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Committee on Economic, Social and Cultural Rights

Sixth periodic report submitted by Kenya under articles 16 and 17 of the Covenant, due in 2021 ***

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* The present document is being issued without formal editing.

** The annexes to the present report may be accessed from the web page of the Committee.



List of acronyms and abbreviations

ABMT	Appropriate Building Materials Technology
AGPO	Access to Government Procurement Opportunities
ARP	Alternative Rite of Passage
ASAL	Arid and Semi-Arid Lands
ARA	Assets Recovery Agency
CBC	Competency-Based Curriculum
EAC	East Africa Community
EACC	Ethics and Anti-Corruption Commission
EPA	Economic Partnership Agreements
EU	European Union
FRC	Financial Reporting Centre
FGM	Female Genital Mutilation
FPIC	Free, Prior & Informed Consent
GoK	Government of Kenya
GPA	Government Proceedings Act
HELB	Higher Education Loans Board
ICESCR	International Covenant on Economic, Social & Cultural Rights
IDPs	Internally Displaced Persons
LDCs	Least Developed Countries
KICD	Kenya Institute of Curriculum Development
KNCHR	Kenya National Commission on Human Rights
KIPPRA	Kenya Institute for Public Policy Research and Analysis
MLA	Mutual Legal Assistance
NACADA	National Authority for the Campaign against Alcohol and Drug Abuse
NCPWD	National Council on Persons with Disabilities
NGEC	National Gender and Equality Commission
NHIF	National Hospital Insurance Fund
NLAS	National Legal Aid Service
NPS	National Police Service
NYS	National Youth Services
ODPP	Office of the Director of Public Prosecutions
OAG&DOJ	Office of the Attorney General & Department of Justice
OSIEA	Open Society Initiatives for Eastern Africa
PMTCT	Preventing Mother to Child Transmission
PrEP	Pre-Exposure Prophylaxis
PTI	Prosecutors' Training Institute
SGBV	Sexual & Gender-Based Violence
TVET	Technical & Vocational Education & Training

UHC Universal Health Coverage
VMC Voluntary Medical Male Circumcision

Part I

Introduction

1. The Government of Kenya (GoK) herewith submits to the Committee on Economic, Social & Cultural Rights (Committee) its 6th periodic report in conformity with the provisions of articles 16 and 17 of the International Covenant on Economic, Social & Cultural Rights (Covenant).
2. The report outlines the measures taken to implement the concluding observations issued by the Committee following the consideration of Kenya's combined 2nd to 5th periodic reports on the Covenant in 2016. Where appropriate, this report also provides information on new developments during the reporting period.
3. The GOK prepared this report in consultation with representatives from the National Human Rights Commissions, the academia, and civil society organizations(CSO). In its concluding observations dated 4 March 2016, the Committee requested Kenya to submit its sixth periodic report by 31 March 2021. Due to challenges caused by the coronavirus preventive measures, the government faced difficulties conducting data collection meetings, thus resulting in the delay in submitting the report within the given timelines.
4. The novel Corona Virus Disease (COVID-19), declared a pandemic by the World Health Organization (WHO) in 2020, ravaged many countries, including Kenya. Several measures that the government took to curb the spread of the virus adversely affected the enjoyment of economic, social and cultural rights for all, including the most disadvantaged and marginalized populations.
5. Nonetheless, the GOK moved with speed to mitigate the broader impact of the crisis on the lives of all persons in Kenya. These include: the creation of a Covid-19 emergency fund to support vulnerable members of society, enhanced healthcare facilities and provided free food, a 100 per cent waiver on income tax to all those who earn less than KES24, 000 (USD 200.67) a month, a reduction of the value-added tax (VAT) from 16 per cent to 14 per cent and decrease of the income tax rate (Pay-As-You-Earn) from 30 per cent to 25 per cent and resident income tax (corporation tax) from 30 per cent to 25 per cent.
6. The GoK took all measures necessary to guarantee access to vaccines against coronavirus to all persons, without discrimination. Indeed, as of May 22 2022, Kenya had administered 18.2 million vaccine doses. Booster shots are also available. The introduction of the vaccines helped lessen the health and life risks brought about by the virus while allowing for the gradual lifting of some of the preventive measures taken that had adverse consequences for the enjoyment of economic, social and cultural rights of the people.

Part II

1. Domestic application of the covenant

Adoption of pending legislation and policies

7. In follow-up to the recommendation outlined in paragraph 6 of the concluding observations, the GoK is pleased to inform the Committee that Parliament enacted the Community Land Act 2016, the Water Act 2016, The National Health Insurance Fund (Amendment) Act 2022 and the Health Act, 2017.
8. The Community Land Act, 2016, provides for the recognition, registration and protection of community lands and outlines the role of county governments in relation to unregistered land. All dealings with the lands can only be conducted with the consent and participation of communities.
9. The Water Act, 2016 creates several institutions to manage water resources to ensure efficient and effective access and recognizes that water-related functions are a shared responsibility between the national and county governments.

10. The Health Act, 2017 formalizes collaboration between national and county governments. It obliges Kenya to address the health needs of vulnerable groups and mandates the provision of emergency and specialized care. Progressively, the law also ensures the provision of free maternity care, vaccinations for children under the age of five years and workplace breastfeeding facilities. The law safeguards the right to health for vulnerable groups by clarifying the state's obligation to provide services for women, children, youth and members of minorities or marginalized communities. The NHIF (Amendment) Act, 2022 opened up insurance to more beneficiaries.

11. The Housing Bill 2020 and the Social Assistance (Repeal) Bill 2020 will be tabled before the National Assembly for enactment into law after a public participation exercise has been completed, and cabinet approval received.

12. Regarding policies, the National Housing Policy 2016, the National Land Use Policy 2017 and the Kenya Health Policy 2014–2030, which give effect to the Covenant's rights, have been formulated and adopted by Parliament.

Implementation of the decisions of the court

13. Kenya has an independent and impartial judiciary that makes progressive decisions that advance human rights. In Kenya, the High Court has jurisdiction to grant redress for a denial, infringement, or violation of a right or fundamental freedom in the Bill of Rights.

