



# **International Covenant on Civil and Political Rights**

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## **Human Rights Committee**

### **Information received from Kenya on follow-up to the concluding observations on its fourth periodic report\***

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\* The present document is being issued without formal editing.



## Introduction

1. The Government of Kenya is honoured to present to the Human Rights Committee (the Committee) the follow up report to the concluding observations of the fourth periodic report to the International Covenant on Civil and Political Rights (the Covenant).
2. The Committee considered the fourth periodic report of Kenya (CCPR/C/KEN/4) at its 3763rd, 3764th and 3765th meetings held on 9, 10 and 11 March 2021. The meetings were held virtually, owing to the COVID-19 pandemic. At its 3778th meeting, held on 26 March 2021, the Committee adopted the concluding observations.
3. The Government of Kenya received a number of recommendations to improve the protection of civil and political rights in the Kenya. The recommendations touch on the domestic implementation of the Covenant, corruption, past human rights violations, non-discrimination, gender equality, counter terrorism measures, violence against women, voluntary termination of pregnancy, sexual and reproductive rights, prison conditions, liberty and security of the person, elimination of slavery and trafficking in persons, treatment of aliens, forced evictions, freedom of expression, right to peaceful assembly, rights of the child, indigenous people and the right to participate in public affairs.
4. The Committee requested for additional information on the implementation of specific recommendations made by the Committee in paragraphs 19 (violence against women), 41 (forced evictions) and 49 (participation in public affairs) to be submitted two years after the review process.
5. This present report provides the additional information requested by the Committee.

## Follow-up responses

### Violence against women

**Kenya should continue and expand its efforts to prevent and address female genital mutilation, including through prosecution and punishment, awareness-raising, sensitization, cross-border cooperation and data collection;**

#### *Response*

6. In this reporting period, the Government of Kenya has intensified its efforts to eradicate FGM within its borders. Following the 2019 presidential directive to end FGM in Kenya by 2022, many counties, state, and non-state actors have taken up the challenge and come up with innovative techniques to end FGM in Kenya. The innovations include anti-FGM declarations and heightened collaborative approaches towards the implementation of anti-FGM programmes. Declarations form powerful communal pronouncements with explicit statements against a vice in this case FGM.
7. County Anti-FGM steering committees are now operational in all the 22 counties classified as hotspot. The committees which are chaired by the County Commissioners are required to monitor the FGM situation in their respective counties and report accordingly on a quarterly basis to the Multi-Agency Technical Committee.
8. In the year 2022, the Government of Kenya with support from UNICEF developed county costed action plans to eliminate FGM and utilize the innovative mobile application (PASHA) to promote reporting and rescue of girls at risk which increased from the then ongoing drought emergency and the long school holidays.
9. In addressing the issue of cross boarder FGM, there has been concerted efforts and collaboration between community-based organizations, law enforcement agencies and community policing agents in intensifying the enforcement of the law in Kenya. In 2016, the East African Community passed the East African Community Prohibition of Female Genital Mutilation Act that made FGM a transnational crime between the member States. In April 2019, following the inaugural regional inter-ministerial meeting between Kenya, Tanzania,

Uganda, Ethiopia and Somalia a Declaration and Action Plan to End Cross Border FGM was adopted. These initiatives have provided effective and efficient coordination and collaborations among the State and improvement on legislation, policy framework and the environment to end cross border FGM.

10. The Government has continued to encourage initiatives by non-state actors in addressing the issues of female genital mutilation. For instance, the launching of Alale Anti-FGM Project in Pokot by the World Vision Child Protection in May 2022 to create awareness on FGM and address the emerging issue of cross-border FGM.

11. County Anti-FGM steering committees are now operational in all the 22 counties classified as hotspot. The committees which are chaired by the County Commissioners are required to monitor the FGM situation in their respective counties and report accordingly on a quarterly basis to the Multi-Agency Technical Committee. The table below provides data on law enforcement and girls who were facilitated to go through Alternative Rights of Passage (ARP).

