited accounts every year in order to ensure conformity with the current legislation. Inquiries could be launched by the relevant government agency in order to determine legal compliance, but it could only suspend or cancel an NGO's registration in specific, limited circumstances and in accordance with comprehensive procedures.

8. Woman-to-woman marriages, which were a customary practice among certain ethnic communities, had now been recognized as legal unions by the courts, thereby conferring succession rights. They were not same-sex relationships, however, since there were no sexual relations between the two women. Such marriages were typically an arrangement entered into by an older, childless woman and a younger woman, who had relations with men so as to provide her partner with an heir.

9. The Government had introduced various affirmative action measures, among others the Equalization Fund, to facilitate the economic, social and political empowerment of vulnerable groups. Moreover, the devolved system of government ensured the equitable distribution of resources and services and sought to protect marginalized communities. The equivalent of US\$ 10 billion had been transferred to the devolved governments since 2013 in order to support service delivery.

10. Action had been taken to improve the situation of women in Kenya, who had long been marginalized and faced a variety of cultural, institutional and structural barriers that often left them in a situation of poverty. The Government was, for example, promoting women's empowerment through the Women Enterprise Fund, which had so far distributed 8 billion Kenya shillings (K Sh) in business start-up loans to 72,000 women's groups, who had, in turn, used those funds to establish income-generating activities. To strengthen girls' education in marginalized areas, policies had been introduced to, inter alia, ensure that pregnant teenage girls or those who had dropped out of school completed their education. A programme had also been implemented to encourage girls from poor families living in arid or semi-arid areas to undertake training in engineering subjects, and most of its graduates had now secured employment in various fields. In that connection, according to World Bank statistics from 2016, the literacy rate in Kenya was 78 per cent.

11. A study conducted by the National Cohesion and Integration Commission had found that 70 per cent of all jobs were occupied by members of just 5 of the 22 communities in Kenya, a situation that had arisen for historical and geographical reasons rather than from any deliberate policy. With that in mind, the Government was taking steps to promote equal opportunities in the labour market. A diversity policy for the public service had been introduced in 2016 and the national police had also developed recruitment guidelines to foster the inclusion of members of minority groups. As a direct result, there had been an improvement in public-sector diversity, including in the police and the judiciary.

12. While poverty affected persons from all ethnic communities, those living in marginalized or rural areas were often the hardest hit. The Government had taken a variety of measures to alleviate its effects, including by investing heavily in agriculture, education, health and housing. Budget increases for free primary education had, for instance, seen a

rise in enrolment rates, and a recruitment drive had helped to reduce the teacher-to-pupil ratio and alleviate teacher shortages. Investments in health care had resulted in the successful implementation of a free maternity health programme and improvements to the health-care infrastructure. As a consequence, the number of women giving birth in health-care facilities each year had almost doubled to 1.2 million and the maternal mortality rate had dropped by a third. Dams had also been constructed with the aim of improving access to water in arid and semi-arid areas.

13. The Restorative Justice Fund had now been set up to provide redress to the survivors of historical injustices unrelated to land issues, which were covered by another fund. The Government had recently finalized guidelines for the payment of compensation and had allocated the equivalent of US\$ 10 million to the Fund for the 2016-2017 period. The Fund would address historical injustices occurring from 1963 to 2008 only. In that connection, the High Court had declared unconstitutional the 2013 Constituencies Development Fund Act, introduced to bring the Constituencies Development Fund into line with the 2010 Constitution, owing to a failure to obtain the support of the Senate and to ensure public participation. The National Government Constituencies Development Fund had now been set up in its stead and after following the appropriate procedures.

14. Primary and secondary education were compulsory and all parents or guardians, including those from indigenous or marginalized groups, had a legal obligation to ensure that their children attended and fully participated in school. Regarding cash transfer programmes, the specific criteria in place to regulate payouts were not based on ethnic considerations. For example, cash transfer payments for persons with disabilities were made on the basis of disability and income status. Lastly, the Department of Culture organized various festivals and events around the country in partnership with local communities, including marginalized groups, with a view to promoting and preserving African culture and traditions and building national and social cohesion. Furthermore, the Protection of Traditional Knowledge and Cultural Expressions Act had been promulgated in 2016 to prevent the misappropriation, misuse or unlawful exploitation of traditional knowledge and cultural expressions.

