



# 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 2530th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 2 May 2017, at 3 p.m.

*Chair:* Ms. Crickley

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*Combined fifth to seventh periodic reports of Kenya*

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*The meeting was called to order at 3 p.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 (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. **Ms. Njau-Kimani** (Kenya), introducing the combined fifth to seventh periodic reports of Kenya (CERD/C/KEN/5-7), said that her Government wished to affirm the words of the Universal Declaration of Human Rights, namely that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”, and believed that achieving that ideal would require concerted efforts between the international human rights system, United Nations agencies and States. Conversely, the Government considered intolerance and discrimination to debase the dignity of the human person, and regretted that refugees and migrants were still likely to suffer human rights violations as a result of racial discrimination. However, human rights violations could be significantly mitigated if all countries played their part in the implementation of the Convention.
3. Since the submission of Kenya’s latest periodic report in 2015, the Government had taken legislative, policy and administrative actions to give effect to the principles enshrined in the Convention. However, the country still faced obstacles to building a fairer and more peaceful society, while general elections due to be held on 8 August 2017 presented a risk of ethnic and political tensions and a possible upsurge in election-related violence. To tackle that risk, the Government intended to address hate speech and incitement to violence by setting up a unit to monitor social media platforms and identify those who publicly engaged in such activities, with a view to their prosecution. It was also developing guidelines for the review of bulk political text messages before they were sent, and had drawn up plans to work with State and non-State actors to monitor political rallies in the run-up to the elections, including through the deployment of the Uwiano Platform, an early warning mechanism. Cohesion monitors were being trained and equipped with the necessary devices and would be deployed to all counties.
4. Various legislative and affirmative action measures had been taken to mitigate inequalities and socioeconomic marginalization, which posed a threat to peaceful coexistence in Kenya as in other societies. The National Cohesion and Integration Act was being amended in accordance with the Committee’s recommendations so as to expand the definition of the crime of hate speech and align it with article 4 of the Convention, as well as providing for higher penalties. The amendment was currently before the National Assembly at the second reading. The Community Land Act, 2016 prohibited all forms of discrimination with regard to community land, allowing communities to secure formal legal recognition of their land rights, while the Land Laws (Amendment) Act, 2016 sought to address historical land injustices by providing remedies of restitution and compensation for successful claimants. In addition, the Mining Act, 2016 provided for the sharing of benefits between the national government, county governments and local communities while ensuring that mineral exploration did not result in the marginalization or impoverishment of the communities that owned or occupied the land. The Community Land Act, the Land Laws (Amendment) Act and the Mining Act all included provisions designed to protect indigenous communities. An Equalization Fund had been established, with an allocated budget of approximately US\$ 74.7 million for the 2017/18 financial year, to bring basic services in marginalized areas up to the levels enjoyed in the rest of the country. In tandem with those efforts, the Government was promoting devolution as a balanced social and economic development strategy that aimed to boost public participation in decision-making and the equitable distribution of resources. The National Employment Authority Act, 2016 provided a legal framework for the State to take affirmative measures to ensure access to employment and economic empowerment among youth and marginalized groups, while the Diversity Policy for the Public Service included strategies to ensure that public service staffing and recruitment reflected the diversity of Kenyan communities. A restorative

justice fund had been set up in 2016 to afford relief for victims and survivors of historical injustices, with a budget of approximately US\$ 10 million. The National Gender and Equality Commission audited and monitored affirmative action undertaken by devolved governments on the access of women, persons with disabilities, ethnic and other minorities and marginalized communities to employment, education, health and information. Housing and slum upgrading policies, adopted in 2014 and 2015 respectively, sought to address the interests of vulnerable groups and were being implemented through the Kenya Slum Upgrading Programme and the Kenya Informal Settlements Improvement Project.

5. Over the years, the State had developed various strategies to address extreme poverty and to support historically disadvantaged groups and regions. Medium-term plans had been adopted under the Vision 2030 national development blueprint, together with several national poverty eradication measures. To enhance social protection for the most vulnerable, the Government had earmarked US\$ 2.4 billion for the National Safety Net Programme, which included the older persons cash transfer, the cash transfers to orphans and vulnerable children, the persons with severe disability cash transfer, the hunger safety net programme and the urban food subsidy cash transfer. The Government also planned to invest US\$ 15 million to boost agriculture, which was the main livelihood of many communities, and intervened to subsidize the cost of agriculture inputs such as fertilizers.

6. Several measures had been taken to improve access to education, which played a key role in providing access to opportunity. The Policy Framework for Nomadic Education was being implemented through the construction of boarding secondary schools in arid and semi-arid counties, the establishment of mobile schools and school feeding programmes for children in nomadic communities and support for distance learning facilities. Other measures included recruiting more teachers, readmitting boys and girls who had dropped out of school, setting up a food voucher system in five of the poorest counties and increasing the overall education budget.