14. To the greatest extent possible, the GoK strives to respect and implement all judicial decisions expeditiously. However, procedural, policy and budgetary issues may in some cases delay the implementation of court decrees. For example, the satisfaction of decrees or judgments is classified as a budgetary expenditure by Parliament and as a result, must be justified in law and provided for in the government's expenditure in a particular financial year. Under Article 206 (2) of the Constitution, money may be withdrawn from the Consolidated Fund only in accordance with an Act of Parliament. As such, accounting officers cannot expend what has not been budgeted for unless allocated by Parliament in the relevant financial year. In some instances, court decisions on payments may be made in the middle of a financial year making it difficult for accounting officers to properly plan to satisfy a judgment debt. In other cases, even where a Ministry has budgeted for the implementation of a court decision, the allocation may not be adequate further delaying the implementation. Nonetheless, the government continues to release monies to satisfy awards made by the courts. The OAG&DOJ in line with section 21 of the GPA and accounting procedures as per the Public Finance Management Act, facilitates the implementation of court judgments and decrees by paying aggrieved parties settlement funds received from Ministries and Agencies held liable by the courts. Indeed, in the last two financial years, 2020–2021/2021–2022, the Office of the Attorney General and Department of Justice paid out Kshs 5 billion (USD 41,823,504.50) in compensation to victims of torture following the various court decrees.

Section 21(4) of the Government Proceedings Act

15. The core issue in the case of Nahashon Omwoha Osiako & 66 Others v Attorney General Amicus Curiae Kenya Section of International Commission of Jurists (Open Society Justice Initiative) [2017] eKLR was whether or not section 21(4) of the government Proceedings Act (GPA) is a violation of Articles 27, 28, 40 and 47(2) of the Constitution. Section 21(4) of the GPA essentially prohibits execution or attachment of process of that nature against the government as a means for enforcing orders and decrees of the court. The court held that the rationale provided for the differentiation between ordinary litigants and the government in the impugned provisions of the GPA and Civil Procedure Code (CPR) is well-founded and is not discriminatory. The court observed that the purpose of Section 21(4) of the GPA is to protect the public interest and prevent disruptions in the social fabric which may take place in the wake of attachments and executions against state assets. The accounting officer of the relevant government department is nevertheless under a statutory duty to satisfy a judgment made by the court against that department. The provisions of the GPA and CPR however require that the procedure laid out under the Act be followed so that the accounting officer may effect payment. Monies to satisfy judgement debts may be paid out of the Consolidated Fund. In any event, section, 21 (4) of the GPA does not prevent petitioners from realizing the fruits of their judgment if they followed the laid down procedures.

2. Provision of legal aid

16. The Legal Aid Act, 2016 provides for legal aid and its funding mechanism. Section 5 of the Act establishes the National Legal Aid Service (NLAS) with the mandate to, among other things, 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 drawing membership from State and non-State actors. 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, with plans 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 for better provision of legal aid.

17. In 2017, the Board formally launched a National Action Plan for Legal Aid (NAP), which serves as a road map for coordinated implementation of legal aid interventions by the government and legal aid actors across development sectors for maximum impact.

18. The implementation of the NAP has brought justice closer to the people, through community-based initiatives which have increased access points. Some of the achievements of NLAS during the reporting period include the provision of legal aid to 1,399,042 people. Some of the achievements of NLAS during the reporting period include the provision of legal Aid to 1,399,042 people. Legal Aid includes advice, representation, Alternative Dispute Resolution (ADR), drafting of court documents, and creation of legal awareness. Legal aid clinics are conducted annually in Nairobi, Mombasa, Kisumu, Eldoret and Nairobi. The Judiciary periodically organizes children’s service weeks. Implementing the NAP has brought justice closer to the people through community-based initiatives, which have increased access points.

19. NLAS, through the support of Open Society Initiatives for Eastern Africa (OSIEA), continues to build the capacity of paralegals on the Legal Aid Act, 2016 and Legal Aid (General) Regulations 2020. So far, 120 paralegals have benefited from the training conducted in Mombasa, Kisumu, Eldoret and Nakuru. During the period under review, NLAS has resolved 5,715 cases through various delivery models for legal Aid with the use of ADR, including traditional justice systems (TJS).

3. Protection of internally displaced persons (idps)

20. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 makes provision for the prevention, protection and assistance to internally displaced persons and affected communities and gives effect to the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, and the United Nations Guiding Principles on Internal Displacement. The Act guides the resettlement of Internally Displaced Persons (IDPs) and underscores the importance of a human rights-based approach when dealing with IDPs. A fund created by the law covers the capital and recurrent expenditure relating to displacement, including rebuilding of destroyed houses and rehabilitation of community utilities and institutions.

Establish a comprehensive IDP registration system and keep up-to-date records of all IDPs

21. An all-inclusive National Consultative Coordination Committee on Internally Displaced Persons is created by the legislation to oversee the resettlement programmes. The Committee oversees the registration of all internally displaced persons and maintains a national data-base of such persons. The registration should (i) commence and conclude within thirty days of the occurrence of internal displacement; (ii) be declared by the Cabinet Secretary through the issuance of a Gazette notice; (iii) be only for reasons of ascertaining the identification, profile, conditions, and numbers of internally displaced persons for the

sole purpose of protection and assistance in accordance with article 3 (4) of the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons.

Adopt a National Internally Displaced Persons' Policy

22. The National Policy on the Prevention of Internal Displacement, Protection and Assistance to IDPs establishes a national framework for addressing all situations of internal displacement in Kenya, whether current or future, in compliance with the commitments the government has accepted by recognizing the UN Guiding Principles on Internal Displacement and by ratifying the Great Lakes Protocol on the Protection and Assistance to IDPs as well as other relevant regional and international treaties, especially the AU Convention for the Protection and Assistance of IDPs in Africa.

23. The Policy reflects the primary responsibility of the government as well as its outstanding commitment to prevent and protect its citizens from displacement, to provide assistance and protection to IDPs during displacement irrespective of its cause and whether they stay in camps, settlements, host families or other places and provide them with a sustainable and durable solution to their displacement. It identifies the main actors, their roles and responsibilities to prevent and protect from displacement, provide protection and assistance to internally displaced persons as well as a durable solution that is sustainable and allows the displaced to restart their normal lives.

24. Importantly, the framework addresses closely interrelated issues such as reconciliation, accountability, early recovery and development to the extent necessary. It reflects the importance of including internally displaced persons in decision-making in all matters affecting them.

Access to amenities

25. To ensure that IDPs in resettlement sites have access to public transport and basic services, including water and sanitation, health, education and social assistance, the State constructs boreholes, fish-ponds, dams and new schools in IDPs settlement areas; seeds, fishing gear and breeding cows are also distributed in the areas. The state also sets up health clinics and business solution centres to provide medical assistance and entrepreneurial skills to youth and women respectively.

4. Economic partnership agreements

26. Negotiations for an Economic Partnership Agreement (EPA) between the European Union (EU) and members of the East African Community (EAC) were finalized in October 2014. Kenya and Rwanda signed the agreement in September 2016. It is noted that the EPA did not come into force because all other EAC countries, except for Kenya, refused to ratify the agreement. Kenya ratified the agreement, in order not to lose free access to the European Union (EU) market.