No.	Issue	June to Nov 2020	Dec to May 2021	June to Nov 2021	December to May 2022
1.	No. of FGM cases Reported	192	117	92	100
2.	No. of girls rescued from FGM	205	200	37	445
3.	No. of FGM perpetrators arrested	61	37	36	45
4.	No. of ongoing FGM prosecutions	53	34	36	341
5.	No. of girls undergoing ARP		28 970	858	4 004

*Status of the FGM cases pending in court between December 2021–June, 2022*

	County	No. of cases registered	No. of cases finalized	No. of cases pending in court
1.	Wajir	0		0
2.	Bomet	3		3
3.	Samburu	2		2
4.	Narok	14		14
5.	Elgeyo Marakwet	1		1
6.	Kisii	0		0
7.	Meru (Marimanti)	1		1
8.	Kajiado	1		1
9.	Baringo	2		2
10.	West Pokot	15		15
11.	Taita Taveta	4		4
12.	Mandera	0		0
13.	Marsabit	0		0
14.	Isiolo	0		0
15.	Embu	2	1	1
16.	Tharaka Nithi	5	2	3
17.	Samburu	3	1	2
18.	Laikipia	2		2
19.	Nyamira	0		0
20.	Tana River	0		0
21.	Garissa	0		0
22.	Migori	35	20	15
23.	Bungoma	0		0

*Status of the FGM cases pending in court between December 2021–June, 2022*

<i>County</i>	<i>No. of cases registered</i>	<i>No. of cases finalized</i>	<i>No. of cases pending in court</i>
24. Nyeri (Mukurweini)	2		2
<b>Total</b>	<b>91</b>	<b>24</b>	<b>67</b>

**Take concrete steps to eradicate other harmful traditional practices, including wife inheritance, ritual cleansing and child marriage**

*Response*

12. The Children Act was enacted in July 2022. The Act provides increased safeguards for at-risk children and has enhanced county government responsibilities and structures for child protection.

13. The launch of the Care Reform Strategy also took place in 2022, focusing on the promotion of alternative family-based care for children at risk of living in institutions. UNICEF continued to support the County Governments to implement this strategy. For example in Kisumu County 359 children were reintegrated back to families or placed in alternative family-based care. In Nairobi County, 122 children with disabilities and their families have been assessed for reintegration.

14. The Government of Kenya with support from UNICEF developed the National Action Plan to tackle Online Child Sexual and Exploitation Abuse, which is an emerging protection concern. Further, to guide county governments' work on child protection three counties developed model Child Protection policies. As a result, a total of 29,989 girls and boys who have experienced violence were reached by health, social work, or law enforcement services in 2022.

**Take all necessary measures to provide effective remedies to women who were victims of violence, including sexual violence, in the period surrounding the 2017 elections, and to punish such acts of violence**

*Response*

15. The Independent Policing Oversight Authority (IPOA) is a statutory body established by an Act of Parliament No. 35 of 2011 to provide for civilian oversight over the work of the National Police Service.

16. Cases on sexual and gender-based violence are among complaints received and processed by the Authority in the context of police inaction/negligence in the performance of duty while in other instances; the police officers emerge as the sexual offenders.

17. The Authority has recorded a total of one hundred and ninety-five (195) cases in the last five years (2017–2022) and processed the same through different avenues such as referrals, investigations and prosecutions among others.

18. During the reporting period for this present report, three cases were concluded in court as illustrated in the table below:

<i>s/no.</i>	<i>Court File No.</i>	<i>Charges</i>	<i>Accused Person</i>	<i>Court</i>	<i>Findings</i>
1.	SOA 2/2018	Defilement	1 police officer	Gatundu Law Courts	Accused sentenced to 40 years imprisonment in February 2021
2.	SOA 89/2018	Rape	1 police officer	Busia Law Courts	Accused sentenced to 10 years imprisonment on 25th February 2021

<i>s/no.</i>	<i>Court File No.</i>	<i>Charges</i>	<i>Accused Person</i>	<i>Court</i>	<i>Findings</i>
3.	SOA 19/2018	Rape	1 police officer	Milimani Law Courts	Accused sentenced to 15 years imprisonment on 13th May 2022

*Source:* Independent Policing Oversight Authority (IPOA) report.

**Strengthen its institutional and legal frameworks to address domestic violence, including the criminalization of marital rape, targeted measures to protect women from violence during the COVID-19 pandemic and the full and effective implementation of the Protection against Domestic Violence Act (Act No. 2 of 2015)**

*Response*

19. Since Kenya's review in March 2021 the Government through its various agencies has put in place various measures to address sexual and gender based violence including domestic violence. These measures include:

(a) The development of a rapid reference guide on the prosecution of sexual and gender based violence cases. The guide highlights the practical steps towards identifying the offence, its ingredients and the practice of the law to secure justice for victims/ survivors of sexual and gender based violence.