7. Since institutional, cultural and structural factors had long prevented Kenyan women from accessing economic resources and other opportunities, affirmative action designed to empower women had been taken through the Uwezo Fund and the Women Enterprise Fund, while new laws guaranteed the property and inheritance rights of women and girls. Efforts to increase the number of women holding elected office had suffered a setback in 2016 when the National Assembly had failed to adopt a constitutional amendment bill that would have ensured that no gender occupied more than two thirds of parliamentary seats. However, the High Court had directed Parliament to enact legislation within 60 days to implement the two-thirds gender rule and the President had challenged lawmakers to approve the legislation. To encourage more women and persons with disabilities to stand at the 2017 election, a checklist had been developed to ensure that party nominations represented marginalized communities, persons with disabilities, young people and women. The Office of the Registrar of Political Parties had conducted training and capacity-building to enhance the appreciation of women's role in governance among political party leaders.

8. Significant steps had been taken under the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 to resettle all profiled persons displaced by the 2007 post-election violence and forest evictions. The Government had resettled all 19,000 internally displaced persons who had been living in camps, and was in the process of auditing integrated internally displaced persons in different parts of the country.

9. The Government affirmed its commitment to ending all forms of discrimination and to building a society in which gender, status and ethnicity were non-issues. However, those goals could not be achieved in isolation and required the continued assistance of development partners such as the United Nations Development Programme and the United Nations Children's Fund in training and capacity-building. In that context, the Government hoped to maintain and intensify its dialogue with the United Nations as it sought further support in its implementation of the Convention.

10. **Mr. Marugán** (Country Rapporteur) said that, according to the common core document (HRI/CORE/KEN/2011), people of African descent constituted about 90 per cent of the Kenyan population, divided into 42 ethnic groups that belonged to three linguistic

families: Bantu, Cushitic and Nilot. In its previous concluding observations (CERD/C/KEN/CO/1-4), the Committee had welcomed the adoption of the 2010 Constitution, which contained a broad catalogue of human rights that laid the foundation for the promotion of an inclusive, multi-ethnic Kenyan society, addressing inequalities and eliminating discrimination. Noteworthy developments since then included the adoption of the National Employment Authority Act, 2016, the Vision 2030 blueprint and the Legal Aid Act, also of 2016. The establishment of the Equalization Fund and the increase in the national education budget to approximately US\$ 2 billion also suggested that the Government and civil society were striving to address the many challenges that lay ahead.

11. Noting that the State party had reported that it was in the process of deciding whether or not to recognize the Committee's competence to receive and consider communications from Kenyan citizens, he wished to learn whether that decision had been made. Moreover, he believed that the definition of discrimination used in the Constitution and the National Cohesion and Integration Act was not aligned with article 1 of the Convention, and would be grateful if the delegation could comment on whether that was the case. Did the Government plan to bring the definition into line with article 1?

12. In its previous concluding observations, while noting that racial discrimination was outlawed in the State party and that the Convention formed part of its law, the Committee had regretted the absence of information on sanctions for actions of racial discrimination. While paragraph 63 of the report stated that the National Cohesion and Integration Commission had investigated 680 complaints, as at June 2013, on issues including ethnic, racial and religious discrimination and hate speech, he considered that more details should be provided in relation to sentences and convictions, compensation for victims and the type and number of cases that were dealt with through administrative sanctions or that were referred to the Director of Public Prosecutions and to the courts. In particular, the Committee required a better explanation of the procedure that the State party was following, and would appreciate information on whether the hate speech complaints mentioned in the report had resulted in prosecutions, convictions or administrative sanctions. Did any of the complaints relate to discrimination in areas such as education and housing?

13. Further information should also be provided in relation to the budget and staff available to the National Cohesion and Integration Commission and its level of independence from the Government, and recent trends and developments in that regard. The Committee would welcome clarification as to the workings of the Integrated Public Complaints Referral Mechanism.

14. The report had mentioned that Vision 2030 identified lack of access to justice as having a direct link to poverty and recognized the need for access to justice as a pillar for economic development and poverty reduction. Accordingly, the Committee would like to know more about the Legal Aid Act, its implementation and how it protected the victims of racial discrimination. In light of reports that some victims of racial discrimination in Kenya were afraid to turn to the courts, the delegation should describe the problems that they faced and outline any measures that the State party was taking to assist them.

