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Summary record of the 3763rd meeting*

Held via videoconference on Tuesday, 9 March 2021, at 4 p.m. Central European Time

Chair: Ms. Pazartzis

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* No summary records were issued for the 3761st and 3762nd meetings.

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The meeting was called to order at 4 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

*Fourth periodic of Kenya (CCPR/C/KEN/4; CCPR/C/KEN/Q/4;
CCPR/C/KEN/RQ/4)*

1. *At the invitation of the Chair, the delegation of Kenya joined the meeting.*
2. **Ms. Njau-Kimani** (Kenya), introducing the fourth periodic report of Kenya (CCPR/C/KEN/4), said that the Government of Kenya was committed to upholding the highest human rights standards and adhered strictly to constitutional and accepted international human rights principles as the foundation of a dignified, respectful and peaceful society. Since the review of the country's third periodic report in 2012, the Government had developed effective follow-up mechanisms to implement the recommendations of the Committee and other human rights bodies.
3. Access to justice had been enhanced through the establishment of 39 High Court stations in the counties and the decentralization of the Court of Appeal. There were plans to establish magistrates' courts in every sub-county; alternative justice system programmes had been launched; access to alternative dispute resolution mechanisms and court-annexed mediation had been expanded; and a small claims court had been established. The courts had annulled various laws that violated the Bill of Rights enshrined in the Constitution and had taken a number of decisions reaffirming refugees' rights, as well as freedom of religious belief, freedom of expression and privacy. Furthermore, in a landmark ruling, the Supreme Court had declared the mandatory death penalty unconstitutional on the grounds that it violated the right to a fair trial. The Government was in the process of aligning all impugned laws with human rights principles.
4. The Government had taken legislative measures to promote equality and tackle discrimination in all its forms. The Law of Succession Act of 1981 had been amended to recognize that women and men had equal inheritance rights; the 2019 bill amending the Registration of Persons Act provided for the legal registration of intersex persons, whose status had previously not been recognized by law; while the 2019 bill amending the Persons with Disabilities Act would promote equality of opportunity and improve access to rehabilitation services for persons with disabilities. A policy promoting diversity in the public service was currently being implemented.
5. Various institutional, policy and legislative measures had been taken to combat corruption in the public and private sectors. The Bribery Act of 2016 criminalized the offering and receiving of bribes, while the National Ethics and Anti-Corruption Policy, adopted by the National Assembly in 2019, provided a comprehensive framework for combating corruption and promoting ethical behaviour. A multi-agency team led by the Attorney General had been established in 2018 to enhance coordination between government agencies in the fight against corruption and organized crime, and the National Anti-Corruption Academy, established in 2018, provided training on ethics, integrity, leadership, good governance and anti-corruption strategies for public and private institutions in Kenya and the surrounding region.
6. Over the years, Kenya had suffered terrorist attacks with devastating consequences for the enjoyment of the right to life, liberty and physical integrity. The Government had implemented various counter-terrorism measures and strategies in accordance with its legal framework to protect its citizens from the threat of terrorism. Law enforcement officers were authorized and trained to use justifiable force in certain circumstances, in accordance with the sixth schedule of the National Police Service Act of 2011. Comprehensive investigations were conducted in response to all allegations of excessive use of force and the alleged perpetrators were prosecuted in accordance with due process. Various accountability and institutional structures, including the Independent Policing Oversight Authority, monitored police activity and recommended the prosecution of officers suspected of having acted unlawfully.

7. Significant progress had been made in promoting equal rights for women and eliminating gender discrimination. However, much remained to be done to increase the representation of women in elective office. Various measures had been taken to that end, including the establishment of empowerment programmes and a national political leadership programme for women. A legislative handbook on equality and non-discrimination had been developed to help legislators to assess the compatibility of policy and legislation with gender-equality goals; the Political Parties Act had been amended to promote gender equity in political parties; and a bill to amend electoral law – the representation of special interests groups laws (amendment) bill – had been submitted to the National Assembly with a view to promoting the representation of women, persons with disabilities and other marginalized groups in the Parliament.

