



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

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**Committee on the Elimination of Racial Discrimination**

**Combined eighth and ninth periodic reports  
submitted by Kenya under article 9 of the  
Convention, due in 2020\***

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



## List of Acronyms and Abbreviations

ABMT	Appropriate Building Materials Technology
ADR	Alternative Dispute Resolution
AGPO	Access to Government Procurement Opportunities
AMISOM	African Union Mission in Somalia
CSO	Civil Society Organizations
CAM	Court Annexed Mediation
CERD	Committee on Elimination of Racial Discrimination
eKLR	Electronic Kenya Law Report
EITWG	Equality and Inclusion Technical Working Groups
GOK	Government of Kenya
ICERD	International Convention on Elimination of all forms of Racial Discrimination
ILO	International Labor Organization
IPPF	Indigenous Peoples Planning frameworks
KENSUP	Kenya Slum Upgrading Programme
KDHS	Kenya Demographic Health Survey
KNCHR	Kenya National Commission on Human Rights
NCIC	National Cohesion and Integration Commission
NHIF	National Hospital Insurance Fund
NGEC	National Gender & Equality Commission
NLC	National Land Commission
SDG	Sustainable Development Goals
SGR	Standard Gauge Railway
TB	Tuberculosis
TVET	Technical & Vocational Education and Training
UHC	Universal Health Coverage
WHO	World Health Organization

## **I. Introduction**

1. The Government of Kenya (GoK) has the honour and pleasure to submit to the Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) her 8th and 9th Combined Periodic Report under the Convention, covering the period 2016–2021.
2. The Office of the Attorney General and Department of Justice held several consultative workshops with line Government Ministries, Departments and Agencies, National Human Rights Institutions, the National Cohesion and Integration Commission (NCIC) and Civil Society Organizations to prepare this report.
3. In particular, the report outlines the Government of Kenya's replies to the Committee's Concluding Observations (CERD/C/KEN/CO/5-7) of 8th June 2017. The Report also provides information on the implementation of Article 5 and 7 of the Convention.
4. This report was due by 13th October 2020, however, the GoK encountered difficulties in collecting and collating the required information in time due to containment measures taken to address the COVID-19 pandemic.

## **II. Replies to the Committee's Concluding Observations**

### **A. Definition of Racial Discrimination and Application of the Convention**

5. The Government of Kenya (GOK) notes the Committee's recommendation that the definition of ethnic discrimination contained in the National Cohesion and Integration Act should be aligned to Article 1 (1) of the Convention. Kenya has very strong constitutional and legal frameworks that prohibit discrimination based on several grounds that are well aligned to the country's contextual and historical perspectives. The Constitution bars the State or anyone from discriminating against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. The National Cohesion and Integration Act prohibits both direct and indirect discrimination on ethnic grounds. The term "ethnic ground" in the Act is construed to mean any of the following grounds: colour, race, religion, nationality or ethnic or national origins.
6. The GOK submits that the prohibition of discrimination outlined in the Constitution and national legislation is sufficient to address Kenya's current circumstances. It is important that even as State parties seek to implement measures to give effect to the Convention, they are conscious of the national circumstances and lived realities of their people. There are several incidences of discrimination based on race. However, the majority of cases unearthed relate to discrimination based on ethnic, (including hate speech), gender, minority, marginalisation, disability, economic, and social angles as opposed to race. These factors contribute heavily to the nullifying of the enjoyment of human rights and fundamental freedoms for persons falling under the aforementioned grounds. Consequently, the State as directed by the Constitution continues to take legislative and other measures, including affirmative action policies and programmes to ensure that all persons enjoy, on an equal footing, their human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. To this end, the GOK has introduced a number of measures to address these factors in a bid to ensure inclusion, cohesion and tame internal political strife. These measures are outlined in this report and other reports submitted by the GOK to regional and international human rights treaty bodies.
7. The National Cohesion and Integration Commission (NCIC) established by the National Cohesion and Integration Act, 2008 addresses ethnic discrimination and ensures that all groups in Kenya benefit equitably in the provision of public services, employment opportunities and appointments. To actualize its mandate, the Commission facilitates processes and policies that encourage the elimination of all forms of racial discrimination irrespective of background, social circle, race and ideological belief, and by so doing, enhances the capacity of Kenyans to accept each other in appreciating the significance of

diversity. The Commission also promotes equal access and enjoyment by persons of all ethnic communities and racial groups to public or other services and facilities provided by the Government. Other strategies are outlined throughout this report.

## **B. National human rights institutions**

8. The GoK notes the Committee's recommendation relating to the financing of the Kenya National Commission on Human Rights (KNCHR). The GoK has and continues to facilitate a favourable working environment for all its institutions. Over the years, the GoK has provided the KNCHR with sufficient resources to promote, protect and monitor human rights in the country effectively and efficiently. Indeed, it was a great achievement for the country when the Kenya National Commission on Human Rights (KNCHR) was granted the "A" status by the Global Alliance of National Human Rights Institutions. Financial challenges experienced by the GoK, in the last few years have resulted in decreased budget allocations to all sectors, including the judiciary, the executive and the legislature. The Government has begun putting in place viable short and long term strategies to improve the economy. Funding will be increased to all institutions when the financial streams are stabilized. Since the KNCHR enjoys constitutional and statutory back-up for its existence and operations it has a window through its enabling statute to solicit funds from external development partners to address shortages in budgetary allocations to ensure that it continues to discharge its mandate effectively.

## **C. Acts of Racial Discrimination, Racist Hate Speech and Incitement to Racial Hatred**

9. In response to the Committee's recommendations to align the national law with Article 4 of the Convention, the GoK assures the Committee that it has a strong constitutional and legislative framework to promote and protect human rights and punish racial discrimination. The legislative protective regime includes:

"Section 13 of the National Cohesion and Integration Act (No. 12 of 2008), which outlaws hate speech and provides for a penalty of a fine not exceeding one million shillings (Approx. USD 10,000) or imprisonment for a term not exceeding three years or to both. The scope of this offence includes the display of written materials or the distribution of a recording of visual images if the intention is to stir up ethnic hatred."

10. The Computer Misuse and Cybercrimes Act, (No.5 of 2018)<sup>1</sup> prescribes the intentional publication of false, misleading or fictitious data or misinformation that is inter alia likely to incite persons to violence, constitutes hate speech, or advocates hatred that:

(a) Constitutes ethnic incitement, vilification of others or incitement to cause harm; or

(b) Is based on any ground of discrimination specified or contemplated in Article 27(4) of the Constitution.<sup>2</sup>

11. The Act prescribes hefty penalties for contravention of its provisions. Penalties include fines, imprisonment, confiscation of assets purchased from proceeds of an offence and compensation.

12. The Kenya Information and Communication Act, 2015<sup>3</sup> further safeguards the freedom of the media. However, the right should not extend the improper use of the telecommunication system through sending messages or other matters that are grossly offensive or of an indecent, obscene or menacing character.

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<sup>1</sup> Section 22 (2) (a) and (b).

<sup>2</sup> Article 27(4) of the Constitution- The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

<sup>3</sup> Section 29.

13. The Election Offences Act (No.37 of 2016)<sup>4</sup> also outlaws any campaigns that use language that is threatening, abusive or insulting or engages in any kind of action which may advocate hatred, incite violence or influence the voters on grounds of ethnicity, race, religion, gender or any other ground of discrimination.

14. Further, the Code of Conduct for the practice of journalism in the second schedule of the Media Council Act (No. 46 of 2013)<sup>5</sup> prohibits journalists from quoting persons making derogatory remarks based on ethnicity, race, creed, colour and sex.

#### **D. Information on Complaints, Prosecutions, Convictions, Administrative Procedures Initiated on racial discrimination and hate speech**

15. The mandate of the Office of the Director of Public Prosecutions is to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect to any offence alleged to have been committed. The Office receives investigative files from the NCIC on allegations of acts of racial discrimination and racist hate speech and decides on whether to prosecute or not. The GoK has over the years endeavoured to provide an adequate budget to the Office to ensure that all cases are handled expeditiously and effectively. In the 2020/2021 period, the allocated budget stood at Kshs. 3.2 billion (translating to approximately 320 Million dollars). In the 2020/2021 period, the budget stood at 2.9 billion (approximately 290 Million dollars) having been somewhat affected by COVID restriction measures. Prosecutors also receive continuous training to improve their capacity to handle cases involving racial discrimination and hate speech.

16. Concerning the prosecution of hate speech, in 2020, the Director of Public Prosecutions charged two Members of Parliament (MP) with hate speech contrary to Section 13 of the National Cohesion and Integration Act, 2008 and offensive conduct conducive to breaches of peace contrary to Section 94 of the Penal Code. Oscar Sudi, MP of Kapseret and Johanna Ng'eno, MP for Emurua Dikirr were arrested and arraigned in court on charges of using abusive language in which ethnic hatred was likely to be stirred up and offensive conduct during a public gathering. The court granted MP Ng'eno a Kshs.1 million cash bail with an alternative Kshs.2 million bond. Oscar Sudi, on the other hand, was released on a Kshs. 500,000 cash bail or a Kshs.1 million personal bond. The hearing has begun and witness testimony is ongoing.

17. The NCIC was formed to tame the use of hate speech and promote national cohesion and integration in Kenya. Primarily, the NCIC seeks to enhance peaceful co-existence among persons and communities. Accordingly, conflicts are generally handled through arbitration, conciliation, mediation and similar forms of conflict resolution mechanisms. To this end, guidelines have been developed to guide the process of public apology, reparation for victims, among other remedies. In cases involving communities, dialogue and handshakes have been used to amicably resolve racial issues between the warring ethnic sides.

18. The NCIC also holds investigative powers on complaints of discrimination and any issue affecting ethnic and racial relations. Where an offence has been committed that warrants criminal proceedings to be initiated the NCIC refers the investigative report to the Director of Public Prosecution.

19. To deter the use of hate speech ahead of the upcoming 2022 elections, the NCIC has begun publishing persons or institutions whose words or conduct undermine peace in the country in a naming and shaming list. Persons who appear on the list three times will be disqualified from running for election. The NCIC has so far named three high ranking officials in a list of shame published in February 2021.

<sup>4</sup> Section 13 (f) (i).

<sup>5</sup> Second Schedule Section 26(1).

20. The NCIC is mandated to receive and investigate complaints of ethnic or racial discrimination, hate speech and ethnic contempt. A total of 250 cases were reported between January 2017 and June 2018.

**Table 1: Summary of complaints received and processed January 2017–June 2018**

<i>S/No.</i>	<i>Case type</i>	<i>No. of cases (Jan–Dec 2017)</i>	<i>No. of cases (Jan–June 2018)</i>
1.	Hate Speech under investigations	34	8
2.	Ethnic Contempt under investigations	45	19
3.	Discrimination under investigations	6	3
4.	Cases Pending in Court	14	3
5.	Other cases in the NCI Act under investigations	85	33
6.	Convictions	1	-

*Source:* National Cohesion and Integration Commission 2018 annual report.

21. The following institutions are also authorized to hear and consider individual complaints of racial discrimination; The National Human Rights Institutions (NHRIs) in Kenya have the mandate to receive and handle individual and group cases of discrimination including racial and ethnic discrimination.