27. While Uganda, Tanzania, Rwanda, Burundi, and South Sudan are the Least Developed Countries (LDCs), Kenya is classified as a developing country and thus does not enjoy some of the privileges accorded to the LDC. Therefore, Kenya would have been the greatest loser if such an Agreement was not concluded as it cannot enjoy the Generalized System of Preferences (GSP) or the Everything but Arms (EBA) which other EAC members enjoy by virtue of being LDCs. A decision of the EU Parliament allows Kenya to access the EU market until the other countries decide to sign.

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30. To broaden participation in the negotiations, the Ministry of Trade established an institutional framework involving all critical stakeholders drawn from Ministries, Departments, Agencies, the Private Sector and Civil Society Organizations.

31. Various impact assessment studies were conducted to inform and guide negotiators in the EPA negotiations based on evidence. Other studies were also undertaken by the Civil Society on the potential impacts of EPAs on various economic and social sectors. It was also the case that all the ACP Countries were to conduct impact assessments to inform their decision on whether to participate in the EPA negotiations or not because the EPA was being to be negotiated only by countries that were ready and willing to do so. Indeed, the Kenya Human Rights Commission (KHRC) examined the implications of the EAC-EU EPA on Kenya's agricultural sector, specifically the likely effects on smallholder farmers and agricultural outputs.¹

32. The Study indicated that the main threat of EPAs on local agricultural production is due to the potential flooding of the domestic market by imports from the EU following the liberalization schedule. However, most of the agricultural products are listed as sensitive products and therefore are protected from tariff liberalization.

33. The Study recommended various measures to address the negative impacts of the EPA, including the importance of continued support to all smallholder farmers in the country to cushion them from any possible threats of liberalization in the context of EPAs. The support should include but not be limited to the supply of farm inputs, increased extension services from public and private providers, marketing services, storage facilities and trainings.

34. The Kenya Institute for Public Policy Research and Analysis (KIPPRA) is an autonomous institute whose primary mission is to conduct public policy research leading to policy advice. KIPPRA examined the economic implication of EPAs on Kenya.² The study recommended that for Kenya to benefit from EPAs, there is need to urgently address supply-side constraints such as inadequate infrastructure and low productive capacity of producers, which limit exportable surplus.

35. Kenya should also enhance export growth and diversification from limited primary and natural resource-based commodities. There is need for the country to build capacity for the fish SPS measures. Kenya should urgently embark on an industrialization strategy to diversify exports, especially high technology exports. This can be done by seeking new markets for traditional products, adding value to traditional products and selling them to existing trade partners, or creating new products to be sold in the non-traditional markets. The GoK has embarked on implementing the recommendations of the two studies.

5. Endorois

36. Regional human rights mechanisms have issued several recommendations to the GoK, with many under implementation. These include the African Commission's recommendations on the Endorois people. The government is primarily responsible for the promotion and protection of human rights for all in Kenya. In formulating any strategy to implement the decisions of the regional mechanisms, the government must consider its internal infrastructural processes, budget and national ethos. It is incumbent upon the State to address any issues concerning its people in an all-inclusive and holistic manner. Any strategy must consider the government's obligations to other communities.

¹ Kenya Human Rights Commission, assessment of the possible implications of the EAC-EU EPA on Kenyan agricultural sector and its compatibility with the WTO rules.

² The Kenya Institute for Public Policy Research and Analysis: "The Economic Implication of EPAs on Kenya" Nairobi, Kenya.

37. Admittedly, any plan to implement decisions takes time because the government must weigh the strategy against other existing policies, constitutional provisions, and environmental, political and security impacts. Additionally, some decisions require a change in laws, policy formulation and programmes, thus requiring stakeholder consultations, public participation, and sensitization. Lobbying must also be undertaken to gain consensus on many issues.

38. Kenya is not yet a party to the ILO Convention (No. 169) on Indigenous and Tribal Peoples. The GoK believes that its current national legal and policy frameworks offer sufficient protection to all indigenous people. Indeed, the Constitution recognizes that indigenous people form part of marginalized communities who must be protected through the development of specific affirmative actions designed to ensure that they enjoy their human rights and fundamental freedoms on an equal footing with others. Indigenous people in Kenya are protected under the purview of marginalized communities.

39. The Article 56 of the Constitution mandates the government to ensure that minorities and marginalized groups are provided with special opportunities in various fields including educational and economic, access to employment, enjoy their cultural values, languages and practices, and have reasonable access to water, health services and infrastructure.

40. The Employment Act, 2007 demands that employers promote equal opportunities for all employees to eliminate discrimination in employment policies and practice. Concerning access to employment, the Diversity Policy for the Public Service, 2016, provides strategies for ensuring that the recruitment process for the public service reflects the diverse Kenyan communities. The policy is strictly followed in any recruitment or appointment in the public service.

41. In the educational sphere, the GoK has ensured that primary school education is mandatory and accessible for all persons, including those who are part of marginalized communities. All public day secondary schools offer free tuition. Parents or guardians who fail ensure that children under their care attend school face heavy penalties.

42. Health services have been devolved to all 47 counties in Kenya, thus ensuring that all citizens, including marginalized persons can access medical services.

43. Through the National Policy on Culture, 2017, the country seeks to realize her dreams and aspirations as captured in its constitution, which underscores Kenya's pride in her ethnic, cultural and religious diversity and her determination to live in peace and unity as one indivisible and sovereign nation. By formulating the policy framework, Kenya responds to both international and national requirements for the protection and appreciation of the diversity of cultural expression while at the same time charting a path that promotes her unique identity and culture.

44. The policy seeks to protect and preserve the unique identity of the people of Kenya and use it for their well-being and development. It guides the practice of democratic governance by promoting inclusion and participation for all citizens as a guarantee for social cohesion and peace. The policy emphasizes the appreciation of cultural diversity by recognizing it as an opportunity towards widening the range of options open to every citizen and as a root of development, not simply understood in terms of economic growth but also as a means for achieving a more satisfactory intellectual, emotional, moral and spiritual existence.

45. In Kenya, most of the land belonging to indigenous people is held in undivided shares by a community. The Community Land Act, 2016 bestows legal protection and recognition to community lands. The legislation defines "Community" to mean a consciously distinct and organised group of users of community land who are citizens of Kenya and share any of the following attributes: common ancestry, similar culture or unique mode of livelihood; socioeconomic or other similar common interest; geographical space; ecological space; or ethnicity. The Act empowers communities to take control of the management and administration of their land. Benefit sharing of natural resources is promoted among community members and must be used and managed sustainably and productively for the benefit of the whole community and future generations.