8. To tackle violence against women and protect women’s rights, the Government had implemented a national policy on the eradication of female genital mutilation, had developed a training manual for medical personnel to stop the medicalization of the practice, and had enhanced regional collaboration to prevent cross-border female genital mutilation. The Director of Public Prosecutions had appointed special prosecutors for sexual and gender-based violence and the increased presence of prosecutors in all counties and sub-counties had greatly enhanced conviction rates. A Model Policy on Gender-Based Violence had been developed to help local governments to tackle the issue and platforms offering psychosocial support and empowerment programmes for victims had been established in some counties.

9. In a push to enhance efforts to address human trafficking, the Government had developed standard operating procedures to help law enforcement officials to identify and prosecute traffickers. A special manual on prosecuting trafficking offences had been developed; training on trafficking offences had been organized for law enforcement officers and children’s officers; and an anti-human trafficking unit had been established to investigate cases of child trafficking and online child abuse. Information materials on trafficking had been disseminated to the public. A 2018 bill on children’s rights and juvenile justice, which proposed an increase in the age of criminal responsibility, had been submitted to the Parliament.

10. The realization of human rights in Kenya had been undermined by the onset of the coronavirus disease (COVID-19) pandemic in 2020. The introduction of curfews, lockdowns and travel restrictions had limited the enjoyment of certain civil and political rights, including access to justice and the freedoms of association, assembly and movement. To mitigate the negative impact of those restrictions, the Government had facilitated the conduct of online court proceedings, exempted lawyers and members of police oversight authorities from the curfew, released petty offenders to curtail the spread of the virus in prisons and established a national helpline for survivors of sexual and gender-based violence.

11. **Mr. Bulkan** said that the State party had made impressive progress in fulfilling its commitments under the Covenant but that significant gaps remained. Noting that the Constitution of 2010 provided for the automatic incorporation of international standards into domestic law, he invited the delegation to clarify whether that provision applied to treaties ratified by Kenya prior to the Constitution’s enactment. He would welcome examples of cases in which the Supreme Court had cited the Covenant in its decisions, particularly cases in which the Covenant had been applied directly. It would be useful to learn whether the State party planned to accede to the first Optional Protocol to the Covenant; and, in that connection, whether awareness-raising sessions on the Covenant were organized for public sector workers and the general public; and, if so, whether civil society organizations took part. Further information on the State party’s efforts to harmonize domestic law with international standards would also be useful; in particular, he wondered whether information on the harmonization process had been disseminated outside of government circles and whether stakeholders such as non-governmental organizations had been given the opportunity to contribute to the process.

12. With regard to efforts to tackle impunity, up-to-date figures on the number of persons who had received compensation from the Restorative Justice Fund for human rights violations suffered prior to 2008 would be helpful, as would clarification of the current status of the Fund, and of the regulations drafted by the Attorney General in 2017 to facilitate its operationalization. In the absence of regulations, were there any standards providing

guidance on the use of the Fund; and, if so, were they publicly available? It would be interesting, moreover, to receive a full account of the steps taken to implement the recommendations issued by the Truth, Justice and Reconciliation Commission to address the structural causes of unrest and violence, and to have details of the steps that the State party planned to take to ensure that the Commission's report was adopted by the Parliament. With regard to election-related violence, he would appreciate further information on the work of the special section established under the Office of the Director of Public Prosecutions to address sexual and gender-based violence linked to election-related disturbances, including data on the conviction rate of alleged perpetrators of such violence. Had any steps been taken to hold police officers who had committed sexual and gender-based offences accountable?

13. The Victims Protection Act of 2014 had ushered in substantial reforms aimed at improving victims' access to justice. He would therefore be grateful for information on any measures, other than compensation, taken to implement those reforms, including, in particular, measures intended to improve the manner in which the courts treated victims. For example, were the courts making use of the provisions that entitled victims to compensation from offenders for economic losses that they had suffered as a result of the crime? It would also be useful to know whether victims were separated from alleged offenders in court waiting rooms and whether they had access to adequate and effective medical services.