22. During the reporting period, the National Gender and Equality Commission (NGEC) has handled the following complaints:<sup>6</sup> In FY 2015/2016 – The Commission processed in full 53 complaints on violation of the principles of equality and inclusion; 2016/2017 – the Commission received and processed 84 complaints related to the discrimination of special interest groups. The majority of the cases received at the headquarters (73.7%) were from women and revolved around property dispute, child maintenance, maladministration, child access, employment and recruitment processes. The cases related to property ownership, gender-based violence, social and economic rights, and violations of rights by county government and discrimination based on disability; 2017/2018 – the Commission received and processed 77 complaints on various forms of discrimination. The complaints revolved around violations of social economic and political rights by the State and other actors. 2018/2019 – The Commission received 105 complaints on violation of the principles of equality and inclusion. The complaints revolved around social-economic rights, access to government affirmative economic funds such as youth funds, women enterprise funds, Inua Jamii among others, violations of rights by State and other actors 2019/2020 – The Commission received 63 cases on inequalities and discrimination. In 2020/2021, the NGEC developed complaints handling practice and procedure regulations, which are awaiting review by the relevant Parliamentary Committee.

23. In the reporting period, the Kenya National Commission on Human Rights (KNCHR) received 32 complaints on discrimination; 4 cases in 2017, 12 in 2018, 12 in 2019 and 4 as of September 2020. 25 of these were referred to other relevant agencies, 6 are being investigated and one is in court.

24. Compensation for discrimination and hate speech are handled through the Court system.

## **E. Different bodies with the authority to address the act of racial discrimination**

25. In response to the Committee’s request for an explanation on the different administrative bodies with the authority to address acts of racial discrimination, the GOK submits that several institutions have been established to ensure clarity, focus, and

<sup>6</sup> More information regarding these complaints available at <https://www.ngeckenyia.org/Downloads/Annualreports>.

effectiveness in providing oversight over specific important issues that are of concern to the Kenyan people. These institutions include the following.

#### **Article 59 of the Constitution established the Kenya National Human Rights and Equality Commission**

26. In 2011, in line with Section 59(4) of the Constitution, Parliament restructured the Commission into three distinct institutions for better service delivery and realization of the Bill of Rights. The three restructured institutions are the Kenya National Commission of Human Rights (KNCHR), the National Gender and Equality Commission (NGEC) and the Commission on Administrative Justice (CAJ). The main rationale underpinning the establishment of separate institutions is to ensure better focus and funding for each thematic area that is of particular concern to the Kenyan people. The institutions play very distinct yet important roles. The GOK submits that while all areas are human rights as outlined in the constitution, regional and international human rights treaties, it is up to the individual countries to domestically structure their institutions in a way that enhances efficacy and effectiveness in improving the enjoyment of rights for its people.

#### **The Kenya National Commission on Human Rights**

27. The mandate of the Commission is to enhance the promotion and protection of human rights in Kenya. The Commission monitors Government institutions, carries out investigations on alleged human rights violations, and in appropriate cases provides redress to those whose rights have been violated.

#### **National Gender and Equality Commission**

28. Handles matters concerning gender and special interest groups. The Commission was established to promote gender equality and freedom from discrimination per Article 27 of the Constitution. To this end, the Commission monitors, facilitates and advises on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions.

#### **Commission on Administrative Justice**

29. Is established under the Commission on Administrative Justice Act 2011. The main mandate of the Commission is to investigate any conduct in state affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice.

#### **Other institutions**

##### **The National Cohesion and Integration Commission**

30. The Commission's function is primarily the prevention of discrimination based on race or ethnicity, advocating for cohesiveness among the diverse groups in the country and enforcing the legal provisions of the National Cohesion and Integration Act 2008. The National Cohesion and Integration Commission is also mandated by its constitutive Act to address hate speech in Kenya. Further, the Commission has the mandate to facilitate and promote equal opportunity, good relations, harmony and peaceful co-existence of persons of different ethnic and racial communities and advise the Government on all matters thereof; Eliminate all forms of ethnic or racial discrimination and discourage persons, institutions, political parties and associations from advocating or promoting discrimination. Plan, supervise, co-ordinate and promote educational and training programs to create public awareness, support and advancement of peace and harmony among ethnic communities and racial groups; Promote arbitration, conciliation, mediation and similar forms of conflict resolution mechanisms and Investigate complaints of discrimination.

**The Media Council of Kenya**

31. Is an independent national institution established by the Media Council Act, No. 46 of 2013 for purposes of the setting of media standards and ensuring compliance with those standards as set out in Article 34(5) of the Constitution. The Council's functions include the promotion and protection of the freedom and independence of the media, enhancing ethical and professional standards amongst journalists and media enterprises and advising the government or the relevant regulatory authority on matters relating to professional, education and the training of journalists and other media practitioners. The Media Council Act establishes the Media Council of Kenya to set media standards for journalists and the Complaints Commission to which a person aggrieved by a media organization may seek redress. The media complaint commission has adjudicated complaints on various issues including protecting individuals and groups from hate speech.

**The National Employment Authority (NEA)**

32. Was established in April 2016 by an Act of Parliament (The National Employment Authority Act No. 3 of 2016) which effectively provided the legal framework and mandates for its operations. The Authority mainly provides for a comprehensive institutional framework for employment management; enhancement of employment promotion interventions; and increasing access to employment by the youth, minorities and marginalized groups.

**F. Access to Justice**

33. The Government notes the Committee's recommendation on providing adequate funding and staffing for legal aid services. Section 5 of the Legal Aid Act, No. 6 of 2016 establishes the National Legal Aid Service (NLAS) with the mandate to, inter alia, facilitate the provision of legal aid services in a coordinated manner to the indigent, vulnerable and marginalized citizenry. The NLAS is operated by a fully functioning Board comprising of 11 members who are representatives of State and non State actors. It also has a Secretariat comprising of a director, technical and support staff who are mandated to provide administrative work. The Service has offices in 5 counties – Nairobi, Mombasa, Kisumu, Uasin Gishu and Nakuru. The process of rolling out the services to 7 marginalized regions – Lamu, Mandera, Tana River, Garissa, Wajir, Isiolo and Marsabit is ongoing to establish offices in all counties. The Board provides legal aid (to eligible clients) in criminal matters, civil matters and matters of public interest. Its services also extend to stateless persons and internally displaced persons. The Government provides the Board with adequate funds and works with other regional and international development partners to ensure that the Board fully fulfils its mandate.

34. In 2017, Kenya formally launched a National Action Plan on Legal Aid for 2017–2022. The Action Plan provides a framework where the policy, legal and institutional aspects merge to ensure sustainable and quality legal aid for all persons no matter the circumstances. It provides a road map that ensures the effective provision of legal aid services by the government and other stakeholders.

35. The implementation of the National Action Plan's has brought justice, through providing legal aid, to the indigent and persons falling within specific areas of focus such as children, women, marginalised communities, and persons with disabilities. Therefore, legal aid services are closer to the people through community-based initiatives which have increased access points.

36. On the Committee's recommendation to reduce the distances between national courts and the areas where some minority groups and indigenous peoples live, the Government has used various strategies to ensure access and delivery of justice in the country. The Director of Public Prosecutions has expanded its operations to all the 47 counties in Kenya. Likewise, the Judiciary has expanded by establishing high courts in all the 47 counties in Kenya. In 2017, 39 High Courts were established in 38 of the 47 counties. Plans are also ongoing to establish at least one Magistrates Court in each of the 290 sub-counties.

37. In addition, the Judiciary has established mobile courts to hold court sessions near the people in far flunked areas such as Baringo, West Pokot, Mandera, Marsabit, Kuria, Narok, and Lamu. The judiciary is also in the process of digitizing the court process, which will ease the means of accessing courts. Similarly, the National Police Service has also digitized the Occurrence Book to be able to track complaints.

38. Other interventions include the launch of the court-annexed mediation project in 2016. Article 48 of the Constitution recognises mediation as one of the ways in which access to justice is promoted. The pilot phase began in the Commercial and Family Division of the High Court in Nairobi in 2016.

39. The major milestones that were realized under the Court Annexed Mediation Program in the FY 2019/2020 are:

(a) Referral of 3,540 matters to mediation by courts where 1,050 of them were settled successfully;

(b) Implementation of online mediation as part of Court Annexed Mediation digital strategy. This was coupled with the development of guidelines on the use of technology to facilitate the resolution of disputes between parties without the need for in-person appearances;

(c) A total of 49 matters underwent virtual mediation in Nairobi between April and June 2020 where 34 of them were successfully settled;

(d) Release of approximately KSh4.5 billion held in litigation back to the economy, the largest sum in one financial year since the pilot program and bringing the total amount so far released back into the economy to KSh11.5 billion;

(e) Introduction of Court Annexed Mediation at Tononoka Children Court and Malindi Law Courts;

(f) Increase of mediators from 548 in June 2019 to 703 by the end of June 2020.

40. Further, the Constitution recognizes the significance of both the formal justice system and the richness of traditional systems that have been used in Kenya for so many years by the various communities. On 27th August 2020, the Alternative Justice System (AJS) Baseline Policy and Associated Policy Framework were launched. The policies seek to mainstream into the formal justice system, traditional informal mechanisms to ensure access to justice in Kenya. AJS is the administration of justice by the people using their culture, customary law practices and beliefs to resolve disputes. Alternative justice processes help to reduce the burden on courts and are meant to strengthen the links between formal and informal justice systems rather than replace the reliance on courts. It is worth noting that the alternative approaches are only acceptable to the extent that they do not contravene the Bill of Rights, and are not repugnant to justice, morality or inconsistent with the Constitution or any written law.

41. The Small Claims Act, which came into effect on 30th April 2020, set up Small Claims Court to hear and determine expeditiously disputes involving small and medium-size businesses that do not exceed Kshs. 1 million. These subordinate courts resolve disputes through informal, inexpensive, and expeditious action under principles of law and natural justice. The importance of the small claims court is that they avoid the complicated rules of procedure of the formal courts, incessant delays and high costs that impede the delivery of civil justice. Therefore, the Small Claims Courts now enhances access to justice in the country by moving the formal justice system to many of the marginalized areas of Kenya, which had no courts hitherto and to serve a large group of persons currently unable to access judicial services for a number of reasons.

## **G. Special Measures to Address Inequalities**

42. The devolved system of government rolled out in 2013 introduced 47 county governments in Kenya. Both the Constitution and national laws highlight the principles of diversity and inclusivity to be reflected in all spheres of life. In particular, the constitution

provides for the national values and principles of governance in Article 10;<sup>7</sup> the Public Service values and principles in Article 232 (1) (h) and (i) (ii);<sup>8</sup> and the objectives of devolution as highlighted in Article 174 (b) (e) and (g), include fostering national unity by recognizing diversity, ensuring the equitable sharing of national and local resources throughout Kenya and the protection and promotion of the interests and rights of minorities and marginalised communities. Section 7 of the National Cohesion and Integration Act (NCIA), 2008 states that all public appoints shall seek to represent the diversity of the people of Kenya and that no more than a third of its staff shall be from the same ethnic group.