46. The Forest Conservation and Management Act 2016, protects forests which form the habitat of indigenous people and provides for community participation in forest management.

47. The Indigenous Peoples Planning Framework (IPPF) is invoked in cases where indigenous peoples are present in, or have 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.

6. Maximum available resources

48. The government (GOK) continues to take legislative, institutional, judicial and other measures to reduce corruption in the country.

49. The training of police and other law enforcement officers, investigators, prosecutors and judges in the fight against corruption is ongoing. The Office of the Director of Public Prosecutions (ODPP) has established a Prosecutors' Training Institute (PTI), which offers specialized prosecutorial training to enhance the execution of the office's mandate as stipulated in Article 157 of the Constitution.

50. The National Integrity Academy was established by the Ethics and Anti-Corruption Commission in 2018 to provide specialized training on ethics, integrity, leadership, good governance and anti-corruption to public and private sector officials in the country and the region. The overall goal of the Academy is to entrench a culture of integrity and create an ethical and value-driven society that upholds integrity and the rule of law by influencing the mindsets, attitudes and behaviour of national and regional citizens.

51. In 2019, the High Court in *Moses Kasaine Lenolkulal v Director of Public Prosecutions* [2019] eKLR Criminal Revision 25 of 2019 ruled that elected executives, such as governors, should not continue holding office when faced with corruption-related charges. This judgment was upheld on appeal in *Moses Kasaine Lenolkulal v Republic* [2019] eKLR Criminal Appeal No. 109 of 2019.

52. Legislation on corruption includes the Bribery Act, 2016, which expands the mandate of the Ethics and Anti-Corruption Commission to cover the private sector. The law provides for the prevention, investigation and punishment of bribery. The Regulations operationalising the Act have been drafted and are awaiting Parliamentary approval.

53. The Whistle Blowers Bill, 2022, currently before Cabinet for approval provides an effective protective framework for persons who disclose certain suspected acts of wrongdoing or corruption to competent authorities in good faith and on reasonable grounds. Another critical step taken to enhance the fight against corruption is strengthening collaboration with different jurisdictions through Mutual Legal Assistance agreements.

54. The Proceeds of Crime and Anti-Money Laundering Act, 2009, is the primary legal framework enacted to combat money laundering and provides for the identification, tracing, freezing, seizure and confiscation of proceeds of crime. The Act creates the Financial Reporting Centre (FRC) and the Assets Recovery Agency (ARA). The mandate of the Asset Recovery Agency (ARA) is to identify, freeze and recover assets acquired illegally and are benefits or profits of proceeds of crime.

55. The FRC is tasked with the responsibility of identifying proceeds of crime and combating money laundering. It does this through receipt of suspicious transaction reports from banks and other financial institutions.

56. The State has also made significant progress in the recovery of assets. The EACC traced public assets worth Kshs. 25.3 billion (USD 211,626,932.77) and recovered others worth Kshs. 12.1 billion (USD 11,212,880.89) in 2019/2020 compared to assets worth KSh 2.7 billion (USD 22,584,692.43) traced and Kshs. 4.5 billion (USD 37,641,154.05) recovered in 2018/19. The Commission averted the loss of assets worth Kshs. 10.0 billion (USD 83,647,009.00) in 2019/20 compared to Kshs. 14.5 billion (USD 121,288,163.05) the previous year. (Refer to Table 1 in the annexures).

57. The EACC ensures that those involved in corruption and abuse of office are promptly investigated and prosecuted. In that regard, several governors have been charged in court and forced to step aside from their posts due to corruption and misuse of public funds among other things. The number of reports investigated by the EACC, status and outcomes of the investigation for the period 2015/16 to 2019/20 are reflected in the table below:

Reports Handled by EACC by Type and Action Taken, 2015/16–2020/21

<i>S/No</i>	<i>Action Taken</i>	<i>2015/16</i>	<i>2016/17</i>	<i>2017/18</i>	<i>2018/19</i>	<i>2019/20</i>	<i>2020/21</i>
1	Report for investigation	3 856	3 735	2 898	3 482	2 221	2 032
2	Reports referred to public organizations	848	736	493	921	448	391
3	Reports pending for more information	55	64	86	226	125	73
4	Complainants advised on where to report	2 616	3 045	2 207	3 803	2308	1 621
5	Reports with no further action (terminated)	542	575	527	876	814	77
6	Reports forwarded to ODPP	167	143	183	234	163	103

58. Further, the EACC undertakes proactive measures to strengthen systems in public institutions to minimize opportunities for corruption and unethical practices and forestall possible loss of public resources. The status of proactive investigations conducted by the Commission during the reporting period is detailed in the EACC Annual Report 2019/2020.³

59. Regarding the roles of businesses in combating corruption, many Kenyan businesses have now signed up to the Code of Ethics for Business which establishes practical steps to promote and enhance the ethics of business conduct in the country in line with the principles of the UN Global Compact covering human rights, labour standards, environment and anti-corruption.

7. Non-discrimination

60. Kenya has enacted several laws that combat discrimination on grounds such as disability, gender, HIV and AIDS, and mental health. To further buttress the fight against discrimination, the following Bills have been tabled before Parliament: The Registration of Persons (Amendment) Bill, 2019 which provides for the registration of intersex persons, who hitherto had not been recognized by Kenyan laws. The Geriatric Bill 2021 provides for the protection of the elderly.

8. Lesbian, gay, bisexual, transgender and intersex persons

61. Sexual relations between same-sex persons are expressly prohibited by national law and are unacceptable to Kenyan culture and values. However, every person in Kenya, whatever their orientation, is guaranteed the full protection of the law if their rights are violated. There are several institutions set up where all persons can lodge complaints claiming the infringement of rights. These include the Independent Policing Oversight Authority (IPOA), the Kenya National Commission on Human Rights (KNCHR) and the National Police Service (NPS) and some Civil Society Organizations (CSOs).

62. Several pieces of legislation and policies have been developed that attest to the realization of the principles of equality and non-discrimination. These include, inter alia; the Health Act 2017, the Education Act 2012 and the Diversity Policy for the Public Service,

³ <http://eacc.go.ke/default/wp-content/uploads/2021/05/Final-Annual-Report-2019-20-18th-MAY.pdf>.

2016. The Committee should note that one is not required to indicate his/her sexual orientation when accessing any government service.

