



International Covenant on Civil and Political Rights

Distr.: General
17 March 2021

Original: English

Human Rights Committee 131st session

Summary record of the 3765th meeting

Held via videoconference on Thursday, 11 March 2021, at 4 p.m. Central European Time

Chair: Ms. Pazartzis

Contents

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

Fourth periodic report of Kenya (continued)

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.



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 report of Kenya (continued) (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. Sancin** asked whether the latest version of the refugee bill stipulated that refugees and asylum seekers could be expelled if they were found to have engaged in conduct that was in breach or likely to be in breach of public order or contrary to public morality, bearing in mind that a provision of that nature would violate the principle of non-refoulement. She also enquired what safeguards were in place to protect minority groups, including lesbian, gay, bisexual, transgender and intersex persons, from refoulement; whether the refugee bill contained provisions that would require asylum applicants to abide by the laws of Kenya and, if so, whether those provisions would place lesbian, gay, bisexual, transgender and intersex persons at risk of refoulement, given that same-sex conduct remained illegal in Kenya; whether the bill would allow for asylum seekers to be held on remand in police stations as well as in immigration detention facilities pending the filing and processing of their asylum applications; whether the bill would protect asylum seekers against arrest and detention on the grounds of illegal entry while their asylum applications were being finalized; whether the bill would prohibit encampment policies, which restricted the right to freedom of movement of refugees and asylum seekers; and how soon the bill would be adopted.
3. It would be helpful to learn whether the provisions of the Huduma bill on the registration of births and deaths and the issuance of travel and other documents to refugees and asylum seekers were in line with international legal standards; what steps had been taken, aside from the introduction of an expanded community policing programme, to protect lesbian, gay, bisexual, transgender and intersex persons in refugee camps and throughout the territory of Kenya; and what measures were in place to ensure that non-citizens, including undocumented migrants and lesbian, gay, bisexual, transgender and intersex persons, were not subjected to xenophobic and repressive practices.
4. She would like to know what was being done to expedite the process of finding durable solutions for all internally displaced persons in Kenya. The number of complaints filed against various State agencies under the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act suggested that the procedures outlined in the Act were not being followed; she would therefore like to hear the delegation's comments on that issue. She also wondered whether a national consultative coordination committee on internally displaced persons had been established in accordance with the Act and, if so, how it operated; and whether Kenya was considering ratifying the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.
5. She welcomed the news that the children bill, which would raise the age of criminal responsibility from 8 to 12 years, would soon be submitted to the Parliament; however, given that the Penal Code allowed for the prosecution of children under 12 years old, she wondered how soon the Code would be amended to establish 12 years as the age of criminal responsibility under all circumstances. Lastly, she would like to know whether the commendable reforms undertaken in the field of juvenile justice had been fully implemented in all rural areas; and how the State party ensured that the principle of the best interests of the child was applied throughout the juvenile justice system.
6. **Mr. Bulkan**, noting that members of the Sengwer community had been forcibly evicted from their dwellings in the Embobut Forest between December 2017 and February 2018, that thousands of people had been forcibly evicted from the Mau Forest in July 2018 in an operation that had involved excessive use of force and that forced evictions had continued to take place during the coronavirus disease (COVID-19) pandemic, asked whether any action had been taken against those who had broken the law during those operations; whether anyone had been charged and prosecuted in connection with the deaths that had occurred; whether any reparation, including resettlement and compensation, had been provided to those affected; whether the Government intended to fully implement the Land

Laws (Amendment) Act of 2016 and to ensure that evictions were conducted in accordance with international standards; and whether any of the relevant recommendations made by the Kenya National Commission on Human Rights, such as the recommendations to investigate Kenya Forest Service officials suspected of involvement in illegal logging and to provide human rights training to the various agencies operating in the forests, had been implemented.