43. Section 58 of the County Government Act, 2012 sets the County Public Service Board (CPSB) as an independent institution in charge of county employment. Furthermore, Section 59 (1) sets out the functions of the Board which include; the establishment and abolishment of offices in the county public service and the appointment of persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments.

44. The County Governments Act, 2012 under section 65 (1) (e) provides that at least 30% of the vacant posts at entry-level should be filled by candidates who are not from the dominant ethnic community and this must be adhered to by the County Public Service Board. However, a study by the NCIC in 2016 revealed that only fifteen counties (31.9%) adhered to section 65 of the CGA by recruiting more than 30% of the vacancies from minority ethnic groups (non-dominant ethnic groups) since the counties were established in 2013.

45. The NCIC periodically conducts capacity building and sensitization programs for the County Public Service Board on constitutional imperatives on inclusion and non-discrimination. In the period under review, 41 County Public Service Boards have been sensitized and they committed to ensuring gender equality and inclusion in their office. To empower the devolved units to comply with the existing laws on non-discrimination in employment, the National Government developed a handbook prescribing the minimum standards the devolved units should apply to comply with the existing laws. The handbook contains important best practices and principles on how to ensure inclusion in employment at the county level.

46. Historical discrimination and marginalization is a huge responsibility addressed by the GoK. There have been challenges concerning ensuring that all ethnic groups are well represented in the Public Service. A Report released by the Public Service Commission (PSC) 2020, on the ethnic and regional distribution of high cadre jobs in public service has revealed that Kenya's five most populous ethnic groups continue to dominate the top civil service jobs in the country. While it is noted that ethnic representation in the service is examined against the corresponding national population proportion, disparities in access to education and infrastructure are also factors relating to future ability to qualify for formal employment positions. The Government has taken the following steps to address the gaps in representation: construction of additional schools, recruitment of more teachers, free education for all, compulsory primary and secondary education, hefty penalties for parents or guardians who fail to take the child to school, the establishment of several universities and other tertiary institutions. The Diversity Policy for the Public Service is strictly followed in recruiting candidates in the public service to discourage racial discrimination and promote impartial recruitment from different regions and ethnic groups.

47. The GOK notes the Committee's recommendation that private corporations and businesses in the country should be encouraged to facilitate greater equality in employment across ethnic groups. Inclusion, non-discrimination, human dignity, equality and social justice are some of the national values and principles of governance, which must inform the interpretation and application of the constitution and all laws in Kenya by both public and

<sup>7</sup> The national values and principles of governance outlined in Article 10 of the constitution include national unity, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.

<sup>8</sup> Section 232 (1) of the Constitution provides that the values and principles of public service include (h). representation of Kenya's diverse communities; and i. affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of, i. men and women; ii. the members of all ethnic groups; and iii. persons with disabilities.

private agencies.<sup>9</sup> The Employment Act, 2007, provides that a person's access to any institution, employment or facility, or the enjoyment of any right may not be denied because of a person's belief or religion. The Act further prohibits all employers, whether private or public, from discrimination against a current or a prospective worker based on race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status. The Act particularly guarantees equality of opportunity for a person who is a migrant worker or a member of the family of the migrant worker, lawfully within Kenya. Discrimination in the process of recruitment, training, promotion, terms and conditions of employment, termination of employment and other matters related to employment is not allowed. The State and the Courts are required to promote equality of opportunity in employment to eliminate discrimination in employment. The National Gender and Equality Commission, through an initiative dubbed Equality and Inclusion in Private Sector (EIPS), rolled out a framework on integrating equality and inclusion in the private sector focusing on the media, telecommunication and banking sectors.

## H. Situation of Indigenous People

48. The Constitution recognizes that indigenous people form part of marginalized communities who must be protected through specific affirmative action designed to ensure that they enjoy their human rights and fundamental freedoms on an equal footing with others. The Government has an obligation to all these communities to ensure inclusion and non-discrimination. It is thus incumbent upon the State to address any issues concerning indigenous people in an all-inclusive and holistic manner.

49. The Community Land Act is a progressive law that enables local communities to legally register and own their communal lands. The law allows individual communities to secure a single collective title over all or part of their lands, and manage the property. All dealings with community land can only be conducted with the consent and participation of communities. The Community Land Regulations (2016) regulate the recognition, protection and registration of community land rights.

50. The Ministry of Lands is processing applications from various communities to have their land rights legally registered. Civil Society Organizations have been instrumental in assisting communities to understand the Community Land Act and meet the set requirements for land registration. Between 2018 and 2020, the Ministry of Lands and Physical Planning sensitized 24,000 participants in 24 counties and related sub-counties on the provisions of the law and the role of the community especially concerning the establishment of Community Land Management Committees. The participants included community members, county governments, Civil society Organizations as well as officials in the Ministry of Lands and the National Land Commission. The 24 counties are Kwale, Kilifi, Tanariver, Lamu, Taita Taveta, Garissa, Wajir, Mandera, West Pokot, Samburu, Elgeyo Marakwet, Baringo, Marsabit, Isiolo, Meru, Tharaka Nithi, Embu, Kitui, Makueni, Turkana, Laikipia, Narok and Kajiado and Migori.

51. The Forest Conservation and Management Act 2016, protects forests that form the habitat of indigenous people and provides for community participation in forest management. Furthermore, the Representation of Special Interest Groups Laws (Amendment) Bill 2019 seeks to give effect to the government's obligation under Article 100 of the constitution, to promote the right of representation by marginalized communities in political processes. Indigenous peoples fall within the bracket of marginalized communities. The Bill is currently before the National Assembly.

52. In addition, the GoK has also elaborated the Indigenous Peoples Planning frameworks. The Indigenous Peoples Planning Framework (IPPF) is invoked in cases where indigenous peoples are present in or have a collective attachment to any project lands. The Plan is prepared so that the development process fully respects the dignity, human rights, economies, and culture of indigenous peoples. All dealings with community land can only be conducted with the consent and participation of communities.

<sup>9</sup> Article 10 of the Constitution of Kenya.

53. The Land Laws (Amendment Act) 2016 further introduced comprehensive procedures to govern evictions in Kenya. Evictions undertaken by the government must strictly conform to constitutional provisions, the law and must be conducted humanely.

54. With regard to the Ogiek, Endorois and Sengur communities, Kenya submits that in a situation where the State needs to save the forest's ecosystem, which is under constant threat from illegal settlement and deforestation, all genuine indigenous occupants are offered compensation to settle elsewhere or land is identified elsewhere and the occupier moved. This was the case of the Sengwer people of the Empoput Forest, the original Ogieks of the Mau forest and the Endorois of the Mochongoi forest. However, so far these communities have disputed the resettlements or compensation and filed cases in Courts. Indeed, we now have several cases on these matters in the local and regional courts. The Government awaits their full determination. In the Ogiek matter filed before the African Court of Human and Peoples' Rights, on 13th February 2018 – African Commission on Human and Peoples' Rights -vs- The Republic of Kenya – the Respondent (Kenya Government) filed their written submissions on Reparation to the African Court on Human and Peoples Rights. The Respondent rejected the claim for compensation by holding that the figure claimed for compensation of US Dollars 297,104,578 alongside other forms of reparation was exorbitant. A hearing on reparations negotiation in the Ogiek matter before is due in June 2021. The Government is implementing the Endorois judgement in collaboration with the county government.

## **I. Education for Indigenous People**

55. GoK notes the Committee's recommendations on enhancing access to education for all, including indigenous people. Section 43 and 53 of the Constitution outlines the right to education. Kenya is committed to providing inclusive, equitable and quality education for every child irrespective of their race, colour, nationality or ethnic origins. In this regard, Kenya has invested heavily in free primary education and free day secondary school education. Kenyan parents/guardians face harsh penalties for not taking children to school.

56. GoK is aware that because of their way of life some communities in Kenya may find it difficult to access schools. Several special measures have been adopted to improve the availability of opportunities for education, which include the construction and rehabilitation of existing facilities in pastoralist areas and the establishment of boarding and mobile schools in arid and semi-arid. In 2009/2010, two schools per constituency were provided with Kshs 3.5 million each to expand opportunities for the increased number of enrolled pupils. 1.6 million vulnerable children, who rely on school meals for a reliable source of daily nutrition are provided with free school meals.

57. The sustained implementation of the Free Primary Education and Free Day Secondary Education has seen increased completion in primary education; and increased participation and completion of secondary education.

58. The GoK through the Ministry of Education initiated a programme to construct technical Institutes in every constituency to bolster the capacity of the existing ones to increase the number of youths with skills and enhance employability. The Government has developed a National Industrial Training and attachment policy to guide industrial training and attachment in the country. This is aimed at equipping the youths with the relevant skills and increasing employability and productivity as well as improved linkages between industry and training institutions. The youth enterprise fund has been streamlined to empower youth to start and grow their businesses.

59. The Constituency Bursary Fund (CBF) was established by the government of Kenya through an act of parliament in 2003 to ensure that needy students have access to secondary education. This fund provides for the involvement of community members in identifying the bursary recipients. With the communal involvement in decision-making, it was anticipated that there would be fairness and efficiency in the bursary allocation process.

## J. Historical Land Injustices

60. In response to the Committee's recommendation on Historical Land Injustices, the GoK submits as follows: The National Lands Commission (NLC) is responsible for investigating historical land injustices and recommending appropriate redress. The Commission formulated the Historical Land Injustices Rules, 2016 to facilitate the expeditious, efficient, impartial investigations and just resolution of claims arising out of historical land injustices. The rules apply to historical land injustices that occurred between 15th June 1895 and 27th August 2010.

61. The NLC has received 740 historical land injustice claims. The claims relate to colonial displacement, inequitable land adjudication, incomplete land acquisition, natural resources conflict, evictions and natural disasters.

62. The GoK has also intensified the issuance of title deeds throughout the country. Under the National Titling Programme, over 5 million title deeds have been issued, since 2013, in different parts of the country to Kenyans to help them put their land to productive use without fear of losing their property. By way of examples, in August 2017, 60,000 title deeds were issued to Coast residents thus beginning a journey by the national government to find a lasting solution to the land issue at the Coast. Nairobi Titling Programme, launched in 2018 to fast track the issuance of title deeds to bona fide land owners in the Country's capital, saw over 30,000 title deeds issued to residents of Embakasi Ranching Company, Tassia estate, and the Korogocho and Mbagathi informal settlements in a historic event that brings to an end 45 years of waiting. In 2020, Samburu County residents got about 10,000 land ownership documents for land previously owned under a group ranch. Eight women from the Samburu Community were among the recipients of title deeds at the titling exercise presided over by President Uhuru Kenyatta.

63. For a long time, community land has not been titled and in some areas, this has been a source of disputes. This problem is being solved by issuing title deeds so those communities, with their leaders, can decide how that land will be used according to the community needs. The issuance of title deeds, especially at the Coast, seeks to address historical land injustices. The problem of squatters has been a vexatious issue for many years after independence.

64. In response to the Committee request for more information on constitutional requirements to set a maximum limit on the amount of land that can be owned or leased by an individual or group, the Government submits as follows: Article 68(i) of the Constitution empowers Parliament to prescribe minimum and maximum private land holding acreages. The Minimum and Maximum Land Holding Acreage Bill was prepared in 2015. The legislation is awaiting a scientific study to inform the particulars within the legislation. According to the Land Act, the scientific study is mainly to determine the economic viability of private land acreages in various zones countrywide. Ownership sizes will, therefore, become applicable after the law is finally enacted and implemented. The study will be shared with the public for their input for the promotion of transparency and accountability.