14. While there had been some improvements in the human rights situation of lesbian, gay, bisexual, transgender and intersex persons in Kenya, there had also been significant setbacks. In that connection, he wished to know whether the Government would be taking the lead on the decriminalization of homosexuality, either by repealing the criminal prohibition currently in force or by refusing to defend the High Court's decision of May 2016 to reject a petition of unconstitutionality in respect of sections 162 and 165 of the Penal Code, which criminalized consensual same-sex sexual activity. He would welcome statistical data on the extent to which lesbian, gay, bisexual, transgender and intersex persons sought the help of oversight bodies for the protection of their rights. It would also be useful to learn whether the State party would consider enacting specific legislation to prevent discrimination based on sexual orientation, introducing legal reforms to prevent law enforcement officers from arresting and/or detaining lesbian, gay, bisexual, transgender and intersex persons arbitrarily, and making a public commitment to stamp out the practice of expelling students from school on the grounds of actual or suspected homosexuality. He would also like to know what steps the State party was taking to end the social stigmatization of lesbian, gay, bisexual, transgender and intersex persons. Lastly, in the light of reports that intersex children in Kenya were often subjected to genital mutilation and other harmful practices, he would appreciate statistical data on the number of intersex children who had undergone non-urgent irreversible surgical procedures, and the number who had been victims of infanticide or abandonment. What measures did the State party plan to take to stop those harmful and cruel practices?

15. **Ms. Sancin**, commending the State party for the steps it had taken to establish a strong legal framework to tackle corruption, said that a number of draft laws nevertheless had yet to be enacted. She would therefore appreciate an update on the status of the bill amending the Anti-corruption and Economic Crimes Act, the bill on whistle-blower protection, the bill on false claims and the bill on conflicts of interest – all of which had initially been put forward in 2017 – and an explanation of any obstacles to their enactment and implementation. Furthermore, according to information received by the Committee, corruption remained a major impediment to the enjoyment of human rights; systemic corruption and unjust enrichment remained high; and the majority of Kenyans identified corruption and impunity as the greatest hindrance to the realization of the Bill of Rights. In the light of such reports, and recent events such as the Arror and Kimwarer dams scandal, the arrest of the head of the State party's energy regulator over bribery accusations and the arrest of the Governor of Nairobi on charges of, inter alia, money-laundering and unlawful acquisition of public property, she would like to know what further efforts were envisaged to ensure that corruption was promptly investigated and prosecuted; that its proceeds were recovered; and that public officials implicated in corruption were not permitted to remain in any public office, in line with the judgment of the High Court in *Moses Kasaine Lenolkulal v Director of Public Prosecutions*.

16. **Mr. Muhumuza** said that he would be grateful for information on the number and percentage of women represented in the executive, judicial and legislative branches. Women in rural areas constituted the majority, yet they were more susceptible to human rights abuses owing to high levels of illiteracy and poverty, coupled with limited access to the formal and informal legal systems. He would therefore like to know what support women were receiving to help them to qualify for leadership positions and gain access to land use and ownership and financial resources. He would also be interested to learn how the State party was addressing discrimination against Muslims, who made up 11 per cent of the State party's population and had reportedly been scapegoated for acts of terrorism.

17. There had been no clear efforts by the State party to arrest and detain perpetrators of harmful practices related to witchcraft or murder for body parts; moreover, there had been no convictions for offences against persons with albinism. He would like to know what steps the State party had taken to eliminate discriminatory acts perpetrated against persons with albinism in the exercise of traditional culture such as witchcraft, and to uphold those persons' right to life; and, more broadly, how the State party planned to address forms of cultural expression that hindered the enjoyment of human rights. Turning to the issue of HIV/AIDS, he said that it would be useful to have a full account of the work and impact of the HIV/AIDS Tribunal. In addition, in view of the reports of religious and ethnic discrimination against ethnic Somali persons, who were also, for the most part, Muslim and were often targeted as suspects in terrorist acts, it would be interesting to learn how the State party had adjusted formal and informal legal structures to take account of the needs of marginalized groups in promoting their rights.