7. He would like to know what steps had been taken to address gaps in the legislation governing elections and to respond to the election-related concerns and recommendations of the Kenya National Commission on Human Rights; whether the controversial amendments made to electoral legislation in 2017 would be revisited ahead of the 2022 general election; whether any reforms had been undertaken to address the multiple election irregularities identified by the Kenya National Commission on Human Rights, such as the misuse of public office; how soon the Independent Electoral and Boundaries Commission would be fully reconstituted; and whether it would be adequately funded. In the light of allegations of excessive use of force by police officers against civilians during the 2017 election period, he asked what steps had been taken to prevent the reoccurrence of violence of that kind; how many State actors and civilians had been prosecuted for acts of violence and harm to other persons and property following the election; what the outcome of those prosecutions had been; and why there had been no formal inquiry into the killing of Mr. Msando, an officer of the Independent Electoral and Boundaries Commission.

8. In the light of reports that the Community Land Act of 2016 was not being effectively implemented, he enquired how many indigenous communities had successfully obtained official recognition of their land and resource use rights under the Act; what measures would be taken to ensure that applications for recognition of those rights could be received and processed; and whether any funding had been set aside for the implementation of the Act. Noting that the African Court on Human and Peoples' Rights had ordered the Government to grant formal recognition of the Ogiek people's right to land ownership in the Mau Forest and that the report of the task force appointed in 2017 to address the issue had not been made public and had not been acted upon, he asked what had become of that report and what steps would be taken to give effect to the Court's decision. In view of allegations that development projects had been carried out without the consent of the affected communities, he would appreciate examples of projects for which the free, prior and informed consent of the relevant communities had been obtained, as well as details of the measures that would be taken to ensure a more participatory approach to land and resource use, in keeping with international human rights standards, and the efforts that would be made to protect indigenous women, taking into account their specific vulnerabilities.

9. **Mr. Zyberi**, expressing concerns about the serious restrictions imposed on civic space in Kenya, asked what measures had been taken to bring all laws relating to freedom of expression into line with the Constitution and international standards; whether the delegation could provide statistics on the number of prosecutions that had been brought with the aim of curtailing freedom of expression; whether any such cases had been brought since the High Court had declared sections 132 and 194 of the Penal Code to be unconstitutional; and what steps had been taken to ensure respect for freedom of speech on social media while preventing the spread of hate speech and fake news. He also asked whether the delegation could provide information on the scope and outcomes of the work of the National Cohesion and Integration Commission and comment on the reports of repression of the cultural expressions of lesbian, gay, bisexual, transgender and intersex persons.

10. He enquired whether any criminal penalties had been imposed on journalists or media outlets under the Media Council Act of 2013 or the Kenya Information and Communications (Amendment) Act of 2013 during the reporting period; how many incidents of violence or threats against journalists, bloggers and media workers had been recorded during that period; whether any persons had been held to account for those incidents; and what would be done to prevent the intimidation and harassment of journalists and media workers during the 2022 general election.

11. **Mr. Ben Achour**, noting that the public order bill of 2019 had been criticized on the grounds that it threatened freedom of assembly, that human rights defenders had been unlawfully arrested and detained for having exercised their right of peaceful assembly and that more than 100 opposition supporters had been killed by police and pro-government

militias during demonstrations following the 2017 general election, asked whether the State party planned to bring its legislation and practices relating to freedom of assembly into line with the Constitution and international human rights standards; whether it planned to strengthen police oversight bodies and increase the resources available to them in order to facilitate investigations into the illegal use of firearms; and what stage had been reached in the adoption of the draft national police service regulations. The State party should honour the commitments that it had made with respect to freedom of assembly and association during the second cycle of the universal periodic review, including by allowing the Special Rapporteur on the rights to freedom of peaceful assembly and of association to visit the country.

The meeting was suspended at 4.35 p.m. and resumed at 4.55 p.m.

12. **Mr. Owino** (Kenya) said that Kenya faced an ongoing threat from the Al-Shabaab militia and other terrorist groups. Many young Kenyans had been radicalized. The National Counter-Terrorism Centre and the police worked together to rehabilitate and reintegrate foreign fighters who had returned to Kenya after having been tricked or coerced into joining a foreign terrorist group and the Government worked with civil society and international organizations to identify employment opportunities for them. Since 2017, nine cases involving terrorism-related offences had been tried in court, resulting in 21 convictions.