65. Creating communities in which residents live, work, go to school and exercise political participation in multi-ethnic settings. Kenya is a multi-ethnic country in which where people from all walks of life, live and work together in various cities and urban areas across the country. In 2018, an estimated 27 per cent (13 million) of Kenya's population lived in cities and towns, of varied sizes. This number is expected to increase in the next few years. Nairobi, Mombasa, Kisumu and Nakuru are some of the cities in Kenya which have attracted huge multi-ethnic diversification due mainly to the rural-urban migration of people seeking better business opportunities. The migration has led to an ethnically and culturally diverse population. The GOK has made significant efforts to build a community within which all people live together in peace and unity as one indivisible sovereign nation.

66. The main legal framework for urban planning is the Urban Areas and Cities Act, 2011. The Act provides for the classification, governance and management of urban areas and cities, the criteria of establishing urban areas and the principle of governance and participation of residents. Each county government operates within the framework of an integrated city or urban area development plan, which, inter alia, recognizes the diversity of the people,

protects and promote the interests and rights of minorities and marginalized communities and promotes the provision of proximate, easily accessible services throughout Kenya.

67. In formulating and implementing the integrated development plan, the relevant Board conducts an assessment of the existing level of development in the city or urban area, including identification of communities that do not have access to basic services. The Committee must also make a determination of any affirmative action measures to be applied for inclusion of community's minorities and marginalized to access funds from the equalization funds. The Equalization fund is used only to provide basic services to marginalized areas. These services include water, roads, health facilities and electricity.

68. Education for primary schools and tuition for day secondary schools is free and accessible to all students, notwithstanding their ethnic backgrounds. To ensure equality and inclusion for all, despite different financial backgrounds, all pupils are required to wear a uniform. To promote a common national identity, in most areas, all teaching is conducted in English and Kiswahili, the official languages of the Republic. In some areas (particularly rural areas), children can attend the first three years of primary school in their mother tongue. The Ministry of Education has encouraged schools to promote diversity, among others through courses such as Peace (primary level) and Life Skills (secondary level) To promote inter-group contact, teachers are encouraged to teach outside of their home region.

69. The GOK is required to avail adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, to members of all ethnic groups. In 2016, the Public Service Commission published the Diversity Policy, a strategy for ensuring an inclusive workforce that takes care of the interests of diverse Kenyan communities including gender, ethnicity, youth, persons with disabilities, minority and marginalized groups. The Policy relates to both the national and the county governments.

70. Political participation is a key tenet of any democratic state. The GOK has taken several steps to ensure full political participation for all qualified persons, including:

- Civic education is periodically conducted to develop the capacity and knowledge of the people to engage in public affairs and to exercise and protect the rights that the constitution extends to them;
- Enhancing voter education programmes, including through the development of voter education curriculum for primary and secondary schools among others;
- Review and enactment of laws to ensure better participation for special interest groups: The *Political Parties (Amendment) Bill, 2016* amended the *Political Parties Act 2011* to include provisions that facilitate gender equity in political parties and *The Representation of Special Interest Groups Laws (Amendment) Bill 2019* is currently before Parliament to ensure more women, youth and persons with disability win elective seats.

## **K. Informal Settlements**

71. The government issued a community land title to the Nubian community trust for 288 acres of land in Kibera thereby acknowledging the land rights of the Nubian Community. UN-HABITAT is facilitating the Sustainable Neighbourhood Programme, funded by the Government of Finland, by linking slum upgrading activities with capacity-building and income generation through a self-help construction project relocating the slum dwellers to a piece of land in Athi River, Mavoko County made available by the Government of Kenya. The Programme aims to strengthen the capacities of communities, the private sector and local authorities for the provision of housing, infrastructure and services. Mavoko Municipal Council has now incorporated slum upgrading and redevelopment in its development agenda and budgeting. Collaboration with the private sector is now being developed through their engagement as full partners in the programme.

72. The rapid response initiative has generated 5.3 million title deeds in the eight (8) years since 2013 compared to six (6) million issued in the first 50 years of independence. This has in effect doubled the number of people who have security of tenure and have collateral for

loans. The titling programme, therefore, plays a critical role in boosting the ‘Big Four’ Agenda by empowering landowners and businesses through ease of access to credit facilities from financial institutions.

73. Other measures in place to enhance the enjoyment of the right to property include:

(a) Establishment of the National Titling Center to fast track issuance of titles; The titling programme targets informal settlements such as Kariobangi, Jua Kali Sector B, KCC resettlement, Dandora Block G and others in Nairobi and other counties. Under the Embakasi Ranching Company, 15,000 title deeds were issued in the 2020–2021 Financial Year. So far the Ministry has issued 26,000 title deeds to members of this company;

(b) Digitization of the Land Registries-Section 6 (h) of the Land Act has mandated Ministry to develop National Land Information System (To digitize Land Records). The import of this is that the Physical Planning, Survey, Valuation, Land Adjudication and Settlement, Land Registration and Land Administration will be anchored under the National Land Information System (NLIS). Through the NLIS, the citizens, lawyers, bankers, judiciary, county government, KRA, NLC and other external users will be able to get land-related data from the system;

(c) The Business Laws (Amendment) Act 2020 amended several Land Laws to allow electronic land transactions to facilitate ease of doing business. Through this, the citizens can now carry out several land transactions online such as Conducting Title Searches, doing away with Land Rate Certificate, Consent to transfer, payment of stamp duty, endorsement and assessment of documents. Further, there are various regulations in parliament aimed at giving effect to electronic land transactions. These are the Land Registration (Electronic Transactions) Regulations, 2020, The Survey (Electronic Cadastre Transactions) Regulations 2020, The Survey (Amendment) Regulations 2020, Stamp Duty (Valuation) Regulations, 2020, Stamp Duty (Amendment) Regulations 2020 and The Land (Amendment) Regulations 2020.

74. The Land (Allocation of Public Land) (Amendment) Regulations 2020 and Land (Extension and Renewal) Amendment Rules 2020 are awaiting publication before submission to Parliament.

75. Under Community Land registration, the Government is conducting strategic consultations with key stakeholders to fast-track the process. Twenty-four (24) counties with community land have been sensitised on the Community Land Act, 2016, 113 Registrars re-designated to Community Land Registrars and 34 adjudication officers gazetted. As of June 2021, ten (10) community land title deeds have been processed: four (4) in West Pokot County, two (3) in Laikipia County, one (1) in Samburu County and two (2) in Kajiado County. Further, the Ministry successfully presided over the election of Community Land Management Committee members in twenty-three (23) communities in Samburu County.

## **L. Stateless Persons**

76. Concerning the Committee’s recommendation on stateless persons, the GoK has addressed the vulnerability of stateless people in the country by progressively granting them nationality by law, after stringent processing. The issuance of citizenship has enabled many stateless persons to benefit from access to employment opportunities, freedom of movement, access to education and the right to vote. The GOK is happy to inform the Committee that all deserving Nubians have been granted citizenship and issued with national identity cards. Further, the GOK in collaboration with United Nations High Commission on Refugees has facilitated the mobile birth registration of at least 11,000 children, including Nubian children.

77. To further ensure the full protection of the rights of the Nubian community, the Government of Kenya in 2017, acknowledged the land rights of the country’s Nubians and issued a community land title to the community trust for 288 acres of land in the Kibera, neighbourhood of Nairobi.

78. Additionally, in December 2016, the President issued a directive that all eligible stateless Makonde people be issued with national identity cards and subsequently with land title deeds.

79. In December 2020, Zimbabwe's Shona community in Kenya were finally recognized by the Government. H.E President Uhuru Kenyatta conferred citizenship on Shona community members. The Shona community in Kenya is estimated at 3,500 members. The Shona, originally from Zimbabwe, arrived in Kenya before independence and worked as church missionaries on British travel documents. When Kenya gained independence, they had 24 months to apply for citizenship but most did not, leaving them stateless. Their recognition as citizens secures their rights, such as access to education, healthcare, employment, property ownership, and financial services access.

80. Through Gazette Notice 7245 of 21st July 2017, the President decreed that Kenyans of Asian Heritage constitute a Community that is one of the Tribes of Kenya.

## **M. Counter-Terrorism Measures and ensuring fundamental legal safeguards**

81. Kenya has faced a large number of terrorist attacks over the years, resulting in the investigation, prosecution and conviction of suspects. Constitutional and legal frameworks safeguards are in place to ensure that measures taken to fight terrorism do not discriminate against anyone based on nationality, religion, sex, colour, race or ethnic origin. Indeed, the courts have emphasized the civil liberties of all accused persons without discrimination, in a judgement dated 15 January 2019-Alliow Somo Abdi on behalf of the subject Mohamed Adan Abdow and 2 others v Minister of State for Provincial Administration and Internal Security and 3 others [2019] eKLR. The court ruled that one was not exempted from the ordinary protection of the law, whether one was a terror suspect or an ordinary suspect. Whatever the security considerations that the Police had, the recognition and preservation of the liberties of the subjects was the only way to reinforce the country's commitment to the rule of law and human rights. Police can battle terrorism and enforce human rights at the same time as the two were not incompatible. All suspects whether local or foreign are entitled to a fair trial.

82. The 24-hour rule espoused by the constitution on detaining suspects is strictly adhered to by the Police. It must be noted that the rule is observed notwithstanding the suspect's nationality, race or ethnic origin. Any further detention must be sanctioned by the Courts. All arrested persons can be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released. The discretion to grant or deny bail or bond rests with the Court, and a writ of habeas corpus to the courts is available as recourse for unlawful detention or imprisonment. The writ of habeas corpus is a non-derogable right guaranteed by the Constitution vide Article 25 (d) and Article 51 (2).

83. Reasons for denying bail include protection of the suspect or any witness, the suspect availing himself/herself for court proceedings or interference with investigations; and the prevention of the commission of an offence under the Prevention of Terrorism Act. In 2015, the National Council on Administration of Justice formulated the Bail and Bond Policy to guide police and judicial officers to apply laws that provide for bail and bond. In particular, the Bail and Bond Policy Guidelines seek to balance the rights of the suspects/ accused persons with the public interest, including the rights of victims, and streamline and address disparities in bail and bond decision-making, to enable fair administration of bail and bond measures.

84. All claims made against law enforcement officials are subject to independent and effective scrutiny by the Independent Policing Oversight Authority. The Authority investigates and recommends prosecution of unlawful practices committed by the law enforcement officers, including any that concerns discriminatory or racist behaviour. The Victim Protection Act was enacted in 2014 to provide for the protection, rights and welfare of victims of offences and abuse of power. The Act further sets up a Victim Compensation Fund to provide for reparations and compensations to victims. "Victim" means any natural person who suffers injury, loss or damage as a consequence of an offence. The Prevention of

Torture Act enacted in 2017 provides that the expenses incurred for the treatment or professional counselling of a victim granted shall be charged on the Victim Protection Trust Fund established under section 27 of the Victim Protection Act, 2014.