15. **Ms. Gathagu** (Kenya) said that the work of the National Land Commission task force had included the drafting of a bill on land evictions, the provisions of which had been incorporated into the 2016 Land Laws (Amendment) Act. Among other aspects, that Act laid down mandatory procedures for regulating land evictions and addressing historical land injustices. Such procedures had been drawn up on the basis of international practices, and covered situations in which marginalized communities were the evictees. The rights of marginalized communities to own land were protected under the 2016 Community Land Act, which defined a community as a group of citizens of Kenya who shared, inter alia, a common ancestry, similar culture or unique livelihood, geographical space or ethnicity. The process of registering community land required an inventory to be taken, following which the land could be registered and a title deed issued. There were no limitations as to the acreage of land that could be owned, including by ethnic communities. Although land that had been used for communal or public purposes, such as for schools, hospitals and critical infrastructure, was registered as national or county government property, it could still be used by the community.

16. Action to address historical land injustices had first required the introduction of the necessary legal framework, which had now been enacted through the Land Laws (Amendment) Act. Article 38 of that Act defined historical land injustices as an unresolved grievance occasioned by, inter alia, a violation of land rights occurring between 15 June 1895 and 27 August 2010 and that resulted in the displacement of persons from their habitual place of residence. A task force had now been instituted to draft implementation guidelines on evictions and historical land injustices with a view to operationalizing the legislation, and was currently touring the country to gather the views of marginalized communities and civil society. Historical land grievances were referred to the National Land Commission, which, following an investigation, could recommend various remedies, including restitution, compensation or resettlement on alternative land. The authority mandated to comply with those remedies had a maximum of three years in which to do so. Aggrieved parties had five years from the date of enactment of the law in 2016 in which to

submit their claims, and all cases would be determined within 10 years, when those provisions would be repealed.

17. The Government used the term “informal settlements” rather than “slums”, since such settlements generally involved occupations of unplanned land and the building of structures on land to which the persons concerned had no title. Representatives of any and all ethnic groups could be found in such settlements. The Government was taking steps to regularize those informal settlements by providing basic infrastructure and utilities and issuing title deeds to the occupants. Moreover, as part of a project to provide housing to the occupants, the Government had, in 2016, provided 822 houses, far exceeding the annual target of 200. Other housing improvement and construction schemes had also been launched around the country.

18. Expiring leases were not automatically renewed, since leaseholders did not always wish to extend. Leaseholders were, however, notified by the National Land Commission once only five years remained on their lease so that they could apply for renewal if they so wished. The procedure for applying for renewal was set out in the 2012 Land Act. Applications were approved on the basis of certain criteria, and the county or national governments could deny a request in the event that the land was required for a public purpose, notably the building of schools, hospitals or infrastructure. Lastly, internally displaced persons in Kenya came from many ethnic backgrounds and all had now been resettled, either on alternative land provided by the Government or through cash payments enabling them to buy their own land. Awareness-raising activities had also been carried out, both among those persons and among the receiving communities, to facilitate their integration.

19. **Mr. Mwengi** (Kenya) said that, under amendments to the National Cohesion and Integration Act, the definition of hate speech had been broadened to include acts intended to incite ethnic hatred through, inter alia, posts on social media, visual images depicting ethnic stereotypes or propaganda and the wearing or display of signs, flags or emblems. Penalties for hate speech offences had also been increased. Convicted offenders were now liable to a fine of up to K Sh5 million or a maximum term of imprisonment of 5 years and were barred from holding public office. Media companies, including social media organizations, could also face fines for publishing or disseminating hate speech. The amended Act had also introduced sanctions for instances of workplace discrimination in the public sector.

20. The National Cohesion and Integration Commission had 56 permanent members of staff and had seen yearly budget increases since 2014. In addition to its K Sh410 million budget for the 2016/17 financial year, up from K Sh311 million the previous year, it had received a further K Sh200 million to manage the electoral process. It was also part of the Integrated Public Complaints Referral Mechanism, an online complaints referral mechanism, in partnership with several other organizations, including the Kenya National Commission on Human Rights. That online platform allowed the institutions involved to refer complaints to each other and enabled complainants to track the status of their complaints in real time. Some 1,200 complaints had been received by the Commission during the reporting period, of which 60 per cent had been investigated and appropriate measures taken. Fifty cases had been referred to the Director of Public Prosecutions, 160 had been resolved through cessation notices and 224 had been dismissed for, among other reasons, lack of evidence. The remaining cases were at various stages of the investigation process. To date, there had been three convictions, resulting in imprisonment or monetary sanctions, and six acquittals. Investigations encountered various challenges, including the fact that the police often encountered hostility when collecting evidence and witnesses faced intimidation and threats. It was also sometimes difficult to identify the authors of hate speech leaflets or to distinguish hate speech from innuendo.