18. The Committee would appreciate information on how the State party planned to consolidate legislation adopted to eliminate female genital mutilation in the region and thus curb cross-border violations of women's dignity, especially violations involving children below the age of consent; how formal and informal legal systems had been modified to address cultural biases against women, especially with respect to land ownership and equality in marriage; and what steps had been taken to successfully prosecute child abuse cases. There were reports, moreover, that victims connived with perpetrators and that community members were reluctant to testify in court cases. It would be helpful to know whether adequate financial resources had been allocated to facilitate enforcement of the law, the dissemination of information about the attendant risks of female genital mutilation, and the provision of medical care for its victims. How did the State party intend to deal with the medicalization of female genital mutilation, which was a barrier to the practice's elimination?

19. **Mr. Zyberi** said that he would like to know how the pandemic had affected gender equality – specifically, its impact on women's participation in the labour market, protection from domestic violence, access to justice and the availability of shelters and safe houses – and whether the Government had taken any measures to prevent and alleviate the negative effects. While he commended the State party for the progress made in women's representation in the 2017 elections, women still held less than one third of the total number of seats in the National Assembly and the Senate. He would therefore like to know what steps the State party had taken to ensure that men would fill no more than two thirds of the seats in subsequent elections and, more broadly, what general measures were being taken to address gender inequalities in appointive and electoral positions. He would also welcome information on action taken by the State party to ensure the fast-tracking of a comprehensive anti-discrimination law, on any instances of violence or threats of violence against women candidates during rallies and elections, and on the steps taken by the State party to investigate such cases. In addition, he would appreciate information, including relevant disaggregated data, on the percentage of women represented at different levels of the private sector and on any measures taken by the State party to improve their representation.

20. Turning to the issue of counter-terrorism, he said that the Committee appreciated the fact that the State party faced an ongoing terrorist threat from the Al-Shabaab militant group and that it had an obligation to protect lives against terrorist threats and attacks, while respecting human rights. However, the Committee was concerned that the definition of terrorist acts contained in the Prevention of Terrorism Act was so broad that it could be used against political opponents, civil society and protesters. Information on the number of counter-terrorism cases that had been brought before the courts during the reporting period,

including cases involving the specific crimes cited, would be welcome. An increasing number of extrajudicial executions and enforced disappearances had been documented in counter-terrorism operations and had been confirmed by civil society and data from the Independent Policing Oversight Authority. He would therefore like to know what steps the State party had taken to prevent such acts, as well as to investigate and prosecute those responsible and provide redress to victims. Lastly, he would be grateful for an update on the status of the amendments necessary to eliminate mandatory death sentencing from the legal framework, in line with the Supreme Court's decision, and on the current state of legislation on the use of the death penalty.

The meeting was suspended at 4.55 p.m. and resumed at 5.15 p.m.

21. **Mr. Were** (Kenya) said that, under the Constitution, the general rules of international law, together with any treaties ratified by Kenya, automatically formed part of the domestic legal system. The courts were therefore expected to apply international treaties in cases involving components of international law, except where provisions of international law were inconsistent with the Constitution, and international instruments, including the Covenant, had thus been cited in a number of court cases. It was only after several levels of appeal that a case could be submitted to the Supreme Court, which in any event had a limited mandate, dealing mainly with the interpretation of the Constitution; that would explain why most of the cases cited in the periodic report (CCPR/C/KEN/4) were High Court, rather than Supreme Court, cases. Nevertheless, in its ruling on petition No. 23 of 2019, the Supreme Court had referred directly to a number of human rights instruments, including the Covenant, in setting forth guiding principles for trial courts when considering an application by a victim to participate in a trial.