13. With regard to public confidence in the electoral process, it should be noted that the only disputed election result in the 2017 election cycle had been that of the August presidential election. The Supreme Court had annulled the result of that election and a fresh election had been held in October 2017. The small number of petitions considered by the courts regarding the results of the other elections in the 2017 cycle had been resolved peacefully. The President had reached out to the leader of the opposition in 2018 for a much-publicized handshake, and together they had launched the Building Bridges Initiative to ensure that all communities had a say in governance.

14. All allegations of misconduct in public office were investigated and any persons suspected of engaging in illegal activity were prosecuted. With respect to police violence and hate speech during the 2017 election cycle, it was important to note that, while all persons had the right to protest peacefully, most of the protests that had erupted after the August 2017 elections had not been peaceful and many protestors had been armed. The police had responded appropriately in order to uphold the law. A formal investigation had been carried out into the killing of Mr. Msando, but the case remained open and the police were actively searching for new leads.

15. The Government was committed to protecting the right to life and did not condone the execution of individuals by State agents. The Independent Police Oversight Authority and the Internal Affairs Unit of the National Police Service investigated all allegations of unlawful activity by police officers, including allegations of the illegal use of firearms during demonstrations. The claim that the police were responsible for the deaths of more than 100 opposition supporters in the wake of the 2017 general election was false. Likewise, the claim that human rights defenders had been subjected to unlawful arrest was unsubstantiated; during demonstrations, the police only arrested persons whose actions contravened the laws and regulations governing peaceful protest.

16. **Ms. Kariuki** (Kenya) said that article 69 (d) of the Constitution provided that the State had an obligation to encourage public participation in the management, protection and conservation of the environment. Public participation was also an integral part of the environmental impact assessment process under the Environmental Management and Coordination Act. In a decision of 2012, the Environment and Land Court had ruled that access to environmental information was a prerequisite to effective public participation in decision-making and the monitoring of governmental and private sector activities on the environment. The National Environment Tribunal had recently suspended a licence to build a coal power plant in the county of Lamu on the grounds that the public had not been properly consulted during the environmental and social impact assessment process. The regulations of the environmental impact assessment process required developers to seek the views of local residents affected by the project, to display informational posters near the project site, to publish information on the project in national newspapers, to run radio spots on the project

for two weeks in local and official State languages, and to hold three public consultations on the project.

17. Applications for refugee status could not be rejected on the basis of the applicant's sexual orientation; such discrimination was prohibited under article 27 of the Constitution. The refugees bill of 2019 had been circulated to stakeholders for feedback. The bill provided for affirmative action programmes for refugee women and children and refugees with disabilities. As at 31 December 2020, there were 504,854 refugees and asylum seekers in Kenya. In October 2020, the Government had introduced a comprehensive refugee response framework to meet the needs of refugees and host communities. Clause 66 of the Huduma bill of 2019 provided that data on the registration of refugees would be verified and updated through the National Integrated Identity Management System.

18. The main instruments in the legal framework for the protection of internally displaced persons were the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act of 2012, which was based on the Protocol on the Protection of and Assistance to Internally Displaced Persons and the United Nations Guiding Principles on Internal Displacement, and the National Policy on the Prevention of Internal Displacement, Protection and Assistance to Internally Displaced Persons in Kenya. A number of recent court cases had been resolved in favour of internally displaced persons. For example, in the case of *Florence Amunga Omukanda and Francis Khashiyi Ivayo v. the Attorney General et al.*, the High Court had ordered the payment of compensation to the second petitioner, an internally displaced person, as reparation for the violation of his right to dignity.

19. Thanks to the Government's efforts to resettle persons displaced by post-election violence in 2007, around 350,000 persons had been able to return to their homes. Approximately 2.5 billion Kenya shillings in assistance funding had been disbursed to internally displaced persons to help them to rebuild their homes and make a fresh start. In addition, the Ministry of Lands and Physical Planning had successfully resettled 1,337 displaced families on 14 farms, measuring approximately 5,000 acres. The Government was currently discussing the ratification of the Kampala Convention with stakeholders. The National Consultative Coordination Committee on Internally Displaced Persons was in the process of being set up under the Ministry of the Interior and Coordination of National Government.