## **N. Trafficking in Persons and to Combat Abuse of Kenyan Migrant Workers**

85. The GOK has taken a number of steps to combat trafficking persons, including developing a National Plan of Action for Combating Human Trafficking. The Counter Trafficking in Persons Advisory Committee established under Section 19 of the Counter-Trafficking in Person Act is tasked with ensuring full and effective implementation of the National Plan of Action for Combating Human Trafficking.

86. The purpose of the Action Plan is to promote co-operation between different stakeholders in Kenya and hence provide a platform for closer co-operation and partnership with other countries in the region and global in combating human trafficking. Kenya has conformed to Palermo Protocol in formulating and implementing legislation, policies and programmes meant to criminalize all forms of human trafficking. The National Action Plan to Combat Human Trafficking has established a three-pronged approach in combating human trafficking namely; prevention, protection and prosecution in line with the fundamental global framework for fighting the vice.

87. Concerted efforts have been put in place to facilitate capacity building for the criminal justice systems stakeholders including prosecutors, judges, customs officers, immigration officers, tourism industry workers, labour inspectors and social services officials among others.

88. The GoK has developed and disseminated national guidelines for the identification of victims. It has mobilized resources for the establishment of safe homes and in turn, facilitated reintegration and reparation of victims. The Office of the Director of Public Prosecution has undertaken its mandate combating human trafficking. Various cases on human trafficking are ongoing in court and some have reached conclusion with a conviction upheld in *Maduku Mbashani & another v Republic* [2019] eKLR where the appellants were with the offence of trafficking in persons contrary to section 3 (3) & (5) of Counter Trafficking in Persons Act and pleaded guilty. They were given 30 years' imprisonment.

89. The Government has made significant inroads in improving the identification of perpetrators and the rate of prosecutions and convictions of trafficking cases. Interventions in this regard include the following:

- (a) Development of Standard Operating Procedures by the Counter-Trafficking Advisory Committee Preparation of a Prosecutor's Manual on trafficking;
- (b) Establishment of an anti-human trafficking unit that carries out investigations on child trafficking and online child abuse under the Office of the Inspector General of Police;
- (c) Establishment of a Transnational Organized Crime Unit that carries out investigations on adult trafficking and smuggling in persons in liaison with the Director of Criminal Investigations (DCI);
- (d) Appointment of the Counter-Trafficking in Persons Advisory Committee, which coordinates training for law enforcement officers on investigations and prosecutions;
- (e) Training of the police, children's officers and prosecutors' on investigations and prosecution of trafficking cases;
- (f) Information education communication materials are given out to the public conveying information of how to identify a perpetrator and the numbers to call such as child helpline 116 for assistance; and
- (g) Community sensitization through public barazas.

90. The Counter Trafficking in Persons Act, 2010 (CTIP) establishes the National Assistance Trust Fund for victims of trafficking in persons. The funds are used for victims'

assistance, including psychosocial support. The government has strived to develop and disseminate national guidelines for the identification of victims.

91. The GOK has also introduced several reporting mechanisms to ensure the safety of Kenyans working abroad:

(a) The introduction of an Integrated Management System ([www.neaims.go.ke](http://www.neaims.go.ke)) to register job seekers, job opportunities, capture details of migrant workers among others. The System has a portal for reporting complaints and disputes;

(b) The Labour Migration website – The website provides information to migrant workers on the nearest Kenyan Embassies and Labour Attaché Offices where they can report to when they are in distress. The website also provides information about the working conditions in key labour destination countries;

(c) MUSANED System – For migrant workers moving to Saudi Arabia, their details and those of the employers in Saudi Arabia are captured in the System. The System has a portal where the workers report and disputes. Further, Saudi Arabia has toll-free call centres accessible to migrant workers where they report when they are in distress;

(d) Vetting and registration of Private Employment Agencies responsible for the recruitment of Kenyan migrant workers – The agencies have the responsibility of ensuring the safety of migrant workers during the period of their employment contracts. The Agencies execute a bond to the government (National Employment Authority), which is used to cater for the return of the workers to the country in case the worker is not comfortable working abroad;

(e) Pre-departure training – This has been made compulsory for all migrant workers leaving the country. The workers are informed of their rights and where to report in case they are in distress;

(f) The Ministry of Foreign Affairs has established a Hot Line where Kenyans call and report distressful issues.

92. The Domestic Workers Convention, 2011 (No. 189) of the International Labour Organization (ILO), is under consideration by the government to identify its socio, economic and political impact on Kenya.

## **O. Protection of Persons with Albinism**

93. On the Committee's recommendation regarding the protection of persons with albinism from violence, discrimination and stigmatization, the GOK submits that it has the sole responsibility of protecting persons within its borders, including persons with albinism. Any act of violence, discrimination and stigmatization is highly condemned. The GoK has made efforts to ensure that communities are sensitized to protecting and promoting the rights of persons with albinism to get rid of outdated traditions or practices that may affect such persons.

94. Acts of violence, discrimination and stigmatization are condemned. Awareness creation has further gone a long way in disabling misconceptions that drive stigma and the demand for body parts of people with albinism. People with albinism in Kenya are eligible for free sunscreen, paid for by the government, and free skin cancer screenings. Kenya has several high profile persons living with albinism including a High Court Judge and nominated Member of Parliament.

95. To build the self-confidence of persons with albinism a beauty pageant featuring Mr. and Miss Albinism is held every year. A Mr. and Miss Albinism, East Africa ceremony has been introduced, which brings together persons with albinism from Kenya, Uganda and Tanzania to showcase their talents at the beauty pageantry. The pageant seeks to offer them a platform to interact with the larger society. A person found guilty of killing a person with albinism is prosecuted according to the letter of the law and convicted.

96. The Person with Disability (Amendment) Bill 2020 seeks to re-enact the Persons with Disabilities Act, No.14 of 2003 to align it with the constitution, the Convention on the Rights

of Persons with Disabilities and enhance equalization of opportunities and rehabilitation of Persons with Disabilities. The Bill, which is currently undergoing stakeholders' consultations adopts a broader definition of persons with disabilities by including those with developmental impairments and albinism.

97. The challenges faced by persons with albinism is a cross border issue and therefore efforts have been put in place to develop a regional action plan on albinism, a mechanism meant to eradicate discrimination and violence against persons with albinism in sub-Saharan Africa.

## **P. Implementation of The Truth, Justice and Reconciliation Commission's Recommendations**

98. The Truth, Justice and Reconciliation Commission was established by the Truth, Justice and Reconciliation Act No. 6 of 2008. The Commission was established to promote peace, justice, national unity, healing, reconciliation and dignity among the people of Kenya. The Commission interrogated all violations of human rights since 1963 and made recommendations.

99. Kenya has and continues to implement the recommendations of the Commission through various legal, administrative, policy and other interventions. In 2015, H.E President Uhuru Kenyatta apologized to victims of all past wrongs on behalf of himself and current and past governments. In his State of the Nation address, Kenyatta asserted full acceptance of responsibility for the failure of past governments to protect Kenyans from violations and committed to remedying the harms they have suffered. The apologies fulfil one of the recommendations in the report of the Truth, Justice and Reconciliation Commission (TJRC).

100. All Internally Displaced persons emanating from the 2007/2008 post-election violence have been settled, integrated and/or compensated.

## **Q. Protection of Asylum Seekers and Refugees**

101. Regarding the Committee's recommendations on the protection of asylum seekers and refugees, Kenya's refugee situation is one of the most protracted in the world as it clocks three decades. It has therefore become clear that the traditional "care and maintenance" approach towards refugees has to be revisited to address the needs of both, refugees and their host communities comprehensively. All registered refugees and asylum seekers in Kenya can enjoy their rights according to their status. Refugees children can access free public education. This includes schooling in the refugee camps and urban areas. In the Dadaab refugee camp, there is a Kenyatta University campus, 35 primary schools and 7 secondary schools.

102. Kenya is a host to approximately 525,671 refugees and asylum seekers as of 31st July 2021. This population comprises 469,497 (89%) refugees and 56,174 (11%) asylum-seekers.

103. Kenya will continue to play its role in preventing and resolving conflicts as a root cause of displacement in the region, to promote conditions in the country of origin for the voluntary return of refugees in safety and dignity.

104. In October 2020, Kenya developed a Comprehensive Refugee Response Framework. The framework analyses the current refugee situation from a Kenyan context, emerging challenges and sets out strategic responses to meet the needs of refugees and host communities in a more effective manner.

105. The Refugees Act 2006 provides for formal recognition and protection of Refugees and Asylum Seekers in Kenya. This Act is currently under review. The Refugees Bill, 2019 has additional provisions on integration and resettlement of refugees as well as provisions on affirmative action programmes for refugee women, children and Persons with disabilities. The Refugees Bill, 2019 is currently undergoing stakeholders' consultations over various contentious clauses. The state is aware of the principle of non-refoulement and will ensure that this principle is respected in its national laws.

106. The voluntary repatriation of Somalia refugees has been taking place since the 2013 tripartite agreement which was signed in November 2013. The repatriation has remained solely voluntary and is carried out in a humane and dignified manner. The UNHCR has been paying the return package to the refugees and hiring transport. The Kenya Government has been offering escorts to the border stations where the Somalia Government and UNHCR Somalia receive the refugees. From 1 January to 31 July 2021, UNHCR and partners have so far assisted a total of 1,159 persons, including 504 Somalis, to return to their places of origin voluntarily.

### Paragraph 8 of the Concluding Observations

107. In response to the Committee's request set out in paragraph 8 of the Concluding Observations, the GOK hereunder provides statistical data on the socio-economic situation and representation in education, employment, health and housing, access to cultural activities and access to public places. While significant efforts have been made to provide comprehensive statistical data on each of the aforementioned areas, the GOK faces challenges in obtaining data disaggregated by indigeneity and ethnicity. However, in some areas, the report includes data concerning counties, which in Kenya is a good indicator of how the right is enjoyed by different ethnic communities countrywide.

#### 1. Education<sup>10</sup>

108. The total number of registered Technical Vocational and Education Training (TVET) institutions rose substantially by 50.9 per cent from 1,300 in 2016 to 2301 in 2021. The increase is partly as a result of enforcement of the TVET Act where all the institutions were required to be registered.

**Table 2: Selected Indicators on Education**

Indicator	2016	2017	2018	2019	2020
<b>Total No. of Primary and Secondary Schools</b>	<b>84 392</b>	<b>87 876</b>	<b>91 626</b>	<b>89 337</b>	<b>90 145</b>
No. of Universities	30	61	63	63	64
No. of registered Technical Vocational and Education Training (TVET) institutions	1 300	1 962	1 769	2 140	2 301
<b>Enrolment</b>					
Pre Primary school	3.19 M	3.29 M	3.4 M	2.7 M	2.8 M
Primary schools	10.3 M	10.4 M	10.5 M	10.1 M	10.17 M
Secondary Schools	2.7 M	2.8 M	2.9 M	3.3. M	3.52 M
University	83 110	88 323	68 550	89 488	122 831

Source: Kenya National Bureau of Statistics, Economic Survey Reports.