21. The media were self-regulated, and journalists who breached the relevant codes of conduct faced disciplinary procedures. They were, for example, prohibited from quoting hate speech verbatim. The broadcast media were also required to maintain a seven-second delay on live interviews to prevent the transmission of hate speech. As regards politicians who peddled hate speech, it was not true to say that they enjoyed preferential treatment; admittedly, however, they often had the financial resources to engage senior advocates,

who obtained injunctions that effectively delayed court proceedings, sometimes for up to five years. Measures to monitor hate speech during election campaigns included both temporary and permanent mechanisms. While the Director of Public Prosecutions could not launch hate speech investigations *ex officio*, since he did not have investigative powers, he could direct the Inspector General of Police to do so. Lastly, counties that were not in compliance with the 30 per cent public-sector employment quota were issued with non-compliance notices and were required to take measures to address the situation within three months.

22. **Ms. Kariuki** (Kenya) said that the Complaints Commission was an independent organ of the Media Council of Kenya and was responsible for resolving disputes between the Government, the media and the general public. Its decisions had the force of law and appeals against them could be submitted to the high courts. Its seven members were recruited through a competitive process and served a three-year term of office. Complaints to the Commission should clearly set out the grounds and nature of the injury or damage and should be submitted within nine months of its occurrence. On receipt, the Commission had 14 days to determine whether or not it fell within its mandate and, if so, then proceeded to notify the respondent, who, in turn, had 14 days to respond. If no resolution to the grievance could be found, the case proceeded to mediation. As at November 2016, the Commission had been dealing with 101 complaints.

23. The enactment of the 2016 Legal Aid Act had given formal recognition to legal aid in Kenya and defined legal aid providers, a term which included lawyers working under the *pro bono* law programme of the Law Society of Kenya, civil society organizations, paralegals and universities operating legal aid clinics. The Act had also created the National Legal Aid Service to, *inter alia*, establish and administer a national legal aid scheme that was affordable, accessible and accountable; support legal aid providers; provide legal aid training; and undertake public awareness-raising activities on legal issues. Its functions also included undertaking legal aid research, with particular attention to the needs of indigent persons and marginalized groups, and promoting public interest litigation in areas of concern to those groups, such as environmental protection. The Government had allocated approximately US\$ 1 million to the newly created Legal Aid Fund for the 2017/18 financial year. As to access to justice, it should be recalled that the core mandate of the country's national human rights institutions was to receive complaints of human rights violations, and thus any member of the public, including from marginalized communities, could lodge grievances with those bodies. In addition, a court-annexed mediation project was being piloted in the commercial and family divisions of the High Court in Nairobi in order to address a backlog of cases and promote alternative forms of justice. There were currently 65 accredited mediators and 82 cases had so far been settled through that approach.

24. **Mr. Kottut** (Kenya) said that the 2010 Constitution provided that all adult citizens of Kenya had the right to vote, including those living abroad. That right had not yet been fully realized owing to insufficient funding to meet the logistical, infrastructural and technological requirements necessary to facilitate overseas voter registration and voting. Moreover, there was a lack of data regarding Kenyans living abroad, since many failed to register with their government missions. A voter registration drive had been undertaken, however, in East African countries prior to the 2013 elections and similar measures were being taken in South Africa ahead of the August 2017 elections.

25. The activities of unscrupulous recruitment agencies, who had duped Kenyan migrant workers and forced them to become domestic workers in the Gulf region had, in 2012, prompted the Government to ban those agencies from sending any domestic workers abroad and to establish an interministerial committee, which had visited the Gulf countries to examine the situation first-hand. A report issued in 2015 had recommended that recruitment agencies should be vetted and procedures established to ensure that Kenyans were fully apprised of the nature of the employment they were being offered and were protected by a tripartite agreement between themselves, the agency and the employer before leaving the country. While the country had yet to ratify the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189), many of its provisions had been incorporated into the amended Labour Institutions Act, 2007.