63. The GOK is aware that stigma is one of the greatest barriers to accessing services for lesbians, gays, bisexuals and transgender (LGBT). Men having sex with men who are living with HIV are particularly unlikely to take up services, with a consequent negative impact. Some of the measures taken by the State to address the situation include sensitization of healthcare workers to reduce stigmatizing attitudes in healthcare settings; the development and dissemination of population-specific and user-friendly information; and the promotion of the acceptance of all persons as part of the community for increased service uptake. Sensitization forums for judges, prosecutors, the police, prison officers, and law and policy makers on how to handle matters concerning LGBT individuals are conducted.

64. The National Gender and Equality Commission (NGEC) and a number of non-governmental organizations, such as the Kenya Human Rights Commission, and the Legal Resource Foundation have been sensitizing public officers, including law enforcement officers, on the principles of the universality of human rights and the importance of non-discrimination among the population at large.

65. With respect to intersex persons, it is noteworthy that in August 2019, Kenya became the first country in Africa to collect data on intersex persons in its national census. Currently, all laws, policies and programmes are being reviewed by the Intersex Persons Implementation Coordination Committee (IPICC) to ensure the recognition, care, treatment and protection of intersex persons in line with the decision in the case of Baby 'A' (Suing through the Mother E A) & another v Attorney General & 6 others [2014] eKLR.⁴

9. Equal rights of women and men

66. Polygamy is a practice recognized under both African customary and Islamic law. The Marriage Act, of 2014 recognizes four different types of marriage: civil, Christian, Islamic, and customary marriages. All registered marriages under the Act have the same legal status. Before the enactment of the Act, customary marriages were not regulated, thus rendering them informal and uncertain as their legitimacy could only be confirmed and formally recognized through court judgments and rulings. However, it must be noted that the Marriage Act restricts the legal age of marriage to 18, and parties must freely consent to the union. It is up to adult couples to freely choose, from the very onset, the kind of union they prefer. Those adults who voluntarily contract a monogamous marriage cannot later contract another marriage unless in divorce or death. Similarly, no one in a polygamous marriage can contract a monogamous marriage. A polygamous marriage can later be converted into a monogamous one, as long as there is only one wife.

The Matrimonial Property Act, 2013

67. Parties to a marriage are entitled to equal rights at all times, including at the marriage's dissolution (Article 45(3) of the Constitution).

68. Section 7 of the Matrimonial Property Act, 2013 (MPA) states that upon the marriage dissolution, parties are entitled to a share of the property equal to their contribution, whether monetary or non-monetary. Under Section 2 of the Act, 'contribution' includes non-monetary contributions such as domestic work, management of the marital home, childcare, companionship, management of a family business or property and farm work. The matter has been canvassed severally in the Kenyan courts, and for now, the jurisprudence favours distribution based on actual contribution.

69. In the case of Federation of Women Lawyers (FIDA) and Another Vs Attorney General (2018) eKLR, (Petition No. 164B 2016), the petitioners challenged section 7 of the MPA. They argued that the Act significantly disadvantages women whose contribution is usually mainly non-monetary, thus difficult to quantify and prove. This state of affairs disempowers and disenfranchises women economically upon divorce. The High court, by its

⁴ kenyalaw.org/caselaw/cases/view/104234/.

decision delivered on the 14th of May 2018, declared that while the Constitution recognizes the equal worth and importance of parties in a marriage, it does not guarantee a 50–50 sharing of wealth. The beneficial share of each spouse under the law currently depends on the parties’ proven respective proportions of the financial contributions, either direct or indirect, towards acquiring the property. In exercising judicial discretion, the outcome of any case will highly depend on the facts and evidence presented to the court regarding the nature of either spouse’s contribution towards the acquisition of matrimonial property. Jurisprudence set herein is that the courts will evaluate the contributions made by each party and make a decision on the distribution of the property or properties. The courts have taken the view that; “...at the dissolution of the marriage, each partner should walk away with what they deserve. What one deserves must be determined by considering their contribution, whether monetary or non-monetary. The bigger the contribution, the bigger the entitlement. Where there is evidence that a non-monetary contribution entitles a spouse to half of the marital property, then, the courts should give it effect. But to hold that Article 45(3) decrees an automatic 50:50 sharing could imperil the marriage institution... .”

70. Likewise, in *PNN v ZWN* (2013) eKLR, Nairobi Civil Appeal, No. 28 of 2014, the Court noted that if both parties make equal efforts towards the acquisition, preservation or improvement of family property, the process of determining entitlement may lead to a distribution of 50:50 or thereabouts. That is not to say, however, that as a matter of doctrine or principle, the equality of parties translates to equal proprietary entitlement. That each case must ultimately depend on its peculiar circumstances, arriving at appropriate percentages.

The Law of Succession

71. GOK is amending all laws and ensuring they conform to the constitutional principles of non-discrimination and equality. The Law of Succession contains certain progressive provisions such as equal rights for men and women to inherit property and treats male and female children the same in terms of their right to inherit property from their parents. Section 29 of the Law of Succession Act Cap 160 provides for persons that can inherit a deceased person’s property as dependents, which includes, among others, the children of the deceased person. Reference to children does not distinguish between sons and daughters, nor is there a distinction between married and unmarried daughters. Both men and women have equal rights to inherit property.

72. The Law of Succession (Amendment) Act 2021 amended the original law to remove discriminatory provisions as follows: Dependency Clause – Section 29 was amended to discard the need for husbands to prove maintenance to be deemed a defendant, unlike previously, where only the wife/wives/former wives needed not to prove dependency; Re-marriage clause – section 35, amended to provide that either spouse will lose their interest on inheritance if they remarry. The original clause related only to widows who remarry; and the Equal distribution rights between the parents’ clause – section 39 was amended to provide equal distribution rights between both parents where the deceased dies intestate and has no surviving spouse or children. Previously, the beneficial interest went to the father first and then the mother.

73. To further support the fight against discrimination and enhance gender equality, the State Department for Gender has prioritized the following awareness creation and capacity-building initiatives:

(a) Dissemination of the concluding observations made by treaty monitoring bodies, on matrimonial property rights. The treaties include the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (MAPUTO Protocol).

(b) Community awareness-raising to inform the public about women’s rights to access, use and control land and other productive resources and share such information in local languages. The Department involves grass-root Community Based Organizations to ensure that such awareness campaigns effectively reach marginalized and illiterate women.

(c) Under its capacity-building mandate, the Department engages with various stakeholders, such as the media, civil society organizations, and traditional elders, to address

customs and norms that inhibit women from enjoying their property rights. For instance, the International Federation of Women Lawyers (FIDA) uses radio talk shows and legal aid open days to raise awareness among women about their property rights.