15. In its concluding observations of 2011, the Committee had voiced the concern that the State party's legislation did not cover all punishable offences as prescribed by article 4 of the Convention. The delegation should therefore outline how it planned to bring its legislation into line with article 4.

16. He had been interested to learn that under the Media Act, 2007, the Media Council of Kenya and the Complaints Commission had been established so that persons aggrieved by media organizations might claim redress. How did that mechanism work and how many complaints had the Commission received?

17. In light of the information that the Kenya National Commission on Human Rights had received 27 complaints on labour discrimination, he wished to know how many of those complaints referred to ethnic or racial discrimination. Details should also be provided regarding any affirmative action measures that might be implemented under the National Employment Authority Act, and how such measures worked in practice. The State party should also clarify whether it had ratified the International Labour Organization (ILO)

Domestic Workers Convention, 2011 (No. 189), with a view to combating the trafficking of migrant workers overseas.

18. The Committee wished to express its gratitude for the efforts of the Government and local communities in Kenya in hosting a large number of asylum seekers and refugees for more than 25 years. As of March 2017, the country was home to approximately 440,000 refugees and 43,000 asylum seekers, mostly Somalis but also nationals of South Sudan, the Democratic Republic of the Congo, the Sudan and Ethiopia. In that regard, the Committee would be grateful for more information about the High Court's decision to block the Government's plan to close the Dadaab camp and to declare the plan unconstitutional. Information should also be provided on the number of individuals who had been returned to Somalia, and any plans that might have been developed to provide alternatives to camps that could offer lasting solutions.

19. Concerning reports that border communities and minorities such as the Nubians and the Makonde continued to face challenges in accessing identity documents, the Committee acknowledged the State party's positive actions in recognizing the Makonde community and issuing them with identity documents. However, it called for such recognition to be extended to other groups, some of whom were required to undergo burdensome and discriminatory vetting processes. Given that the High Court and the African Committee of Experts on the Rights and Welfare of the Child required Kenya to end such discriminatory practices, the delegation should describe steps taken to improve access to identity cards and to address the situation of stateless persons.

20. Lastly, he invited the delegation to comment on reports from civil society organizations that their dialogue with the Government was not always productive. Information should also be provided regarding the current situation and recent trends in the funding of civil society.

21. **Ms. McDougall** (Country Rapporteur) said that Kenya should be commended for its leading role in the negotiation of the Sustainable Development Goals. However, she did not believe that the report depicted the reality of discrimination on ethnic grounds within Kenyan society and noted that the report of the Kenya National Commission on Human Rights had stated that such discrimination was "rampant" and that "Social ills like tribalism, nepotism, social discrimination and inequitable distribution of resources are part and parcel of Kenyan life". Consequently, the State party should provide the Committee with an overview of the racial and ethnic composition of Kenyan society, including information on which groups found themselves in the poorest 50 per cent of the income distribution, and should describe how it planned to use affirmative action to lift the bottom percentile to the point of equality in accordance with the requirements of Sustainable Development Goal 10.

22. While the Vision 2030 framework was laudable, she believed that the Committee's focus should be on outcomes, rather than plans and policies. In that context, she wished to learn what special measures had been taken to address inequalities in access to public services and to reduce inequalities between ethnic groups in access to education, housing, health care and other areas of public life. The constitutional recognition of different forms of landownership was a welcome development, but she wished to know how the State party intended to rectify situations in which pastoralists and indigenous peoples had been deprived of their land rights and in some cases forcibly evicted, while large swathes of land belonged to foreigners. Regretting that the Committee had still not received an update on the outcomes of work undertaken by the National Land Commission task force and of proposals to address historical land injustices, she asked when those efforts would yield results and when the Government would embark on a programme of land redistribution. In the light of troubling reports of inter-ethnic violence and disputes over land rights, the displacement of communities for the benefit of corporations and extractive industries, and the disproportionate ownership of land by cartels and politicians, the Committee would be grateful for disaggregated data on landownership by ethnic group, in order to better understand the situation. In that regard, she wished to remind the State party of the Committee's recommendation that it take measures without delay to operationalize the machinery and mechanisms for addressing land problems fairly, taking into account the historical contexts of landownership and acquisition.

23. While the State party's report suggested that internally displaced persons affected by the 2007 election violence had returned to their land or had received compensation, the report of the Kenya National Commission on Human Rights claimed that some individuals had received inadequate or no compensation and that many were still afraid to return home. Consequently, clarification should be provided on whether the camps housing internally displaced persons had been closed and whether the provisions of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act had been applied. Given that some internally displaced persons had alleged that compensation had been distributed unfairly, with certain ethnicities or regions receiving more than others, the State party should give a breakdown of its reparation funding by geographical region and the ethnicity of recipients, in order to establish the facts and dispel any perceptions of bias that might have arisen.