26. The Government had taken steps to protect persons with albinism, who often faced violence and discrimination stemming from ritualistic beliefs. It had, for example, set up the National Council of Persons with Disabilities to mainstream disability issues in Kenya; established guidelines for law-enforcement officers to ensure that persons with albinism were taken to safety if their lives were in danger; and allocated funding for the provision of sunscreen and protective clothing for persons with albinism. Indeed, the Independent Expert on the enjoyment of human rights by persons with albinism was due to visit the country in late 2017 seeking best practices for an African Union policy to address the plight of persons with albinism.

27. **Ms. Njau-Kimani** (Kenya) said that, prior to the 1980s, when the first massive influxes of refugees had begun, there had been no refugee camps in Kenya and only one reception centre in Thika. However, in the early 1990s, following the arrival of huge numbers of refugees from Ethiopia, Somalia and the Sudan, refugee camps had been set up in the border areas of Kenya. While many Somalis had arrived in Mombasa and other coastal areas, they had eventually been relocated to Dadaab in north-eastern Kenya, while refugees from Ethiopia and the Sudan had been accommodated primarily in Kakuma in the north-west. At the time, the Government had believed that the refugee situation was only temporary and that people would be able to return to their countries of origin in due course. As such, the refugee camps had appeared to be an appropriate solution which would facilitate the eventual repatriation of refugees, ensure national security and enable those in need to be provided with food, shelter and other forms of assistance.

28. Despite the massive influx of refugees to Kenya, the Government had largely pursued an open-door policy, allowing refugees to flow into the country and granting them refugee status without scrutiny. Unfortunately, that policy had exposed the country to security threats, particularly in the light of the emergence of the Al-Shabaab insurgency. Refugees were increasingly viewed as a potential security threat and, as a result, the Government had taken steps to restrict their freedom of movement to ensure that national security was not compromised.

29. On 12 December 2012, the Department of Refugee Affairs had issued a directive stating that the authorities should stop all urban refugee operations with immediate effect. Somali refugees had therefore been expected to relocate to Dadaab while refugees of other nationalities had been requested to move to Kakuma. On 19 January 2013, Kituo Cha Sheria had filed a constitutional petition in the High Court, challenging the directive on various grounds. The Court had concluded that the directive was in violation of the right to freedom of movement, the right to dignity and the right to fair administrative action, as well as the State's responsibility towards persons in vulnerable situations, all of which were guaranteed under the 2010 Constitution. The Court had also declared that the proposed implementation of the directive was a threat to the non-refoulement principle contained in section 18 of the Refugees Act and had therefore ordered the directive to be quashed. However, on 28 March 2014, the Cabinet Secretary, by notice in the *Gazette*, had designated the Dadaab and Kakuma camps to be transit centres for asylum seekers, in accordance with section 16.2 of the Refugees Act, and subsequently ordered the closure of urban registration centres and the return of over 50,000 refugees to the camps. The new directive had been challenged by some Somali businessmen, but the High Court had concluded that the directive was in fact lawful, as the Cabinet Secretary had acted in accordance with the Refugees Act.

30. Kenya had been left to tackle the refugee situation on its own without any support from the international community. Now that the situation in Somalia was improving, the Kenyan Government saw no reason why the refugee camps should remain in Kenya and not be relocated to Somalia and had therefore decided to close them. When the Government's decision to close the camps had been legally challenged, the Court had ruled that its actions were unlawful. The Government was currently appealing the Court's decision and would provide the Committee with an update on the outcome of that appeal in due course.

31. The tripartite agreement with Somalia and the Office of the United Nations High Commissioner for Refugees (UNHCR) did not affect the assessment of asylum seekers' need for international protection. Under the agreement, 52,591 refugees had already been repatriated to Somalia on a voluntary basis and had received assistance for their return.

Moreover, the Kenyan and Somali Governments met with UNHCR on a regular basis to monitor the implementation of their repatriation.