(d) Establishment of Inter-Governmental County Gender Sector Working Groups which meet quarterly and support the gender programmes, including reaching out to the rural communities and disseminating information. So far, the working groups have been operationalized in 28 counties.

(e) The National Gender and Equality Commission appointed gender and equality technical working groups to raise awareness on gender equality and inclusivity, including on property rights, inheritance and marriage laws in 29 out of 47 counties across the country. The Commission continuously monitors the implementation of legal provisions, policy frameworks and initiatives that seek to ensure comprehensive integration of the principles of equality and inclusion in the administration of land as well as land rights for women and girls in the counties where it has active working groups.

10. Representation of women at the decision-making level

74. Gender parity in political representation is a requirement under the Constitution, which provides that no one gender, should occupy more than two-thirds of appointive and elective posts. Indeed, for a political party to be fully registered by the Registrar of Political Parties it must comply with the conditions set out in the Political Party Act, 2011 on equality and non-discrimination. The Party must show that it complies with the constitutional principles on gender balance and representation of special interest groups. Special interest groups include women; persons with disabilities; youth; ethnic minorities; and marginalized communities.

75. The Code of Conduct for Political Parties requires that every party must respect and promote gender equity and equality and implement affirmative action programmes, policies and strategies relating to political representation contemplated under Article 27(6) of the Constitution.⁵

76. The Political Parties (Amendment) Act, 2016 amended the Political Parties Act 2011 to put in place measures to promote the representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities and marginalized communities. The measures include:

(a) Definition of special interest groups to include women, persons with disabilities, youth, ethnic and other minorities and marginalized communities;

(b) The Constitution of every political Party must require that not more than two-thirds of the membership of all party organs, bodies, or committees shall belong to one gender;

(c) Failure to have representation of the special interest groups is one of the grounds upon which a political party may be deregistered;

(d) Failure to include the representation of special interest groups in the governing body disqualifies a political party from participating in the distribution of certain portions of the Political Parties Fund;

(e) Inclusion of special interest groups in decision-making organs/Membership and representation of special interest groups is one of the conditions which a provisionally registered political party must meet before it becomes fully registered.

77. The legislative proposals drafted to actualize the 2/3 rule for elective political seats failed to attract parliamentary approval in 2018. The main argument for the rejection was that the provisions would substantially increase the tax burden. However, the government continues to take various affirmative actions to give effect to the constitutional provision.

⁵ “To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.”

These efforts have seen more women elected to and appointed in the Executive, Parliament and the Judiciary. (Refer to Table 2 on Participation in Selected High-Level Positions by Sex in Public Service, 2019-2020 in the annexures.)

78. The Kenya Women Parliamentary Association (KEWOPA) and the Kenya Women Senate Association (KEWOSA) are two parliamentary caucuses that were formed to strengthen women's leadership and participation in the two houses. KEWOPA is a membership association of all women parliamentarians drawn from across all political parties both elected and nominated in the Senate and National Assembly. In 2019, The Association developed their 2019–2023 Strategic Plan. The Plan sets out strategies to inform the implementation of constitutional rights for the benefit of women in and outside of elective leadership. Five Key Result Areas guide the Strategy: 1. Strengthening capacities of the Members and the Secretariat for effectively delivering their core functions 2. Shaping and Influencing Legislative Agenda, Retention and augmentation of Women in Parliament 3. Human Capital Development 4. Brand Visibility 5. Effective Resource Mobilization for Sustainability. Both the KEWOPA and the KEWOSA facilitate the work of the Parliament by mainstreaming gender in national laws and policies. Similar caucuses have been established in all 47 County Assemblies.

79. The Representation of Special Interest Groups Laws (Amendment) Bill, 2019 was introduced in Parliament to give effect to Article 100 of the Constitution to promote the representation of women, persons with disabilities, youth and other ethnic minorities in Parliament.

80. The Public Service: The Public Service Diversity Policy outlines a number of strategies for attracting diverse groups into the public service, including ensuring gender balance. There has also been an increase in the number of women chairing Public University Councils. Out of the 20 public universities in Kenya, women chair 23.3% of the universities. Similarly, 4 universities have an equal number of men and women (50/50) on their boards. 66.6% of the universities have met the 2/3 gender rule concerning members of their respective councils. GOK introduced a Reporting Tool to capture, among other things, compliance level with the two-thirds gender representation policy on appointments, employment and promotions in the Public Service as per the Constitution. The tool has helped the PSC monitor compliance levels and addresses any gaps.

81. The Judiciary: The Kenya Judiciary has made tremendous progress in advancing gender equality. Most notably, in the year 2021, Court of Appeal Judge Martha Koome was sworn into office as the first woman Chief Justice. The position of Deputy Chief Justice and Chief Registrar positions are also held by women. (Refer to Table 3 in the annexures on the Distribution of Judges, Magistrates, Kadhis and Lawyers 2016–2020.)

11. Unemployment and underemployment

82. The Ministry of Labour, Social Security and Services formulated the National Employment Policy and Strategy to promote the creation of decent employment opportunities; ensure the creation of green jobs for sustainable livelihoods; build a pool of skilled, adaptive, self-reliant and enterprising labour force; pursue poverty reduction strategies and improve labour market efficiency.

83. The National Internship Policy and Guidelines for the Public Service, prepared in 2016 as part of the implementation of the National Employment Policy provides a framework for engagement and management of internship programmes in the public service. The Public Service Internship Programme (PSIP) offers college graduates opportunities to acquire and develop valuable technical and professional skills while gaining work experience. The interns are deployed to ministries, departments, agencies, state corporations, statutory commissions, constitutional commissions and independent offices. Interns recruited in the first and second cohorts, which began in 2019 for 2019/2020 were 5,565, while the third cohort for 2020/2021 had 3,434 interns. 3267 interns were engaged in the 4th Cohort in 2021/2022.

84. The government has increased the use of information and communication technology (ICT) as an avenue for job creation, greater connectivity, and enhanced ability to

telecommute and outsource work. To this end, the Ministry of Information Communications and Technology introduced the Presidential Digital Talent Programme, an internship programme that develops the ICT talent pool in Kenya. The Programme is a collaboration between the public and private sectors to assist the government in accessing ICT competencies to design, procure, implement and manage a sound ICT structure for effective service delivery.

85. Through this transformative initiative, the government targets young talented Kenyans with an interest in ICT and public service to undergo a structured 12-month internship program in both the public and private sector organizations. The program prepares young talents with skills in ICT operations, gain work experience, refine career goals and build professional networks in the areas of Network and Infrastructure, Applications Development, Information Security, Research & Innovation and Project Management to enhance employability and self-reliance in the ICT sector.