24. Considering the alarming number of urban poor living in slums without adequate housing and sanitation, as well as their lack of access to health care and education services, the Committee asked the delegation to respond to the concern that progress under the Kenya Slum Upgrading Programme had been very slow, and to explain why that had been the case. The Committee would appreciate a demographic breakdown of the slum-dwelling population, including by ethnicity, and an explanation of why they believed that they were being treated unfairly on the grounds of their ethnicity. Noting that the Nairobi Informal Settlements Coordination Committee had proposed that legal recognition be granted to informal settlements as early as 1997, she wished to understand why the State did not take steps to grant immediate tenure and facilitate access to water and sanitation. She did not believe that budget allocation figures provided sufficient evidence of progress on the ground, and therefore the State party should describe concrete outputs and provide disaggregated data on the population groups that had benefited from government expenditure.

25. **Mr. Calí Tzay** (Country Rapporteur), recalling that paragraph 10 of the annex to the report stated that 8,754 households had been resettled on Government-procured land, said that that statement raised the question of what had happened to the ancestral lands formerly occupied by displaced populations. Furthermore, he wished to understand what was meant by the phrase "deserving IDPs", namely what requirements internally displaced persons had to meet in order to be regarded as "deserving" of resettlement. He would also appreciate clarification of new developments concerning reparation for the Endorois and Ogiek communities, who had been the victims of forced eviction, and indication of the outcomes of the work undertaken by the Task Force on the Implementation of the Decision of the African Commission on Human and Peoples' Rights. Recalling that in 2013 and 2014 the Committee had sent letters to the State party about the situation of the indigenous Sengwer people, and in light of recent reports that the Kenya Forest Service continued to forcibly evict that community from its ancestral lands — as well as burning homes, crops and possessions — he requested that the State party provide updated information on the situation of the Sengwer. Conversely, the Committee welcomed the court ruling of 2014 that identified the Ogiek people of the Mau forest as an indigenous minority, in accordance with the definition contained in the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), and wished to learn whether the Kenyan courts used the terminology and legal provisions contained in that Convention. Would the State party consider adopting ILO Convention No. 169 in recognition of its potential to resolve the problems facing indigenous peoples?

26. Taking note of the State party's assertion that poverty presented an impediment to access to justice, the Committee reiterated its request that the State party make justice accessible to indigenous peoples. In that context, it was worrying that individuals who had been forcibly evicted had reported that they did not trust the police or the army, which had often been responsible for violating their rights. In his view, the Government should take steps to build trust in the security services and instil in them the obligation of protecting citizens, which in turn would encourage the victims of forced eviction to seek redress in the courts.

27. Notwithstanding the delegation's encouraging description of efforts to overcome the injustices facing women in Kenya, it should not be forgotten that poor indigenous women

faced multiple discrimination, perpetuated both by the State and by their own cultures, which prevented them from realizing their rights. Furthermore, the Committee had received a troubling report that in 2016, members of the Ogiek community had agreed to participate in a commission to definitively resolve the land issue but had subsequently been tricked into leaving their ancestral land — which had been occupied by non-indigenous settlers — and had been prevented from returning. The Committee would therefore welcome a comment from the delegation in response to its concern that fraudulent methods were being used to relocate the Ogiek people. The State party should also explain the reasons for the disparity in the laws governing land tenure, whereby indigenous persons were entitled to the private ownership of up to 5,000 hectares, whereas non-indigenous persons might own 100,000 hectares. Lastly, he wished to learn how many indigenous peoples were officially recognized by the Government of Kenya.

*The meeting was suspended at 4.10 p.m. and resumed at 4.25 p.m.*

28. **Mr. Kut** said that, in its previous concluding observations, the Committee had requested the State party to provide information on its follow-up to the recommendations contained in paragraphs 13, 17 and 19, concerning a number of issues. Regrettably, that information had not been received. Accordingly, he wished to remind the delegation that the follow-up report was not only useful to the Committee, but provided the State party with an opportunity to show improvement through prompt action in certain areas. The Committee expected the next follow-up report within one year of its review.

29. **Mr. Avtonomov** said he believed that the question of the Nubians merited special attention, since that community had not always dwelt in Kenya, but had been relocated from Egypt and the Sudan by the British colonial administration. Considering that 100,000 ethnic Nubians still lived in Kenya and that many members of that community were stateless, he asked whether the Government would take steps to resolve their status through a mechanism to integrate them into society, such as by awarding them citizenship rights and title deeds to the communal land that they occupied. He also considered that the Ogiek people required special protection.