*The meeting was suspended at 11.40 a.m. and resumed at 11.55 a.m.*

32. **Mr. Marugán** (Country Rapporteur) asked whether the State party intended to make the declaration provided for under article 14 of the Convention; whether the delegation could provide the Committee with specific data on the number of people working for NGOs, the socioeconomic development of ethnic groups, and the number of hate crimes which had been reported and prosecuted; whether discrimination on the basis of nationality was covered by Kenyan legislation; whether the amendments to the National Cohesion and Integration Act would be adopted prior to the upcoming general elections; what type of support was provided to victims of racial discrimination and whether prosecutors could initiate proceedings without the victim; what criteria were used to determine eligibility for legal aid; whether the State party intended to ratify ILO Convention No. 189; and whether the Department of Refugee Affairs had failed to comply with court decisions relating to its suspension of asylum-seeker registration in Dadaab.

33. **Ms. Njau-Kimani** (Kenya) reiterated that the tripartite agreement did not affect the Government's assessment of asylum seekers' need for international protection and said the allegations that asylum-seeker registration had been suspended were unfounded.

34. Counter-terrorist measures taken by the Government, including the deployment of military forces, must be viewed in the context of the numerous terrorist attacks which had occurred in Kenya since 2012, resulting in countless deaths and casualties. Several terrorist acts had been committed in the Eastleigh district of Nairobi, which was home to many Somali refugees and illegal migrants. As a result of growing insecurity, in 2014, the Government had launched an internal security operation dubbed "Operation Sanitization of Eastleigh" to be carried out by the National Police Service (NPS). Various human rights violations which ran counter to the provisions of the Constitution had been committed by police officers during that operation. The Independent Policing Oversight Authority had consequently issued several recommendations to the NPS, calling for intelligence-led policing, human rights training for police and improved conditions in police detention. Lastly, a new counter-terrorism law had been drawn up following broad stakeholder consultation and had been approved by the Kenya National Commission on Human Rights.

35. **Ms. Chweya** (Kenya) said that there were approximately 8,500 civil society organizations in Kenya, which employed 290,000 persons or 2.1 per cent of the country's economically active population. All NGOs were eligible for registration in Kenya, provided that they met certain requirements and were not considered a security threat. The Government was considering making the declaration provided for under article 14 of the Convention, but must first hold public consultations on the matter and ensure conformity with national legislation. Finally, the delegation would provide the Committee with the requested data on the socioeconomic development of ethnic groups as soon as possible.

36. **Mr. Mwangi** (Kenya) said that while his Government hoped that the amendments to the National Cohesion and Integration Act would be adopted by August 2017, the matter was out of its control. The National Cohesion and Integration Commission covered issues of racial discrimination, as the Act defined "ethnic group" as a group of persons defined by reference to colour, race, religion, or ethnic or national origins. Moreover, its mandate was not limited to hate speech, as sections 10 and 11 of the Act referred to discrimination in the areas of licensing, employment, education and training. The Act also established a redress mechanism for victims of ethnic or racial discrimination.

37. **Ms. Kariuki** (Kenya) said, while the Government had allocated US\$ 1 million to the Legal Aid Fund for 2017-2018, the current National Legal Aid and Awareness Programme already had a budget of US\$ 600,000 and could also receive funding from donors. Under the Legal Aid Act, a National Legal Aid Service had been established to, *inter alia*, determine appropriate fees for legal assistance and establish the regulations governing legal aid. While the current National Legal Aid and Awareness Programme already provided legal aid in certain counties, the Government hoped to expand the geographical coverage of the Programme in the future.



38. **Ms. Njau-Kimani** (Kenya), referring to support and access to justice for victims of racial discrimination, said the Constitution provided that every person had the right to complain to the then National Human Rights and Equality Commission, alleging that a right of fundamental freedom in the Bill of Rights had been denied, violated or infringed, or was threatened. The National Legal Aid Service had been established to help indigent persons access legal services, and the Attorney General had been involved in various public-interest cases, most of which had been in support of the most vulnerable members of society.

39. **Ms. McDougall** said that non-discrimination alone did not ensure equality and that affirmative action was needed. She asked whether the Government was taking robust action to ensure that ethnic groups were employed in the public sector; whether the State party could provide the Committee with data that showed whether affirmative action was focusing on lower-end civil service jobs; whether the private sector was required to engage in robust affirmative action; what was the graduation rate from primary and secondary school among ethnic groups; what steps the Government was taking to ensure access to tertiary education for ethnic groups; how many housing units were actually required in informal settlements; how the Government planned to address housing in urban areas given the influx from rural areas; whether private construction enterprises were required to help house the poor; whether the Government had considered redrawing ethnically determined county boundaries so that counties included a range of ethnic groups; and what steps the Government was taking to ensure a more equitable distribution of land when the 99-year land leases expired.