20. **Mr. Were** (Kenya) said that the children bill had been approved by the Cabinet and would be submitted to the Parliament in early 2021. It was important to note that the bill proposed a complete overhaul of the current Children Act, and had been prepared through a broad consultative process involving government bodies and non-governmental organizations. Once the bill was passed, discussions would begin on the amendment of section 14 of the Penal Code to raise the age of criminal responsibility from 8 years to 12 years. The Sentencing Policy Guidelines of 2016 were applied equally in all urban and rural areas of Kenya and the law enforcement authorities had received training on how to apply them. To protect the best interests of the child, judicial proceedings involving children could last no more than six months. Children in conflict with the law were provided with free legal counsel, were accompanied by a relative, guardian or close friend during the proceedings, and, pursuant to recent court decisions, could no longer be held in detention for indefinite periods of time at the pleasure of the President. Children were not generally given custodial sentences and were permitted to continue attending school and living at home with their families while awaiting trial, and parents and probation officers were permitted to participate in sentencing hearings.

21. **Ms. Chweya** (Kenya) said that the Government had taken steps to protect the land rights of the various communities of Kenya and to prevent evictions. The Community Land Act of 2016 provided for the formal recognition of community land titles and stipulated that development on community land was subject to comprehensive consultation with the communities affected. The Indigenous Peoples Planning Framework provided that indigenous peoples must be consulted regarding development projects on land that they had traditionally inhabited or that had a special significance for them. Section 152 of the Land Laws (Amendment) Act of 2016 stipulated that agents tasked with enforcing evictions must identify themselves and present formal authorization prior to the eviction; take special measures to protect vulnerable groups such as women, children, older persons and persons

with disabilities; and may not destroy possessions left behind involuntarily by the occupants. Most evictions involved unlawful settlements near railway tracks, power lines and land earmarked for development projects. Prior to proceeding with an eviction, the Government conducted comprehensive investigations into the backgrounds and circumstances of the persons to be evicted, organized meetings with them and notified the local community through press statements. Mindful of its responsibility to protect Kenyan citizens' right to a dignified and peaceful life, the Government had resettled thousands of landless families in recent years. All indigenous peoples displaced by forest conservation efforts or development projects, including the Sengwer people of the Embobut Forest and the Ogiek people of the Mau Forest, had been offered compensation and land on which to resettle. However, those communities had disputed their resettlement and several cases were pending before the local and regional courts. Hearings on reparation in the Ogiek case were currently ongoing; an outcome was expected in June 2021. Through the National Land Commission, the Government resettled and compensated victims of historical injustices and persons displaced as a result of natural disasters, development or conservation projects, or internal conflicts.

22. Recalling that freedom of assembly was guaranteed under the Constitution, so long as those exercising it were peaceable and unarmed, she said that the Public Order Act, as revised in 2012, struck a balance between the obligation to uphold freedom of assembly and the duty to maintain public order. In a 2019 ruling, the High Court had ordered the State to revise the law or develop new laws to ensure peaceful assembly and to draft a code of conduct for organizers of demonstrations. It was in that context that the Public Order (Amendment) Bill had been drafted in 2019. The aim of the bill had been to hold individuals responsible for harm and losses sustained during assemblies and to ensure that victims were compensated. In February 2021, however, the bill had been shelved at second reading on the grounds that it unnecessarily restricted the right to freedom of assembly, and that its provisions were vague and overly broad. The Government continued to seek a balance between safety and security and the freedom of assembly. Standing invitations had been extended to all special rapporteurs; requests for visits had been received in 2019, but the planning of such visits had been delayed for reasons related to the coronavirus disease (COVID-19) pandemic.

23. **Mr. Oriema** (Kenya) said that a number of laws, including the National Cohesion and Integration Act, the Computer Misuse and Cybercrimes Act and the Media Council Act, were currently being reviewed to ensure alignment with the Constitution and international standards with regard to freedom of expression. A memorandum of understanding had been signed with the Media Council of Kenya and the National Cohesion and Integration Commission for the review of the Kenya Information and Communications (Amendment) Act. The Government had enacted the Computer Misuse and Cybercrimes Act with a view to preventing violence during the next elections while ensuring respect for freedom of speech. In addition, it had strengthened judicial independence and effectiveness, and had conducted public awareness-raising campaigns on the role played by human rights defenders which had highlighted fundamental rights and freedoms and promoted tolerance. The suspension of those provisions of the Computer Misuse and Cybercrimes Act that had been challenged in a petition submitted by the Bloggers Association of Kenya had been lifted by decision of the High Court, which had dismissed the petition in February 2020.