(b) The setting up of an SGBV Court in the Shanzu – along the coast of Kenya. The court has adopted a survivor-centred approach and has specially trained prosecutors and support staff. The setting up of the court is a major step towards aligning the criminal justice system towards a coordinated structure that preserves the dignity of victims and enhances fair trial within the tenets of the Constitution.

(c) The establishment of the National Council on Administration of Justice (NCAJ) committee on the review of the laws on sexual and gender based violence (SGBV). The Committee will run for 3 years and has a mandate to review the Sexual Offences Act and other related laws on SGBV, to review and oversee the implementation of policies, guidelines and rules related to the efficient administration of justice for SGBV, monitor the prevalence of SGBV and effectiveness of the control measures and advice the council amongst other functions.

**Ensure that safe spaces are available to women who have been victims of violence in all parts of the State party's territory, including rural areas; and collect data on minority women subjected to violence in order to effectively target measures to ensure their protection.**

*Response*

20. The Government of Kenya is working closely with non-state actors to ensure that safe spaces are available to all women who have been victims of violence in all parts of the country.

21. At the time of submitting this report, there are three (3) government led safe shelters in Nairobi, Makueni and Bungoma counties. One (1) is under renovation in Kisumu County.

22. There is currently no available data on minority women subjected to violence in Kenya. The existing data captures cases reported on sexual and gender based violence.

23. In the 2022 Kenya Demographic Health Survey (KDHS) report, information was obtained from women and men age 15–49 on their experience of violence committed by any perpetrator, including current and former husbands, wives, or other intimate partners. To capture intimate partner violence, ever-married respondents were asked about experiences of violence committed by their current and former husbands/wives, and, if applicable, never-married respondents were asked about experiences of violence committed by their current and former intimate partners.

24. The findings of the 2022 Kenya Demographic Health Survey were that the percentage of women who experienced physical violence in the 12 months before the survey declined from 20% in 2014 to 16% in 2022. Over the same period, the percentage among men declined slightly from 12% to 10%. Experience of violence among women increases with age; 20% of women age 15–19 have experienced physical violence since age 15, as compared with 42% of women age 45–49. Marital status is linked to experiences of violence among women. Women who have ever been married are much more likely to have experienced violence since age 15 than those who have never been married (41% versus 20%). By county, the percentage of women who have experienced physical violence since age 15 is highest in Bungoma (62%) and lowest in Mandera (9%).

## **Forced evictions**

**Kenya should ensure that all evictions are carried out in accordance with national and international standards, including by:**

**(a) Putting in place a sustainable system of equitable land tenure to prevent forced evictions;**

**(b) When there is no alternative to forced evictions, taking all necessary measures to implement effective protections, including the need for adequate notice and prior and meaningful consultation with and the provision of adequate compensation and/or resettlement of those affected. In that regard, it should effectively implement the Land Laws (Amendment) Act (Act No. 28 of 2016), including the safeguards contained in section 152G;**

**(c) Strictly upholding the moratorium declared during the COVID-19 pandemic and all judicial decisions on evictions;**

**(d) Improving compensation and resettlement among those affected by evictions, including through enacting the Evictions and Resettlement Bill of 2012 into law without delay;**

**(e) Ensuring the investigation, prosecution, conviction and punishment of all individuals who breach the law during evictions**

## *Response*

25. The Constitution of Kenya 2010 has a comprehensive chapter on the Bill of Rights that has significant implications for the right to adequate housing and other economic, social and cultural rights.

26. Sections 152B-152I of the Land Laws Amendment Act, 2016 introduced procedures on how to humanly evict unlawful occupiers from public, private and community lands. The procedure is outlined as follows;

**(a) Eviction of unlawful settlers on public property**

- The process begins with the National Land Commission making a decision to evict the occupant(s) of that property. Having made that decision, all parties affected should be served with an eviction notice of not less than 3 months. The said notices should be in writing published on the Kenya Gazette and in a newspaper of nationwide circulation as well as on radio announcement. It is preferred that the radio announcement be in a local language where the context so requires. The unlawful occupants may be evicted upon expiry of the 3 months' notice.