**Table 3: Enrolment Rates statistical data, disaggregated by sex (2012–2020)**

#### A. Pre-primary Education – Number (\*000)

Enrolment	2012	2013	2014	2015	2016	2017	2018	2019	2020
Boys	1 346.2	1 411.3	1 476.3	1 607.3	1 634.1	1 681.5	1 730	1 393.7	1 436.9
Girls	1 364.5	1 454.0	1 543.4	1 560.5	1 565.6	1 612.2	1 660	1 344.8	1 395.9
<b>Total</b>	<b>2 710.7</b>	<b>2 865.3</b>	<b>3 019.7</b>	<b>3 167.8</b>	<b>3 199.7</b>	<b>3 293.7</b>	<b>3 390</b>	<b>2 738.5</b>	<b>2 832.8</b>

Source: Ministry of Education and KNBS Economic Survey Report, 2020.

<sup>10</sup> [https://www.education.go.ke/images/Approved\\_Basic\\_Education\\_Statistical\\_Booklet\\_2019\\_approved\\_compressed.pdf](https://www.education.go.ke/images/Approved_Basic_Education_Statistical_Booklet_2019_approved_compressed.pdf) Pg. 11, Figures 3 to 8 show enrolments in public and private schools by county at pre-primary, primary and secondary school levels.

**B. Primary Education Enrolment by Sex – Number ('000)**

Year	2012		2013		2014		2015		2016		2017		2018		2019		2020	
	Boys	Girls																
<b>Total</b>	<b>4 972.7</b>	<b>4 784.9</b>	<b>5 019.7</b>	<b>4 837.9</b>	<b>5 052.5</b>	<b>4 898.5</b>	<b>5 127.9</b>	<b>4 962.9</b>	<b>5 214.5</b>	<b>5 054.9</b>	<b>5 293.9</b>	<b>5 109.8</b>	<b>5 364.3</b>	<b>5 178.3</b>	<b>5 105.8</b>	<b>4 966.3</b>	<b>5 191.4</b>	<b>4 978.7</b>

**C. Secondary Education Enrolment by Sex – Number ('000)**

Year	2012		2013		2014		2015		2016		2017		2018		2019		2020	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
<b>Total</b>	<b>1 019</b>	<b>895.7</b>	<b>1 127.6</b>	<b>976.5</b>	<b>1 213.0</b>	<b>1 118.2</b>	<b>1 348.2</b>	<b>1 210.4</b>	<b>1 396.5</b>	<b>1 323.4</b>	<b>1 450.9</b>	<b>1 380</b>	<b>1 505.3</b>	<b>1 437.4</b>	<b>1 626.1</b>	<b>1 634</b>	<b>1 751.5</b>	<b>1 768.9</b>

Source: KNBS Economic Survey Report, 2019–2021.

**D. University Education Enrolment by sex 2013/14–2020/21**

Institution	2013/14		2014/15		2015/16		2016/17		2017/18		2018/19		2019/20		2020/21	
	Male	Female														
Public Universities	173 987	115 746	217 164	146 170	258 688	174 068	286 840	192 472	260 603	180 528	259 514	173 731	251 550	161 290	275 614	176 475
Private Universities	39 980	31 666	42 454	37 994	39 125	38 804	43 547	41 648	43 253	37 675	46 764	39 453	51 494	45 134	50 257	44 353
<b>Grand Total</b>	<b>361 379</b>	<b>361 379</b>	<b>443 783</b>	<b>443 783</b>	<b>510 685</b>	<b>510 685</b>	<b>564 507</b>	<b>564 507</b>	<b>522 059</b>	<b>522 059</b>	<b>519 462</b>	<b>519 462</b>	<b>509 468</b>	<b>509 468</b>	<b>546 699</b>	<b>546 699</b>

Source: Ministry of Education and KNBS Economic Survey Report, 2019–2021.

**Table 4: Enrolment in Public and Private Schools by County**

*The table shows enrolments in Public and Private Schools by County at Pre-Primary, Primary and Secondary School levels.*

S/No.	County	Public Schools – 2019			Private Schools – 2019		
		Pre-Primary '000	Primary '000	Secondary '000	Pre-Primary '000	Primary '000	Secondary '000
1	Mombasa	8.9	75.1	23.2	18.4	80.27	13.3
2	Kwale	52.9	189.0	32.3	14.4	14.66	1.9
3	Kilifi	48.8	310.9	69.0	42.4	42.37	13.1
4	Tana River	23.4	53.1	8.2	3.5	6.59	0.7
5	Lamu	6.4	28.4	7.0	3.0	3.97	0.3
6	Taita Taveta	10.1	60.2	24.6	3.3	6.97	0.7
7	Garissa	15.7	51.9	14.0	6.1	25.57	10.1
8	Wajir	17.9	65.1	17.4	3.8	11.87	0.5
9	Mandera	27.4	91.1	15.6	2.9	11.45	7.5
10	Marsabit	18.2	50.9	8.2	3.8	13.85	0.9
11	Isiolo	15.4	23.8	5.9	7.3	6.44	0.8
12	Meru	52.7	251.1	112.9	21.3	66.19	2.7
13	Tharaka Nithi	18.4	88.6	47.2	4.6	10.39	2.0
14	Embu	17.3	101.4	54.4	5.8	23.35	2.2
15	Kitui	63.0	318.6	98.8	4.5	16.45	1.5
16	Machakos	32.1	238.6	104.4	50.0	45.83	13.8
17	Makueni	41.7	238.6	111.1	5.1	16.54	3.0
18	Nyandarua	22.6	116.4	62.4	11.2	22.28	4.4
19	Nyeri	14.4	101.4	74.0	8.7	23.47	3.1
20	Kirinyaga	12.9	76.8	51.7	10.6	31.17	1.2
21	Muran'ga	38.2	176.5	115.8	10.2	29.91	6.3
22	Kiambu	33.3	227.6	129.9	42.2	119.93	10.7
23	Turkana	117.7	151.1	20.3	3.5	11.46	1.3
24	West Pokot	46.3	180.5	38.3	29.6	14.90	0.3
25	Samburu	42.5	53.2	10.8	1.2	3.31	1.1
26	Trans-Nzoia	37.8	223.6	86.5	13.5	51.03	2.7
27	Uasin-Gishu	34.7	173.9	61.3	22.3	57.28	8.4
28	Elgeyo Marakwet	30.7	109.6	41.9	6.7	14.18	0.3
29	Nandi	52.3	205.9	76.7	10.7	25.97	0.9
30	Baringo	51.3	143.6	44.7	7.9	18.30	2.1
31	Laikipia	20.7	85.6	36.7	6.6	12.12	2.6
32	Nakuru	53.3	376.7	141.3	57.3	101.32	30.4
33	Narok	38.2	263.2	40.6	11.3	34.46	1.7
34	Kajiado	39.0	138.8	28.5	17.4	52.37	10.5
35	Kericho	36.8	178.6	78.4	24.6	44.04	2.2
36	Bomet	50.9	198.9	82.0	12.6	32.34	1.4
37	Kakamega	119.1	519.9	161.7	28.5	35.16	3.6
38	Vihiga	36.0	158.7	68.2	8.7	10.67	0.4
39	Bungoma	85.8	449.1	151.4	34.6	51.01	2.3

S/No.	County	Public Schools – 2019			Private Schools – 2019		
		Pre-Primary '000	Primary '000	Secondary '000	Pre-Primary '000	Primary '000	Secondary '000
40	Busia	62.4	231.8	64.0	26.6	19.10	0.2
41	Siaya	65.2	253.5	92.0	34.6	16.03	0.2
42	Kisumu	49.0	254.0	90.1	28.8	33.15	3.2
43	Homa Bay	79.9	279.6	101.5	37.1	34.07	2.2
44	Migori	65.9	273.7	86.5	22.6	40.48	3.2
45	Kisii	57.7	255.6	131.3	29.8	56.40	1.8
46	Nyamira	34.9	125.6	56.4	12.7	36.95	0.9
47	Nairobi	23.1	230.0	66.4	49.0	184.04	33.4

## 2. Employment

109. In 2019, total employment excluding those engaged in small-scale farming and pastoralist activities is estimated to have increased from 17.3 million in 2018 to 18.1 million. Total new jobs generated in the economy were 846.3 thousand in 2019. The informal sector was estimated to have created 767.9 thousand new jobs in 2019 compared to 744.1 thousand new jobs created in 2018. In 2020, total employment outside small-scale agriculture and pastoral activities stood at 17.4 million, down from 18.1 million recorded in 2019. In the same period, wage employment in the private sector declined by 10.0 per cent from 2,063.2 thousand jobs in 2019 to stand at 1,856.5 thousand jobs. Within the public sector, wage employment increased from 865.2 thousand in 2019 to 884.6 thousand in 2020.

**Table 5: Selected Indicators on Employment**

Indicator	2016	2017	2018	2019	2020
<b>Total No. of persons in Employment</b>	<b>16 Million</b>	<b>16.9 Million</b>	<b>17.8 Million</b>	<b>18.1 Million</b>	<b>17.4 million</b>
Wage employment in the informal sector ('000)	133.0	794.4	762.1	767.9	
Wage employment in the modern sector ('000)	2 686.8	2 931.9	3 012.1	3 091.1	
Wage employment in the public sector ('000)	737.1	833.1	842.9	865.2	884.6

Source: Kenya National Bureau of Statistics, Economic Survey Report 2019, 2020& 2021.

110. In 2020, global employment levels deteriorated substantially due to increased inactivity as individuals were affected by closures of businesses or reduced number of working hours as the economies grappled with the downturns brought about by COVID-19. Inactive individuals due to the pandemic effects were reported to be 81 million persons in the review period. In addition, the labour force participation rate slowed from 60.7 per cent in 2019 to 58.7 per cent in 2020. The unemployment rate rose from 5.5 per cent in 2019 to 6.5 per cent in 2020.

111. Most disputes surrounding discrimination in employment are settled in the Employment and Labour Relations Court. This court was granted High Court status in 2011. The Employment Act, 2007 provides the basic standards of Employment in Kenya. On matters of discrimination in employment, Section 5 (2) provides: “An employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice.”

112. In Kenya Union of Domestic Hotels, Educational Institutions and Allied Workers v M P Shah Hospital [2018] eKLR the claimant prayed for an order of stay, staying the decision of the respondent to retire the claimant’s members at the age of fifty-seven (57) years. In 2015, the parties had signed a collective agreement to be in force for 2 years. It provided

under clause 21 that the retirement age for all unionisable employees was 57 years. Further, under clause 32, the agreement was to remain in force until the next collective agreement. The latter was signed on 13th April 2018. It provided under clause 21 that the retirement age for unionisable staff at 57 years of age. However, the management employees retire upon attainment of 60 years. The court ordered a stay in the decision to retire the claimant's members upon attaining the age of 57 years until the respondent institutes change in policy or renegotiate normal retirement age for its employees that is in line with provisions and respondent's obligations as provided for in section 5 (2) of the Employment Act, 2007. The Court ordered that members be retired at the age of 60.

113. The National Cohesion and Integration Commission conducted an ethnic and diversity audit in 2016 across different public service sectors and the result was as follows.