30. While the adoption of the Community Land Act, 2016 was an important milestone, clarification was required concerning the status of community lands, not least in view of the ambiguity of section 13 (2), which stated that “Any land which has been used communally, for public purpose, before the commencement of this Act shall upon commencement of this Act be deemed to be public land vested in the national or county government, according to the use it was put for.” Was the land in question owned by the community, or was it public land? The Committee would also appreciate information concerning the decision reached in the case of *Joseph Letuya v. Attorney General*, in relation to whether it permitted the ownership of community land by the Ogiek people.

31. **Mr. Yeung Sik Yuen** said that Kenya was to be commended on its impressive institutional framework and the specificity of the mandates of its numerous commissions. However, he could not help but notice the large number of bills that had yet to be passed, such as the Health Bill and the Reproductive Healthcare Bill. He asked when the Legal Aid Bill, 2013 would finally be approved by Cabinet, particularly as the National Legal Aid and Awareness Programme could only be rolled out in all counties once the Bill had been enacted. The delegation might also shed more light on the provisions of the Bill. He further wished to know whether the conditions for granting legal aid were the same in both civil and criminal proceedings; whether there was an annual budget for the provision of legal aid; whether lawyers appointed to provide legal aid were attached to a private law practice; what they earned; and which body was responsible for coordinating the provision of legal aid.

32. He had been pleased to learn that the amended version of the National Cohesion and Integration Commission Act, which included a broader definition of the crime of hate speech in keeping with article 4 of the Convention, was currently before the National Assembly. It would be useful to know whether the Cyber Crime and Computer Related Crimes Bill, which would criminalize specific offences related to hate speech, particularly on social media platforms, had been enacted. Noting that the Kenya Law Reform

Commission was in the process of reviewing the Penal Code to bring it into line with the Constitution, he asked how long the exercise was expected to take.

33. He had been surprised to learn that, in 2015, the High Court had found the Constituencies Development Fund, which had been established in 2003 to channel resources to constituencies for development purposes, to be unlawful. It would be useful to learn more about the reasons behind the High Court's decision. He would also be glad to receive statistical data on the number of persons prosecuted for hate speech and/or incitement to hatred and on the penalties meted out to them. He found it regrettable that the poorer segments of Kenyan society often struggled to find affordable housing and that a not insignificant proportion of the population lived in informal settlements. The delegation might explain how that situation had come about and describe the nature of those informal settlements. Noting that the Kenya Vision 2030 included a project to build 200,000 housing units per year under public-private partnerships, he asked when the construction of those housing units would begin.

34. Lastly, the delegation might clarify whether same-sex marriages were recognized in Kenya in the light of the reference to a case in which the High Court had decided that property could devolve to a widow in a marriage between two women (CERD/C/KEN/5-7, para. 91).

35. **Ms. Dah** said the fact that the Kenya National Commission on Human Rights, which was the country's national human rights institution, was present at the interactive dialogue with the Committee meant that it had been granted "A" status by the Global Alliance of National Human Rights Institutions and possessed the necessary human and financial resources to carry out its mandate. Although the State party had submitted a report of a very high standard, it had fallen behind in its reporting obligations and should not allow the interval between the submission of its reports to grow further. It was regrettable that the State party had failed to submit a follow-up report detailing the progress that it had made in carrying out the recommendations contained in the Committee's previous concluding observations (CERD/C/KEN/CO/1-4) before submitting its next periodic report. She hoped that the State party would comply with that reporting obligation in the future.

36. Kenya was to be congratulated on having adopted numerous laws and amended the Constitution in an effort to prevent the recurrence of a crisis similar to that which had followed the general elections in 2007. However, those laws and amendments would remain a dead letter if they were not effectively implemented. Indeed, the State party's report contained only scant information on how those laws were enforced and how the programmes mentioned therein were actually carried out. She would be interested to know whether the National Cohesion and Integration Commission was a permanent structure or whether it was convened only in time of elections. Regardless, the Commission could be held up as an example to other countries in the region. She asked whether a law specifically prohibiting racial discrimination had been adopted in the wake of the election crisis in 2007 and, if so, how it was enforced.

37. While it was true that the Convention provided for the adoption of special measures for the purpose of securing the advancement of certain racial or ethnic groups or individuals and guaranteeing such groups or individuals equal enjoyment of human rights and fundamental freedoms, States parties should use the Committee's general recommendation No. 32 on the meaning and scope of special measures in the Convention (CERD/C/GC/32) as a guide for their application. Noting that the State party had taken special measures in favour of women, she asked what those special measures entailed, whether they applied to women living in marginalized communities and whether all women could benefit from them on an equal footing. Moreover, she would like to hear more about the State party's approach to tackling the multiple discrimination to which indigenous and other marginalized women were often subjected. It would also be helpful to know of any obstacles preventing children from marginalized communities from accessing the national education system.