86. The Ajira Digital Project was introduced by the Ministry of Information, Communication and Technology in 2017 to enable young people access digital job opportunities. The Project bridges the gap between skills supply and the lack of jobs. Specifically, the objectives of the Project are to raise the profile of online work amongst all Kenyans, promote a mentorship and collaborative learning approach to finding online jobs; enable access to online jobs for all Kenyans and promote Kenya as a destination for online workers. The Ajira Digital Project positions Kenya as a labour destination for multinational companies and encourages local companies and the public sector to create digital work.

87. The government recognizes that Technical, Industrial, Vocational Education and Training (TIVET) are an integral component of national development. In this regard, TIVET institutions have been established to expand opportunities for the youth to acquire important technical skills. 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 National Industrial Training and Attachment policy was developed to guide industrial training and attachment in the country to equip the youth with the relevant skill sets and increase employability and productivity as well as improve the relationship between industry and training institutions.

88. Reforms have been instituted in all Technical and Vocational Training Centres (TIVET) in a bid to eradicate skill mismatches through competent training. Reforms in TIVET have shifted from supply-based to demand-based training involving industry players to guarantee relevance to the country's economic growth. To encourage more young people to join TIVET institutions, the government has standardized the cost of training at Kshs. 56,420 (USD 471.74) annually with the government providing a capitation grant of Kshs. 30,000(USD 250.84) per trainee per annum. Students' enrolment in the technical institutions had increased to 249,316 in 2021 from 55,945 in 2013 hence the need for more trainers and funding.

89. On 25th March 2021, the Governors of six coastal counties in Kenya, together with the Ministry of Devolution, the Blue Economy Secretariat and Team Europe, launched the Go Blue initiative in Kenya on March 25, 2021. The four-year programme aims to protect Kenya's coastal ecosystems while creating environmentally-friendly jobs in a host of industries, including recycling, tourism and small-scale fishing.

90. The National Youth Service(NYS) 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.

91. The Youth Enterprise Fund has been streamlined to empower youth to start and grow their businesses. The Fund provides business development and support services to enhance the youth's capacity to start, grow and sustain their businesses, by imparting the skills necessary to run a successful enterprise. These services include enterprise development, market support and linkages as well as commercial infrastructure development. With the introduction of youth-friendly loan products and a modern ERP platform, the Fund is now optimally contributing to the economic empowerment of youth. The performance of the Youth Fund Board is as follows:

(a) On building the capacity of youth on entrepreneurship skills through training, coaching and mentorship: 508,368 youth trained on entrepreneurship and business opportunities;

(b) On enhancing market access and linkages to available markets for youth products: 10,767 youth facilitated to market of their products both locally and internationally;

(c) On facilitating access to affordable trading spaces for the youth: 1,653 youth entrepreneurs were facilitated to access affordable trading spaces;

(d) On linking youth with accredited employment agencies and facilitating them to access jobs in the international market. 26,015 Number of youth facilitated to access jobs abroad through migration loans and pre-departure training.

92. The Covid 19 Pandemic led to a decrease in employment levels. However, the lifting of the Covid 19 restrictions had a positive effect on the economy. This provided an environment that spurred economic recovery and growth in the year under review. Employment and activity levels rose significantly surpassing the pre-pandemic levels. The KNBS Economic Survey 2022 <https://www.knbs.or.ke/wp-content/uploads/2022/05/2022-Economic-Survey1.pdf> provides a comprehensive picture of the employment levels in Kenya from 2017–2021.⁶

12. The access to government procurement opportunities (AGPO)

93. The Access to Government Procurement Opportunities (AGPO) program is founded on Articles 55 and 227 of the constitution on affirmative action and fair and equitable procurement of goods and services. The AGPO Program aims to facilitate the youth, women and persons with disability-owned enterprises to be able to participate in government procurement. This is made possible through the implementation of the Presidential Directive that 30% of government procurement opportunities be set aside specifically for these enterprises. (Refer to Table 4 in the annexures for a breakdown of the tenders awarded under AGPO).

Enforcement of AGPO

94. AGPO is included as a performance indicator in the Performance Contracts (PC) of all ministries, state corporations and county governments. They are required to report to the Public Procurement Regulatory Authority on their achievements of the AGBO goals. The government uses the PC to monitor its performance and delivery. The PCs now attach rewards and/ or sanctions to the attainment of the goals attached to these indicators.

95. The National Council of Persons with Disabilities (NCPWD) through the LPO Financing Programme supports PWD registered under AGPO to finance Local Purchase Orders (LPOs), Local Service Orders (LSOs) and Contracts awarded by government procuring entities. LPO financing allows clients who have obtained purchase orders or letters of award to deliver goods and services or to carry out contractual works. The main objective of the programme is to improve employment opportunities for persons with disabilities by increasing the AGPO programme. 1252 members have since been trained on matters regarding business grants.

96. There is also educational assistance from the National Council for Persons with Disabilities. This programme aims to improve persons with disabilities' enrolment, retention and completion of the education cycle for the eventual engagement in decent and gainful employment. Education grants aim to empower people with disabilities by enhancing opportunities for them in education, training and rehabilitation institutions.

97. Persons with Disability can also register with the Job Placement Portal (<http://placement.ncpwd.go.ke/public/>) to access vacant job opportunities with the NCPWD's partners.

⁶ KNBS Economic Survey Report 2022 - Chapter 3 (page 53).

13. Minimum wage

98. Under the provisions of the Labour Institutions Act, workers' salaries must be equal to the minimum wage, ensuring every worker a decent standard of living consistent with human dignity. The National Labour Board, a tripartite body, is entrusted with the responsibility of advising the Labour Minister on, inter alia, the appointment of wage councils. The wage rates are determined by Wage Councils constituted per the Labour Institutions Act. While determining the minimum wage, the Wage Council takes into account several factors including the needs of workers and their families, the general level of wages in the country, the cost of living, economic factors, the ability of employers to carry on their business successfully.

99. Kenya's minimum wage is regularly reviewed every Labour Day-1st May to cater for changing economic times. Kenya's minimum wage was raised by 12% on the 1st of May 2022.

100. During the reporting period, the State enacted a number of legislation to govern the regulation of wages. These include the Wage Order released on 8th January 2019, the Regulation of Wages (General) (Amendment) Order, 2017 as well as the Regulation of Wages (Agricultural Industry) (Amendment) Order, 2017.