**(b) Eviction of unlawful settlers on private property**

- The process begins with the property owner or his agent issuing to the unlawful settler(s) an eviction notice of not less than 3 months. All other persons affected should also be served with the eviction notice. Where the settlers are large groups of people, the notices should be placed conspicuously on at least 5 different points on the property, in at least two (2) newspapers of nationwide circulation and be shared by radio announcement. The notices should be in a national language and shared with

the Deputy County Commissioner as well as the Officer Commanding the Police Division of the area.

(c) Eviction of unlawful settlers on community property

- The County Executive Member responsible for land matters makes the decision to evict to be notified in writing to the affected persons. The notice is shared in the Kenya Gazette, in one newspaper of nationwide circulation and by radio announcement. Where the community land is registered, it should be treated, for purposes of eviction, as private property.

27. The Nairobi City County Evictions, Resettlement and Demolitions Control Bill, 2020 seeks to make it illegal to carry out evictions on weekends and during the rainy season. It also proposes that demolitions of unauthorized structures in the capital should be carried out within the regular working hours, between Monday and Friday. If passed, the county government will be required to resettle evictees from public land. The lands executive will be required to prepare a resettlement plan for those affected.

## Participation in public affairs

**Kenya should intensify efforts to provide remedies to all victims of violence in the context of the 2017 elections, including guarantees of non-repetition; and**

**Kenya should also take all necessary steps ahead of the 2022 elections to prevent violence and ensure the effective and independent functioning of the Independent Electoral and Boundaries Commission. In addition, it should adopt all measures necessary to ensure transparency in voting and in vote-counting procedures.**

### *Response*

28. In 2017 the Government enhanced penalties for persons found to have breached the Code of Conduct during the campaign period. The Code was strictly enforced during the 2022 General Election, especially those found culpable of harassing and intimidating female candidates will face severe penalties, including disqualification.

29. The 2022 general elections in Kenya were largely peaceful, with a significant reduction in documented human rights violations and abuses, particularly in electoral-related SGBV, compared to previous electoral period.<sup>1</sup>

30. During the 2022 electoral year, UN Human Rights supported a number of activities to contribute to the smooth running of the electoral process. These included: deployment of human rights monitors across the country; civic education and community dialogue forums to engage youth; integration of sexual and gender-based violence prevention in security sector preparedness; working with women human rights defenders; training of police commanders on human rights-based policing and public order management; and dialogue and exchange between police, the Kenya National Commission on Human Rights and human rights defenders.

31. There was adequate presence of security officers across the country during campaign events and at polling and tallying centres. Security personnel responded to incidents swiftly and in a timely fashion, de-escalating violence and restoring peace where there was unrest.<sup>2</sup> The Government through its National Police Service ensured that there was meticulous deployment of law enforcement officers across the country during the electoral period. Training of security officers on public order management and the responsible use of force and firearms during crowd control was also done.

32. The Independent Elections and Boundaries Commission (IEBC) also engaged the relevant stakeholders to secure credible elections. Government Ministries, Departments and Agencies (MDAs) involved in the elections preparedness for the August 2022 polls came

<sup>1</sup> <https://www.ohchr.org/en/stories/2023/03/partnerships-and-training-helped-prevent-election-violence>.

<sup>2</sup> Kenya National Commission on Human Rights (KNCHR) 2022 election observation report.

together to form the National Multi-Agency Consultative Forum on Election Preparedness. The forum chaired by the Chief Justice provided a platform to share technical knowledge and expertise to guide the realization of credible elections whilst leveraging on the mandates of the respective MDAs.

33. The Judicial Committee on Elections provided a platform for collaboration and provided for preparation of resolution of electoral disputes including dialogue on legislative framework review on Electoral Dispute Resolution and training of Judges, Magistrates and other judicial officers on the electoral process. The Office of the Registrar of Political Parties, (ORPP) together with the IEBC established a joint technical advisory committee to address emerging concerns, in relation to political parties, that have an impact on the election. The Directorate of Criminal Investigations (DCI) seconded investigators to the IEBC under a program that sought to enhance investigation and prosecution of breaches of security and election malpractices during election period. The Office of the Director for Public Prosecution (ODPP) and IEBC had a draft memorandum of understanding to establish a collaborative framework that seeks to efficiently enforce the Election Offences Act.

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