**Table 6: 2016 Ethnic and Diversity Audit across Public Service Sectors**

<i>S/No.</i>	<i>Entity</i>	<i>Total No. audited</i>	<i>Compliant</i>	<i>Non -compliant</i>
1.	National Civil Service	49	87.7%	12.3%
2.	County Public Service	47	31.9%	68.1%
3.	Public Universities	31	16.1%	83.9%
4.	Parastatals (State Owned Enterprises)	185	68.3%	31.7%
5.	Commissions	15	93.3%	6.7%

114. The Access to Government Procurement Opportunities (AGPO) Program established in 2013 facilitates the enterprises owned by women, youth and persons with disabilities to be able to participate in Government opportunities. This is made possible through the implementation of the legal requirement that 30% of Government procurement opportunities be set aside specifically for enterprises owned by these groups. Since its inception in 2013, Women entrepreneurs have received 30,205 tenders worth, Ksh. 33,953,900,402 (Approx. 339 Million USD) representing 52.32% of the total volume of tenders that have been awarded to the special interest groups.

115. The National Employment Authority is established by the National Employment Authority Act 2016. The Act transfers all employment functions to the Authority, which provides a comprehensive institutional framework for employment management; to enhance employment promotion interventions; to enhance access to employment for youth, minorities and marginalized groups and connected purposes. An employer with at least 25 employees must notify the Director of Employment of any vacancy and/or termination occurring in the organization.

116. The high rate of unemployment in Kenya has been a source of great concern for policymakers in government and other key sectors. One of the contributing factors to this state of affairs is the lack of practical work-based experience among the graduates. To address this challenge, the public service, as one of the largest employers has a role to play in ensuring that the youth, especially those with relevant qualifications are offered opportunities to enable them to gain practical work experience. It is against this backdrop that in 2016, the Government through the Public Service Commission developed the Internship Policy and Guidelines for the Public Service.<sup>11</sup> This policy provides a framework for engagement and management of internship programmes in the public service. It outlines the various provisions and requirements of the programme, selection procedures and roles and responsibilities of various stakeholders in the internship programme.

117. In the Financial year 2018/2019, a total of 5,344 interns were engaged by public institutions, out of which 2,452 (46%) were male, 2,892 (54%) were female and 81 (1.5%)

<sup>11</sup> Public Service Commission (2016) 'Internship Policy and Guidelines for the Public Service' available at [https://www.publicservice.go.ke/images/guidelines/PSC\\_INTERNSHIP\\_POLICY\\_AND\\_GUIDELINES\\_FOR\\_THE\\_PUBLIC\\_SERVICE\\_MAY\\_2016.pdf](https://www.publicservice.go.ke/images/guidelines/PSC_INTERNSHIP_POLICY_AND_GUIDELINES_FOR_THE_PUBLIC_SERVICE_MAY_2016.pdf).

were PWDs.<sup>12</sup> In the Financial year 2019/2020 the Commission recruited and placed in Ministries, Departments and agencies 5,560 interns in two cohorts, with Cohort 1 joining the service in October 2019, while Cohort 2 joined in January 2020. A summary of the interns engaged by public institutions disaggregated by gender, disability status and duration of engagement is presented in Table 8 below.

**Table 8: Interns engaged by Public Institutions in FY 2018/19**

Category of Institutions	Total No. of Interns	Gender		Disability Status		Duration		
		Male	Female	Non-PWD	PWD	Below 6 months	6 months to 1 year	Above 1 Year
Constitutional Commissions and Independent Offices	177	95	82	177	0	59	113	5
Ministries & State Departments	360	174	186	360	0	48	289	23
Public Universities	326	168	158	321	5	231	81	14
State Corporations and Semi-Autonomous Government Agencies	4 369	1 950	2 419	4 293	76	2 227	1 451	691
Statutory Commissions and Authorities	112	65	47	112	0	10	91	11
<b>Total</b>	<b>5 344</b>	<b>2 452</b>	<b>2 892</b>	<b>5 263</b>	<b>81</b>	<b>2 575</b>	<b>2 025</b>	<b>744</b>

Source: Status of the Public Service Compliance with the Values and Principles in Articles 10 and 232 of the Constitution for the year 2018/2019 report.

**Table 9: Placement of Interns in Public Institutions 2019/2020**

Category of Public Institutions	Total No. of interns	Female	Male
Constitutional Commissions and Independent Offices	90	44	46
Ministries and State Departments	3 151	1 431	1 720
State corporations	1 948	849	1 099
Public Universities	340	111	229
Statutory Commissions and Authorities	31	11	20
<b>Total No. of Interns</b>	<b>5 560</b>	<b>2 446</b>	<b>3 114</b>
Percentage	100	44	56

Source: Public Service Commission Annual Report 2019/2020.

118. The government through the Ministry of Education initiated a programme to construct Technical Institutes in every constituency to bolster the capacity of the existing ones to increase the number of youths with skills and enhance employability. The Government has developed a National Industrial Training and attachment policy to guide industrial training and attachment in the country. This is aimed at equipping the youths with the relevant skills and increasing employability and productivity as well as improved linkages between industry

<sup>12</sup> Public Service Commission (2019), 'Status of the Public Service Compliance with the Values and Principles in Articles 10 and 232 of the Constitution for the year 2018/2019' available at: <https://www.publicservice.go.ke/index.php/publications/reports>.

and training institutions. The youth enterprise fund has been streamlined to empower youth to start and grow their businesses. The National Youth Service programme has engaged the unemployed youth and imparted skills thereby opening employment opportunities. The implementation of the preferential procurement policies (affirmative action on government procurement) supports enterprises run by the vulnerable and thereby creating jobs and employment opportunities

### 3. Right to Form Trade Unions

119. Kenya upholds the rights of trade unions to go on strike to pursue their collective interests. As a member of the International Labour Organization (ILO), Kenya's amended labour laws comply with the ILO conventions and the Constitution of Kenya. The Employment Act (Revised Edition 2012 [2007]), the Work Injury Benefits Act (Revised Edition 2012 [2007]), and the Occupational Safety and Health Act (Revised Edition 2012 [2007]) have been revised to bring them in conformity with the Constitution and to ensure they uphold labour rights of individuals.

### 4. Health

120. The emergence of the Coronavirus disease (COVID-19) pandemic has caused unparalleled stretch in health systems and economic disruptions across the entire globe. In Kenya, the first case of COVID-19 was confirmed in March 2020.

121. National Government expenditure on health services rose by 34.5 per cent to KSh 103.1 billion in 2019/20, with development expenditure accounting for 41.0 per cent. County Governments' expenditure on health services grew by 16.0 per cent to KSh 106.7 billion in 2019/20, of which 83.5 per cent was on recurrent expenditure. The ratio of Government expenditure on health to total expenditure stood at 6.2 per cent in 2019/20. Expenditure on health services is expected to grow by 6.5 per cent to KSh 113.7 billion in 2020/21.

122. National Hospital Insurance Fund (NHIF) membership increased by 6.0 per cent to 22.0 million in 2019/20. Consequently, NHIF members' contributions grew by 5.7 per cent to KSh 59.5 billion in 2019/20. The amount of benefits payout increased by 1.8 per cent to KSh 54.4 billion. The number of health facilities increased from 13,700 in 2019 to 14,600 in 2020. The number of hospital beds increased by 9.6 per cent to 82,091 while hospital cots increased by 7.7 per cent to 8,946 in the review period. The majority (45.0%) of these hospital beds and cots were in public health facilities.

123. Deliveries in health facilities increased by 1.8 per cent to 1.2 million in 2020 with normal deliveries accounting for 82.8 per cent. There was a general decline in the uptake of modern contraceptive methods except for pills in 2020.

**Table 7: Selected Indicators on Health**

<i>Indicator</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
No. of health facilities	-	-	10 820	13 790	14 600
Registered Members of the National Hospital Insurance Fund(NHIF)	13.5 million	15.5 million	17.4 million	20.7 million	22 million

*Source:* Kenya National Bureau of Statistics, Economic Survey Report, 2020 and 2021.

124. Most of the key interventions for preventing HIV and caring for those with HIV require a strong and competent health workforce, distributed in high HIV impact facilities and counties, and with the necessary skills in HIV care. The data provided in Kenya Health Workforce Report: The Status of Healthcare Professionals in Kenya, 2015 are available for ongoing analysis to strengthen and manage the health workforce to achieve country and the

U.S. President's Emergency Plan for AIDS Relief goals, which are crucial for designing and planning sustainable interventions for HIV control.<sup>13</sup>

## 5. Housing

125. The Constitution under article 43(1) (b) provides that every person has the right to accessible and adequate housing and reasonable standards of sanitation. Vision 2030 and the revamped National Housing Policy 2016 establish the need for decent and affordable housing for all Kenyans. The GOK has defined the delivery of 500,000 affordable housing units to the lower and middle-income communities as one of the prioritized areas under the 'Big Four Agenda'. Currently, Kenya's housing deficit stands at 4.5 million and the plan is to build 50,000 housing units per year as a way of meeting the deficit by the set target year.

126. The construction of the houses has already commenced, covering major urban areas across the country. The houses are being built using affordable building materials, efficient construction technologies and use of environmentally friendly building materials and techniques. Park Road affordable housing programme project is completed. Park Road is the first development promoted by Government under the Affordable Housing Program. This integrated human settlement project is located in the Ngara area of the City of Nairobi, and will consist of 1,370 units; a 40% portion for Civil Servants has been allocated to them. The units are allocated with strong adherence to constitutional principles on equality and non-discrimination and regional balance.

127. The Government of Kenya while acting as an enabler, partner, and catalyst in the housing delivery process is collaborating with the private sector who have a role to play in the sector. For example; through the 2016 Finance Act, developers were given a major tax incentive after Parliament approved a reduction of Corporation tax from 30% to 15% for developers who construct a minimum of 400 housing units in a year. The move was meant to bridge the housing gap and support the construction of decent and low-cost housing. Players in the housing sector, such as, developers, landowners, financiers, manufacturers of building materials, and cooperatives societies are encouraged to develop innovative and practical solutions that will see the timely delivery of affordable and accessible housing for the people.

128. The government scrapped the National Construction Authority and the National Environment Management Authority levies. All these are meant to boost housing developments. Further, the National Government is also encouraging Counties to invest in social housing to cater for the influx of people moving to the County headquarters from the rural areas in search of jobs and business opportunities.

129. To mitigate the high building costs of building materials 93 Appropriate Building Materials and Technologies (ABMT) centres have been established to lower construction costs and improve the quality and speed of construction. 15 more centres to be constructed countrywide by 2022. ABMT refers to processes, materials, elements and tools that are compatible with the local socio-cultural, economic as well as physical and ecological environment of an area. The ABMT's overall objective is to facilitate/coordinate collaborative research and documentation; technology incubation and enterprise development; and technology transfer, capacity building training and dissemination to facilitate efficient and cost-effective housing delivery. The ABMT coordination at the County level is undertaken by the County Directors of Housing.

130. In this regard, the Government has promoted the use of Interlocking Stabilized Soil Blocks (ISSB) technology due to its high appropriateness, local availability of soils, small scale application and potential to address poverty and housing affordability challenges facing the majority of Kenyans. When properly utilized, ISSB technology has the potential to reduce construction costs by up to 50%, create sustainable employment, transfer skills, conserve the environment and raise living standards. The government has promoted the use of these blocks

<sup>13</sup> [https://taskforce.org/wp-content/uploads/2019/09/KHWF\\_2017Report\\_Fullreport\\_042317-MR-comments.pdf](https://taskforce.org/wp-content/uploads/2019/09/KHWF_2017Report_Fullreport_042317-MR-comments.pdf).

in all 47 counties on ISSB application, production and construction processes as well as maintenance procedures.