22. With regard to the question on the relevance of the HIV/AIDS Tribunal, the Tribunal, which was the only one of its kind in the world, had received 28 matters for its consideration and had processed all of them within the 360-day deadline. The Tribunal could be considered to function effectively, since its decisions were generally upheld on appeal.

23. **Mr. Musyimi** (Kenya) said that, according to the Constitution, all treaties ratified by Kenya, regardless of the date of ratification, formed part of Kenyan law and could be applied directly by the courts. However, any provisions of national or international law that were inconsistent with the Constitution were considered null and void. A national task force had been set up to assess the amendments that were needed in order to bring national legislation into line with the various treaties that had been ratified by Kenya. The process would take some time because any amendments that were proposed would be subject to public consultations. There was also a permanent body, the Kenya Law Reform Commission, that was responsible for continuously reviewing national laws and proposing amendments where necessary to align them with international law. The Commission worked in collaboration with the Parliament, ministries and other State agencies.

24. Various laws and amendments had been adopted to give effect to specific provisions of the Covenant. For example, the Political Parties Act had been amended in order to promote the political participation of special interest groups, including women, persons with disabilities and ethnic minorities. The amended Act stipulated, for example, that political parties could be deregistered if those groups were not represented among their rank and file and that political parties were not eligible for State funding unless their governing bodies included members of those groups. Another example of a law that had been adopted was the Act on the Prohibition of Female Genital Mutilation, which was based on the principle that any customary law that was inconsistent with the Constitution was null and void.

25. **Ms. Chweya** (Kenya) said that the process of passing new legislation was lengthy for several reasons. Firstly, all legislative and policy proposals were subject to nationwide public consultations and extensive stakeholder consultations in order to ensure inclusivity, transparency and accountability. It took time to conduct those consultations and to inform the Parliament of the content and implications of each proposal. Secondly, the legislative process had budgetary implications and was sometimes delayed for lack of resources.

26. Training on anti-corruption law had been provided to police officers, prosecutors and judges in order to improve the investigation and prosecution of cases of corruption. In addition, the budget of the Office of the Director of Public Prosecutions had been increased

in order to ensure that cases of corruption were prosecuted effectively and expeditiously. In recent years, 100 cases had led to a conviction, 4 had resulted in an acquittal and 47 had been withdrawn; the fines imposed for corruption had amounted to a total of 1.6 billion Kenya shillings. Unfortunately, the executive branch had little control over the length of the proceedings, which had lasted for six years in some cases.

27. **Ms. Njau-Kimani** (Kenya) said that the report of the Truth, Justice and Reconciliation Commission had been presented to the Parliament but that she did not know how soon it would be adopted. It had not yet been possible to draw on the Restorative Justice Fund to provide compensation to victims of historical injustices because consultations with stakeholders on the draft policy and regulations for the fund were still under way. The Victim Protection Board was fully operational; however, the draft regulations of the Victim Protection Trust Fund were still at the consultation stage.

28. The task force on intersex persons had recommended that no surgery should be performed on intersex persons until the Ministry of Health had established specialized programmes to ensure that they received the care and protection needed. The Attorney General had established a committee to act on the recommendations made by the task force. The Kenya Medical Practitioners and Dentists Council had been tasked with developing protocols on the surgical and hormonal treatment of intersex children.

29. The Government did not condone discrimination of any kind, including discrimination on the basis of sexual orientation. The High Court had upheld sections 162 and 165 of the Penal Code in its ruling of May 2016 on the grounds that there was no public appetite to legalize same-sex conduct, judging from the consultations organized during the drafting of the new Constitution, and that permitting conduct of that kind would contradict the spirit of the Constitution. Based on a literal reading, sections 162 and 165 could not be considered discriminatory, since they referred to “any person” and “any male person”, respectively, and therefore did not target persons of a particular sexual orientation. All persons in Kenya, regardless of sexual orientation, were guaranteed the full protection of the law. For example, in 2018, a court had ruled that the use of forced anal examinations in order to obtain evidence of same-sex conduct was a violation of human rights.

The meeting rose at 6 p.m.