38. Despite the existence of many laws and regulations on landownership and development, the way in which they were applied was not altogether clear. She asked whether the State party had returned land appropriated during the colonial period to its

rightful owners, be they individuals or communities, and whether it intended to provide indigenous communities with land titles as proof of ownership of their ancestral lands. Given that a number of leases which dated back to the colonial period would soon be coming to an end, she wished to know whether the State party had considered undertaking a programme of agrarian reform with a view to redistributing arable land more equitably.

39. It was a shame that one of the most beautiful capitals in Africa, which was also a popular tourist destination, was disfigured by the presence of slums. She asked how the State party planned to remedy that situation.

40. **Mr. Murillo Martínez** said that it would be useful to learn more about how the State party had addressed the inequality and structural discrimination that had characterized the colonial era, particularly in terms of landownership and land distribution. It was his impression that the country's colonial legacy had not been dealt with in its entirety.

41. As only scant information was available on the situation of persons with albinism in Kenya, he would like to know whether they were considered to form a vulnerable group, whether they were targets of discrimination and, if so, what measures the State party had taken to protect them. He also wished to know how the State party went about guaranteeing the equal participation of the country's different ethnic groups in the political, economic and social life of the country and how it kept ethnic rivalries in check. The delegation might also indicate whether any affirmative action had been taken to restore *de facto* equality between traditionally disadvantaged ethnic groups and the majority population and, if so, what it had entailed. He asked how the State party ensured that vulnerable groups had access to special development funds and cash transfer programmes on an equal footing without ethnic origin coming into play. It would also be helpful to know how long applicants for legal residency in Kenya were required to have lived in the country without interruption in order to qualify.

42. The State party had made considerable efforts to combat the phenomenon of human trafficking and, in that connection, had signed protocols and agreements with other States in an effort to protect vulnerable persons from exploitation. However, the Committee had received reports that female domestic workers were frequently subjected to abuse, albeit outside Kenya. He asked what the State party was doing to assist those women and to prevent other women from suffering the same fate. Noting that the State party had recently declared an amnesty under which individuals who had joined terrorist groups could avoid prosecution if they surrendered to the authorities, he asked in what exact circumstances those individuals could avoid prosecution and how many had availed themselves of the amnesty to date.

43. He had been surprised to learn that Kenyan citizens living abroad were not entitled to vote in national elections. He asked whether the State party had considered taking measures to enable the Kenya diaspora to exercise their right to vote.

44. **Mr. Kemal** said that the State party was to be commended on the efforts that it had made to act upon the recommendations contained in the Committee's previous concluding observations. Positive developments included the enactment of the Prohibition of Female Genital Mutilation Act and the Kenya Citizenship and Immigration Act; the implementation of judicial reforms; the establishment of the Supreme Court; and the creation of the National Gender and Equality Commission. However, the definition of racial discrimination set out in the Constitution was still not fully in line with that contained in article 1 of the Convention and should be updated. Furthermore, the Committee had been informed by alternative sources that the State party's report did not fully capture the rampant discrimination on the basis of ethnic origin that pervaded Kenyan society, taking the form of, *inter alia*, tribalism, nepotism and the inequitable distribution of resources. In addition, racist hate speech and derogatory remarks about other tribes and communities were common features of Kenyan political discourse, especially in the run-up to national elections. Alarmingly, it appeared that politicians who engaged in such activities enjoyed immunity from prosecution. The State party should strip those politicians of their immunity with immediate effect and see to it that they were brought to justice for their crimes. It should also consider updating the legal definition of hate speech to cover incitement to hatred on the grounds of religion, sex, sexual orientation and disability, and take steps to

ensure that the legislation prohibiting hate speech was adequately and universally enforced and applied. In that connection, he drew the delegation's attention to the Committee's general recommendation No. 35 on combating racist hate speech (CERD/C/GC/35).

45. Given the extreme vulnerability of refugees and asylum seekers, the State party had a duty to secure their camps and to protect them from the violence reportedly meted out by law enforcement officers. The State party should also see to it that victims of violence received adequate compensation. There was a growing tendency for States that were engaged in the war against terror to impose blanket measures which could unintentionally discriminate against vulnerable groups, such as refugees. He asked whether the State party had given any thought to how it might pre-empt the discriminatory effects of such measures.