40. **Mr. Calí Tzay** asked whether the Government could either deny or explain the violent acts committed on 31 March 2017 against the Sengwer people; whether the security forces were taking steps to regain the trust of the Kenyan people; what penalties were applied to persons, including public officials, convicted of racial discrimination; and what were the grounds for evicting indigenous peoples from their ancestral lands. The State party must observe article 5 of the Convention, as well as general recommendation No. 23 on the rights of indigenous peoples.

41. **Ms. Chweya** (Kenya), referring to affirmative action, said that the Public Service (Values and Principles) Act permitted the public service to appoint public officers without undue reliance on fair competition when certain groups were not adequately represented and that the Diversity Policy for the Public Service provided strategies for ensuring an inclusive public service that reflected diverse Kenyan communities. The Government was also taking various measures to ensure universal access to primary and secondary education, so that all ethnic groups would be competing for employment on a more level playing field.

42. **The Chair** said that the Committee was interested in learning more about the actual impact of the Government's various plans and policies.

43. **Ms. Gathagu** (Kenya) said that the Government was undertaking various housing projects: it was constructing housing for the police and had also provided housing for some public servants. The Government had formed a partnership with the private sector through the national housing corporation and was committed to the progressive realization of the right to housing, which was enshrined in the Constitution. While land leases had been reduced from 999 to 99 years under the Constitution, the Government could not remove title deeds without due process. However, when the leases came to an end, the Government might take possession of the lands for public purposes, such as the settlement of landless persons, in accordance with the provisions of the Land Act. Moreover, the adoption of the Community Land Act had been a milestone for communities that had been traditionally disadvantaged, as it allowed them to identify, survey and register their lands. Under the Act, "community land" was defined as land which was lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; ancestral lands and lands traditionally occupied by hunter-gatherer communities; or lawfully held as trust land by the county governments.

44. **Ms. Gathagu** (Kenya) said that no indigenous peoples had been evicted from their ancestral lands in the recent past. The land rights of indigenous communities were now protected under the Community Land Act.

45. **Mr. Mwangi** (Kenya) said that, to date, no sentences had been handed down for racial discrimination because the law did not provide for any penalties; however, the law was being amended in that regard. With regard to affirmative action, the Government was encouraging all public institutions to ensure equal representation of ethnic groups at all levels. At the national government level, no more than one third of the employees of a public institution should be from the same ethnic group; and at the county government level, 30 per cent of posts must be reserved for members of the non-dominant ethnic group.

46. **Ms. Hohoueto** asked whether the State party still applied the English Statutes of General Application in Force in England on 12 August 1897. Could young Muslim women choose which legal regime governed their marriage, or was their marriage necessarily governed by Islamic law?

47. **Ms. Chweya** (Kenya) said that all marriages, irrespective of whether they were Christian, Islamic or customary, must be registered in Kenya. The Constitution permitted the application of customary law provided that it was not repugnant to justice and also established that the parties to a marriage were entitled to equal rights at the time of, during and at the dissolution of the marriage. The Marriage Act did not recognize child marriages, which meant that children could not be forced to enter into unions. As to polygamous marriages governed by customary law, Kenyan legislation ensured that the rights of all wives were respected equally, including in the event of a succession.

48. **Mr. Kemal** welcomed the excellent work being carried out by the Kenya National Gender and Equality Commission and asked whether the Government had considered increasing its budget with a view to enhancing its effectiveness.

49. **Ms. Njau-Kimani** (Kenya) agreed that the Commission lacked sufficient funding and said that the Government hoped to be able to allocate additional resources to the Commission in the future.

50. **Mr. Marugán** said that the Government had taken significant steps towards the elimination of racial discrimination and must continue to progress in that regard, with the help of the international community.

51. **Ms. Njau-Kimani** (Kenya) thanked the Committee for the constructive dialogue and said that her Government would take all its comments and recommendations into consideration with a view to improving its compliance with the Convention. While her delegation had noted the Committee's concerns about the late submission of Kenya's periodic report, it urged the treaty bodies to explore ways of streamlining their reporting procedures so that reporting did not impose too heavy a burden on developing countries facing considerable financial restraints.

*The meeting rose at 1.05 p.m.*