131. The Government of Kenya, in collaboration with UN-HABITAT and other stakeholders, initiated the Kenya Slum Upgrading Programme (KENSUP) in 2004. This is an ongoing project whose objective is to improve the lives and livelihoods of people working and living in slums through various initiatives and interventions which aims to improve the lives of at least 10 million slum dwellers by the year 2020.

132. Slum upgrading projects: 462 housing units and associated infrastructure including a primary school, police station, market stalls, shopping centre and 2 nursery schools in Mavoko under construction at 93% while 10 classrooms constructed at Mukhaweli Primary School in Bungoma. In addition, 15 wells in various slums, improved in Lamu County and Kibung'ua market in Tharaka Nithi slums constructed.

133. Implementation of Kenya Informal Settlement Improvement Project (KISIP): Kericho, Nakuru, Kisumu, Uasin Gishu, Embu, Kitui, and Kilifi counties benefited from the installation of infrastructure projects as follows: 83km access roads; 84 high masts floodlights; 38km of sewer line; 2,876 sewer connections; 50km of a pipeline; 3500 water connections; and 14 ablution blocks.

134. National Police and Kenya Prison Services housing units are ongoing as follows: Out of the 3,444 units, 1,290 units have been completed and allocated. 2,154 units are in different stages of completion. Kakamega Main Prison (60) – 60%; Narok Police Station (60) – 85%; Kapenguria Main Prison (60) – 55%; Bondo AP Lines (60) – 55%; Police Training College, Loresho (72) – 70%; Eldama Ravine AP Camp (60) – 60%; Ndaragwa Police Post (60) – 50%; Meru Main Prison (60) – 90%; and Kitui AP Border Patrol (60) – 70%. The overall completion percentage as of December 2019 was 75%.

135. Civil Servants Housing Scheme: 613 housing units are completed and have been allocated to Civil Servants in Kiambu (193), Embu (220) and Machakos (200). A total of 496 Civil Servants have been facilitated to own housing through a mortgage from the Civil Servants Housing Scheme. In addition, land documentation is ongoing in preparation for the design of 1,350 units, 150 units in Murang'a; 150 units in Kakamega, 150 units in Nyeri; 150 units in Kisii; 150 units in Mombasa; 200 units in Garissa; 100 units in Nakuru; 150 units in Uasin Gishu; and 150 units in Meru. An average of 10% of works has been undertaken.

136. Policy and legislation: Measures taken to ensure the right to housing include, the review and development of legislation and policies, as follows: – the National Housing Policy of 2016, the Slum Upgrading and Prevention Policy of 2016, The National Urban Development Policy of 2016, the amendment of the Urban Areas and Cities Act by Parliament in October 2017, approval of the Sectional Properties Bill 2018 in February 2019 by the Cabinet among others. National Housing Bill 2019 and the Housing Levy on the Finance Act 2018.

137. The provision of affordable housing in Kenya has been greatly hampered by the high cost of land particularly in urban areas. This situation is further exacerbated by the ever-expanding populations in the cities. The government is addressing this situation by releasing large tracts of public land to realize the housing agenda for the low and middle-income earners.

### **III. Other Recommendations**

#### **A. Ratification of the International Convention on the Rights of Migrant Workers and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169)**

138. On the Committee's call for Kenya to ratify the International Convention on the Rights of Migrant Workers, it is noteworthy that migrant workers are recognized under the Employment Act, 2007. The Act promotes and guarantees equality of opportunity for migrant workers or a member of the family of the worker, lawfully within Kenya. Employers are

expected to strive to eliminate discrimination in any employment policy or practice. Kenya is also a state party to the Migration for Employment Convention (Revised), 1949. The Government regularly reports to the Committee on measures taken to protect the rights of migrant workers.

139. On the ratification of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), Kenya submits that the constitution recognizes that indigenous people form part of marginalized communities who must be protected through specific affirmative action designed to ensure that they enjoy their human rights and fundamental freedoms on an equal footing with others. To this end, various legislative, policy and administrative measures have been taken to improve their lives.

## **B. Follow-up to the Durban Declaration and Programme of Action**

140. The GoK has taken policy, legislative, judicial and administrative measures to implement the Durban Declaration and Programme of Action. These measures are well documented in this report and other reports to other UN treaty monitoring bodies.

## **C. International Decade for People of African Descent**

141. Kenya has taken various legal, policy, programmatic and other measures to combat racism, racial discrimination, xenophobia and related intolerance faced by people of African descent. The measures some of which are well documented in this report, include:

- The enactment of a right based constitution that espouses the right to equality and non-discriminations;
- Setting up strong independent institutions, such as the National Cohesion and Integration Commission, the National Gender and Equality Commission and the Kenya National Commission on Human Rights for monitoring negative ethnicity, racial discrimination, and related intolerance in the country;
- Ensuring access to justice for all through building more courts in all counties, small claims courts, alternative dispute resolutions and provision of legal aid to the indigent;
- Celebration of cultural days and the use of Annual music and drama festivals have built ethnic tolerance in the country;
- Sensitization of the media on responsible reporting to prevent negative reports against members of particular ethnic groups. The Government has recognized several stateless people living in the country and bequeathed them with Kenyan citizenship. All recognized people have been issued with titled documents. The recognized groups include the Makondes, the Shona and the Nubians, including their children;
- Formulation of the Kenya Vision 2030 as the country's main development blueprint covering the period between 2008 to 2030. The Vision outline various plans and programmes of economic and social development on an equal and non-discriminatory basis;
- Free and universal primary education

## **D. Consultations with civil society**

142. The process of the preparation of this report was highly consultative and participatory, bringing together civil society organizations involved in various areas of human rights protection, academia and the Law Society of Kenya. The concluding observations were disseminated to all strata of the society in Kenya. Follow up to these concluding observations involved government ministries as well as civil society organizations.

### **E. Amendment to article 8 of the Convention**

143. The Office of the Attorney General and Department of Justice is in the process of examining the proposed amendments to article 8 (6) of the Convention on the provision of Staff to the Committee<sup>14</sup> to provide an advisory to the Cabinet on the same.

### **F. Declaration under Article 14 of the Convention**

144. On the Committee's call to the GoK to make the optional declaration provided for in article 14 of the Convention recognizing the Committee's competence to receive and consider individual communications. Kenya believes that it has sufficiently strong and effective constitutional and legal frameworks on racial discrimination through which complainants may seek redress in the myriad of impartial and independent courts/tribunals/ human rights institutions in the country.

### **G. Paragraphs of particular importance**

145. The information on the implementation of the recommendations contained in paragraphs 8 and 14 (c) and (d), 20, 24, 26 and 38 are contained in this report. The delay to submit the replies in time was occasioned by challenges faced with regard to the collection of statistical data and the outbreak of COVID 19 whose effects have been explained in the report.

### **H. Access to ICERD state reports**

146. The Office of the Attorney General and Department of Justice has uploaded this report and the previous concluding observations on its website. The concluding observations were disseminated to various groups including civil society organizations, national and county governments.

### **I. Submission of the Common Core Document**

147. The Government has updated its 2011 Common Core Document following the Kenya National Bureau of Statistics' demographic and housing census conducted in 2019. The Core Document has been submitted with this present report and can be used in conjunction with Kenya's other periodic reports on the United Nations' human rights treaties.

## **IV. Article 5 and 7 of the Convention**

### **Article 5: Freedom of movement, peaceful assembly, association and access to public places**

148. With the declaration of the COVID-19 virus as a global pandemic, various human rights have been limited by Governments across the globe in a bid to curb the spread of the virus and protect public health. The GOK restricted several human rights after the confirmation of the first case of COVID 19 in Kenya. These restrictions, including the introduction of dawn to dusks curfews, lockdown in several counties, travel restrictions and limited flights in and out of Kenya, which has had a limiting effect on the enjoyment of the rights to freedom of expression, assembly and access to public places under article 5 of the Convention. The limitation of these rights, in turn, curtails socio-economic rights such as the right to a livelihood, as many people in the informal economy struggle to make a living.

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<sup>14</sup> "The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Convention."

149. The restrictions affected all persons who did not fall within the essential services criteria. They did not discriminate against anyone based on race, colour, descent, or national or ethnic origin. It is noteworthy that the measures taken were and continue to be implemented strictly within the purview of various enabling laws, policies and regulations, which include the Constitution of Kenya, the Public Health Act Cap 242, the Health Act No. 21 of 2017 and the Public Order Act Cap 50.

### **Article 7: Eradicate Racial Discrimination in fields of teaching, education, culture and information**

150. In the period under review, the GOK, the NCIC, NGEC and other organizations have used the media, other social platforms to pass messages about racial discrimination in order to foster a spirit and culture of ethnic tolerance. In this regard, the messages on human rights, are transmitted continuously through various fora, TV shows, national and vernacular radio.

#### **A. Culture**

151. In utilizing mechanisms to foster patriotism and national unity, cultural exchanges have been the key to resolving some of the racial prejudices in society. The Annual music and drama festivals in all levels of education have been a good example of cementing nationhood. Again, different communities celebrate cultural days including Lake Turkana cultural festivals, Samburu cultural festival, Marsabit Cultural festival, Lamu Cultural festival, and Pastoralist cultural festivals among others. In addition, there is also the brand Kenya website which depicts cultural initiatives in Kenya. The State has provided funds to support artists who engage in various artistic creations.

#### **B. Information**

152. Dissemination of information in diverse forms, including vernacular to ensure that there is the widest possible outreach, is one area that enhances understanding and tolerance in society. The State media has facilitated the establishment of different vernacular radio and TV stations with programmes that are meant to sensitize, create awareness and impart knowledge or information on racial discrimination that reach a wider audience. The State media has incorporated programmes that showcase the diverse culture and traditions in the country to foster harmony and understanding among the various ethnic communities. The mass media has sections/columns for human rights which attracts various writers, columnists, speakers and human rights advocates.

153. The media professionals are continuously sensitized on responsible media reporting to prevent negative reports against members of particular groups. The Media Council conducts specialised and tailor-made pieces of training for media practitioners that aim at promoting ethical standards and professionalism among journalists and include training on freedom of expression and hate speech, historical injustices and how the Kenya constitution addresses them as well as constitutionalism among others.

154. In the same review period, NGEC has facilitated and coordinated public education to special interest groups on their rights and opportunities. Targeted communities included ethnic minority and marginalized communities in 8 counties – Garissa, Tana River, Kiambu, West Pokot, Kajiado, Makueni, Vihiga and Migori. The Commission continues to provide public education on protected groups during the Kenya Pastoralist week and in community-specific cultural festivals.

155. Equality and Inclusion Technical Working Groups (EITWG) were established by NGEC to improve coordination and cooperation of agencies dealing with equality and inclusion of the most vulnerable groups. The EITWG support a comprehensive and coordinated approach to managing equality and inclusion of special interest groups in all spheres of life, contribute to a shared vision, integrate strategies and approaches among stakeholders to better address emerging issues of equality and inclusion.