46. **Mr. Bossuyt** said that the State party was to be congratulated on its affirmative action initiatives and on its efforts to define the notion of marginalized communities and to give greater recognition to the country's different ethnic groups. However, he found it regrettable that only 18 of the country's 47 counties had complied with the requirement laid down in the County Governments Act for County Public Service Boards to fill at least 30 per cent of vacant entry-level posts with candidates from ethnic groups other than the dominant one in the county concerned. He asked what action the State party intended to take to enforce compliance with that requirement in all counties. Moreover, he understood that police recruitment procedures did not comply with constitutional requirements. He asked why that was the case and how that issue might be resolved. It would be useful to hear more about the formula for equitable revenue distribution referred to in paragraph 36 of the State party's report.

47. He had been dismayed to learn that a number of ethnic groups were still being driven out of certain areas of the country by force and wished to know whether the Kenyan authorities or other ethnic groups were responsible for their forcible removal. Notwithstanding the fact that the Constitution guaranteed every person the right to accessible and adequate housing and that the Kenyan courts had unequivocally recognized the justiciability of economic and social rights, he still had doubts about whether, in practice, economic and social rights were recognized and adjudicated on an equal footing with civil and political rights in the State party. For instance, was it possible for a person of no fixed abode to apply to a judge in order to obtain housing?

48. Ms. Shepherd said that Kenya was to be commended on the progress achieved in making the transition from a colonial to a free and independent country in such a short space of time. However, information in the Committee's possession suggested that Kenyan society still retained some of the vestiges of colonialism, as confirmed by the continued prevalence of racial discrimination and social inequality. The State party should take care to distinguish between the challenges that were common to nearly all post-colonial countries and the challenges that had arisen following its independence as it worked to restore equity and equality to Kenyan society. She asked what specific historical injustices the State party intended to remedy and whether they coincided with those for which various ethnic groups had already sought redress.

49. Noting that the literacy rate among indigenous groups tended to be quite high in Kenya, she said that it would be useful to know the national literacy rate for the purposes of comparison. Recalling that education was an essential prerequisite for upward social mobility in post-colonial societies, she asked what steps were being taken to guarantee children from marginalized communities equal access to primary and secondary education. She also wished to know how the issue of national identity in a post-colonial society was dealt with in the national curriculum and what was being done to encourage respect for traditional African beliefs, which were often derided in Kenya.

50. **Mr. Lindgren Alves** said that the negative impact of globalization on marginalized groups, whose land was often appropriated and given to international companies, should not be forgotten and that the State party had a duty to address their plight. It was his impression that the tone of the State party's current report differed from that of its previous one (CERD/C/KEN/1-4), which had been rather defensive. He welcomed the new openness with which the State party acknowledged its shortcomings and commended it on the many measures that it had taken to promote social integration and national cohesion, including

various affirmative action initiatives. He too found it regrettable that only 18 of the country's 47 counties had complied with the requirement to fill at least 30 per cent of vacant entry-level posts in public services with candidates from ethnic groups other than the dominant one in the county concerned. He asked whether the State party had considered taking steps to enforce compliance with that requirement in all counties. He would also like to know whether the formula for equitable revenue distribution referred to in paragraph 36 of the State party's report, which ensured that the poorest and most marginal counties received the most resources every year, was consistently applied.

51. Turning to the subject of the Media Guidelines on Hate Speech, he asked whether they were strictly enforced and whether compliance with them was monitored, especially in view of the upcoming national elections. He also wished to know whether the penalties for human trafficking prescribed by the Counter-Trafficking in Persons Act, which included a prison term of 30 years, were imposed as a matter of course. Noting that, in an effort to counter terrorism, the State party had recently declared an amnesty under which individuals who had joined terrorist groups could avoid prosecution if they surrendered to the authorities, he asked whether that initiative had proved to be successful and how many individuals had availed themselves of the amnesty to date.

52. **Mr. Khalaf** said it was evident that there was no lack of will on the part of the State party to combat racial discrimination, rather it sometimes struggled to translate its good intentions into reality. Noting that the National Policy and Action Plan on Human Rights had been awaiting parliamentary approval since 2013, he asked what was behind the current deadlock and when the Action Plan might finally be approved. While he understood that a number of constitutional commissions had been set up to deal with key governance themes, such as human rights, at the national level, he would be interested to know how human rights responsibilities, including the implementation of the various policies and plans adopted, were apportioned among the 47 devolved governments operating at the county level and whether a separate legal framework had been devised to regulate measures taken by the county authorities.

53. Although the incident bore no comparison to the post-election violence that had ravaged the country following the 2007 general elections, it was nonetheless regrettable that the recent primary elections had culminated in a violent death. He would appreciate more information on the comprehensive strategy adopted to counter hate speech and incitement to violence in time of elections and on the State party's approach to implementing it. He would be particularly interested to know what specific action had been taken in response to the aforementioned incident.