24. **Mr. Kitua** (Kenya) said that the Government had set up an office in the United Arab Emirates to better ensure the safety of Kenyans working abroad. In addition, negotiations were under way for the conclusion of social protection agreements for Kenyans working in Bahrain, Jordan and Kuwait. In 2019, the Government had launched a website with information on companies abroad for prospective migrant workers and employers.

25. **Mr. Musyimi** (Kenya) said that the bill on natural resources (benefit sharing), which took into account the specific vulnerabilities of indigenous communities and women in particular, would be submitted to the Parliament shortly, following stakeholder consultations. The Community Land Act was a relatively new law, and implementation had been somewhat slow; however, the necessary regulations were now in place and the rest of the framework, including the allocation of funding, was being set up so that the Act could be given effect throughout the country. In response to the decision of the African Court on Human and Peoples' Rights with regard to the Ogiek people's rights to land ownership in the Mau Forest, the Government had, through the Forest Conservation and Management Act, adopted

measures to ensure the involvement of indigenous communities in the conservation and management of forests. A task force had been set up with specific terms of reference: to examine the decision of the African Court and also of local courts in respect of the Ogiek community and settlers of other forests; to consider related land policies in other parts of the country and their applicability to the situation of the Ogiek community; to establish the registration status of the land in question; and to recommend measures to provide redress for the Ogiek community. The task force would be required to submit a report on the Government's actions to implement the recommendations.

26. **Ms. Kran** said that she would appreciate a more detailed response from the delegation regarding the reports of election-related sexual violence perpetrated by the police in the 2017 elections and the practical measures that would be taken to prevent sexual violence during the 2022 elections.

27. **Ms. Sancin** said that she would appreciate a response to her question regarding the current draft of the refugee bill and whether it still contained the provision stipulating that refugees and asylum seekers would be expelled if they engaged in conduct "in breach or likely to result in breach of public order or contrary to public morality", which violated the principle of non-refoulement. Given that almost a decade had passed since the adoption of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, she would also appreciate information as to why the national consultative coordination committee on the issue of internally displaced persons had not yet been established. What measures were being taken to address the situation of displaced persons in the meantime?

28. **Mr. Muhumuza** said that the State party's blanket denial of discrimination against persons with albinism was inconsistent with the report of the Independent Expert on the enjoyment of human rights by persons with albinism on his visit to Kenya in 2018. He would appreciate the delegation's comments on that matter. He would like to receive a response to his question about measures being taken to ensure that Kenyans working abroad enjoyed decent working conditions.

29. **Mr. Bulkan**, referring to the decision of the African Court on Human and Peoples' Rights with regard to the Ogiek people's rights to land ownership in the Mau Forest, said that concerns had been expressed by civil society that the report on subsequent consultations by the Government had not been made public. As to the issue of evictions, it was well documented that forced evictions had been carried out despite the adoption of the Community Land Act in 2016, and that many had died in the process; he would therefore be grateful for information on any reparations provided to those affected. The delegation's response to calls for changes to the electoral process, including the stationing of properly trained security personnel in all areas of possible violence ahead of elections, would also be welcome.

30. **Mr. Zyberi** said that he would like to know what measures the State party planned to take to address the impact of the COVID-19 pandemic on women, including their access to safe houses, and on the rights of lesbian, gay, bisexual, transgender and intersex persons.

31. **Ms. Njau-Kimani** (Kenya), expressing the delegation's appreciation for the constructive dialogue, said that the concerns raised by the Committee, together with its concluding observations, would be included in an action plan for furthering meaningful implementation of the Covenant in Kenya. The delegation had taken note of the Committee's questions and recommendations and would endeavour to submit any outstanding replies within 48 hours.

The meeting rose at 6.10 p.m.