54. Turning to the phenomenon of internal displacement, he recalled that, in its core document (HRI/CORE/KEN/2011), the State party had explained that the phenomenon of internal displacement was driven by five key factors: politically influenced violence; natural disasters; inter-clan conflicts; social tensions; and climate change. However, the Committee had received reports that members of certain ethnic groups were often forcibly displaced for political reasons. He would be grateful if the delegation could comment on the veracity of those reports.

55. Furthermore, the Committee had been informed that rape victims and indigenous communities whose land rights were under threat seldom asserted their rights and sought redress before the courts as they were frightened at the prospect of having to approach the police to file a complaint. He asked how the State party planned to address the climate of fear that seemed to prevent vulnerable persons from accessing justice.

56. **Ms. Hohoueto** said it was disappointing that the State party's delegation did not reflect its multi-ethnic and multicultural society. She welcomed the introduction of a package of far-reaching judicial reforms intended to, *inter alia*, improve the prison system, facilitate the social reintegration of ex-prisoners and enhance the training provided to members of the judiciary and the police. While the positive effects of such reforms would not be immediately visible, she trusted that they would be conducive to the fight against racial discrimination in Kenya. She would appreciate an update on the status of the Victims of Offences Bill, which was intended to give effect to section 50 (9) of the Constitution on the protection, rights and welfare of victims of offences. She also wished to know why the

female members of the National Assembly were only authorized to represent one of the State party's 47 counties and not another type of constituency.

57. She asked why, out of the 47 cases of human trafficking detected in 2013, only 30 had been prosecuted and 7 traffickers had been convicted under the Counter-Trafficking in Persons Act. It would also be useful to know whether the trafficking victims identified belonged to a particular ethnic group. On the subject of the right to marriage, she noted that article 45 of the Constitution guaranteed every adult the right to marry, based on the free consent of the parties, and provided that a couple had equal rights. That seemed to be at variance with the Marriage Act, which legislated for civil and Christian, customary, Hindu or Islamic marriages, in which a man and a woman were not always considered equal. She asked whether the legal protection available to divorced women was the same, irrespective of the type of marriage into which they had entered.

58. **Ms. Mohamed** asked whether, in Kenya, slum dwellers tended to belong to one ethnic group in particular and whether all ethnic groups, regardless of size, were equitably represented in the country's political parties, elected bodies and public services. The delegation might also indicate whether there was a specific policy for dealing with inequalities between the country's different ethnic groups.

59. **Mr. Marugán** said that he welcomed the importance attached by the State party to combating hate speech and incitement to violence, especially in time of elections, and the raft of practical measures that it had taken to forestall ethnic and political tension, such as the establishment of a unit to monitor social media platforms and the deployment of 225 cohesion monitors.

60. He asked what steps the State party had taken to act upon the recommendation contained in the Committee's previous concluding observations calling upon it to review judicial procedures to speed up the processing of cases of racial discrimination in the courts, including through the reinforcement of the role of public prosecutors and members of the prosecution service in the initiation of judicial proceedings for racist acts. How many sets of judicial proceedings had been initiated by public prosecutors to date? Was it a prerequisite for victims of racial discrimination to file a complaint in order for a public prosecutor to initiate judicial proceedings on their behalf?

61. Recalling that the Committee had also commended the State party on its efforts to alleviate the humanitarian catastrophe at the Dadaab camp and had encouraged it to invite the international community to fulfil its responsibility towards refugees under the principle of burden-sharing, he asked what assistance Kenya had received from the international community to date. The Committee had received reports that counter-terrorism initiatives to combat Al-Shabaab which targeted persons of Somali origin had resulted in serious human rights violations. The delegation might comment on the veracity of those allegations of racial profiling. He asked what steps the State party had taken to give effect to the High Court rulings upholding the right of refugees to freedom of movement within the national territory.

62. **Ms. McDougall** said that she understood the report prepared by the Ndungu Land Commission to provide a detailed account of the injustices stemming from the unlawful allocation of public land to private individuals and corporate entities and to have essentially laid the groundwork for follow-up action, thus obviating the need for the Land Commission to do likewise. Noting that individuals and communities who had been victims of historical land injustices could file a claim for restitution under the recently adopted Land Laws (Amendment) Act, she asked why the time limit for filing such claims had been set at only five years, what the procedure of filing such a claim entailed, whether claimants needed to seek legal counsel and whether any campaigns had been launched to inform potential claimants of the time limit set. Lastly, she requested clarification on whether, in Kenya, performing the registration of non-citizens was synonymous with granting them citizenship or whether registration was simply the first step on the road to citizenship.

*The meeting rose at 5.55 p.m.*