14. Occupational safety and health

Budget allocation

101. In line with the Committee's recommendations under paragraph 32, the GOK provides the Directorate of Occupational Safety and Health Services (DOSHS) with adequate human and financial resources to carry out its mandate effectively. In the financial year 2021–2022 the Directorate was allocated KES. 307 million (2,566,889.63 USD) while in the year 2022–2023 the allocation was increased to KES. 370 million (3,093,645.48 USD).

Labour Inspections

102. Kenya's Ministry of Labour (MOL) oversees a dual system of inspection covering on the one hand general labour inspection by the Labour Department and on the other, occupational safety and health by the Directorate of Occupational Safety and Health Services. Usually, inspections are carried out by the two offices. There are other inspection bodies in different sectors such as, oil, agriculture, fishing, mining, industry, transport, education, health and finance. There is a strong emphasis on voluntary compliance and developing a culture of workplace safety. Systems have been introduced at the workplace so employers do not view DOSHS as simply a matter of policing and inspection but rather giving direct responsibility for improving working conditions.

103. Labour and DOSHS inspections are planned in the MOL annual plan. The two inspection systems operate independently. However, if labour inspectors come across hazardous working conditions in an enterprise, they commonly pass along this information to DOSHS inspectors. Most inspection visits are conducted unannounced and take place in both formal and informal enterprises.

104. There is a strong emphasis on voluntary compliance and developing a culture of workplace safety. Systems have been introduced at the workplace so employers do not view DOSHS as simply a matter of policing and inspection but rather giving direct responsibility for improving working conditions.

105. In addition to its inspection activities, DOSHS carries out awareness-raising campaigns among workers and employers, particularly through training activities with workplace health and safety committees in enterprises with 20 or more employees. This training is largely delivered through partnerships with private institutions licensed by DOSHS.

106. The selection of workplaces for inspection is planned every week based on the monthly performance contract targets in addition to individual complaints. The overall objective is to carry out DOSHS inspections in each enterprise at least once every two years.

107. Enterprise information is sent to the MOL by labour inspectors. The Labour Department developed an accident reporting form to be completed by the employer and sent directly to the Department. Inspectors send a compliance letter to the employer giving a specific amount of time (depending upon the nature of the infraction) to correct the violation and bring their practices into conformity with the law.

108. The National Occupational Safety and Health Policy 2018 addresses the current challenges, gaps and future development of safety and health systems and programmes in the country. It promotes basic principles of assessing occupational risks and/or hazards; combating hazards at the source; and developing a national preventative safety and health culture that includes information, consultation, research and training. The Policy applies to all workplaces in all sectors of the economy and all forms of work.

109. The Occupational Safety and Health (OSH) Guidelines for the health sector in Kenya promotes a safe and healthy work environment in Kenya's health sector. The Guidelines offer a framework for various interventions, including ensuring the implementation of safe and healthy work practices in Kenya's health sector. Specifically, they promote a safe and healthy work environment, practices and procedures for all health sector staff to minimize work-related injuries and occupational diseases.

15. Migrant domestic workers abroad

110. Kenya has taken the following steps to protect Kenyan domestic/migrant workers overseas:

(a) **Bilateral Labour Agreements:** Kenya has signed Bilateral Labour Agreements with major migrant labour destination countries in the Middle East where there are approximately 200,000 Kenyan migrant workers. The agreements provide a framework for safe and regular migration and, above all, protection of the workers' rights. To date, Kenya has signed three (3) Bilateral Labour Agreements with Saudi Arabia, Qatar and the United Arab Emirates. Talks have been initiated to sign more Bilateral Labour Agreements with additional countries in the region. Furthermore, the agreements are being reviewed with the objective of closing gaps and further strengthening provisions on workers' rights and protection.

(b) **Appointment of Labour Attaches and Honorary Consuls:** The Ministry has, in conjunction with the Ministry of Labour and Social Protection posted Labour Attachés to Saudi Arabia, Qatar and the United Arab Emirates to enhance the capacity for provision of specialized consular services to Kenyans in those countries with a focus on migrant worker issues. Further, there has been strengthening of consular services through training of labour and immigration attachés on human rights-based issues and other concerns of Kenyans living abroad.

(c) **Intervention with government Authorities:** Kenya Missions in the Gulf/Middle East region have frequently intervened with authorities in the region to assist Kenyan migrant workers in various ways. These include securing release without prejudice from abusive employers and restoration of confiscated passports, exemption from rigorous requirements such as exit visas, payment of withheld salaries, and waiver of prosecution on minor offenses. The Missions have also issued emergency travel documents to enable distressed Kenyan migrant workers to speedily travel back home.

(d) **Provision of Accommodation and Food:** Kenya Missions in the Middle East (especially in Qatar, the United Arab Emirates and Lebanon) assisted Kenyan migrant workers who lost their jobs but could not return home immediately due to COVID-19 restrictions, to continue occupying accommodation provided by their employers by intervening with the latter. The Missions also rallied the Kenyan Diaspora and other well-wishers in these countries to donate food to affected Kenyan migrant workers.

(e) **Increased Oversight of Recruitment Agencies:** The Ministry of Foreign Affairs is an active member of the Vetting Committee that is domiciled at the Ministry of Labour and Social Protection. The work of this Committee is to regulate, vet, supervise and monitor Kenyan employment agencies to ensure fair and ethical recruitment of Kenyan workers seeking employment in the Middle East. This includes ensuring that employment contracts are transparent and include provisions for the protection of workers' rights. The Ministry is also a member of the National Employment Authority, which provides among other things, a comprehensive institutional framework for promoting and protecting the welfare of Kenyan migrant workers.

(f) **Pre-departure Training:** Pre-departure training and orientation on the country of destination and work environment is undertaken to prepare Kenyan migrant workers for foreign jobs. This includes creating awareness of their rights, avoidance of abuse and seeking remedies in cases of distress.

(g) **Kenya Migrant Worker Website (2019):** A website www.kenyamigrantworker.org has been established to educate Kenyan migrant workers going to the Gulf and Middle East countries on how to obtain jobs, what to do before departure, what to expect upon arrival, and the working and living conditions in the respective countries.

(h) **Enhanced Dialogue and Partnerships with Kenyan Migrant Workers:** Kenya Missions abroad including in the Middle East have continued to engage Kenyan migrant workers through meetings and respective Diaspora associations where the workers' welfare and related issues are addressed.

16. Right to social security

111. The Kenya National Safety Net Programme (KNSNP) is a government social protection programme, rolled out as part of the government's initiatives to improve and enhance social protection delivery in the country. Through cash transfers to the poor and vulnerable groups, the government has made a significant effort in tackling poverty.

112. Currently, the main cash transfer programmes include the Older Persons Cash Transfer (OPCT), Cash Transfers to Orphans and Vulnerable Children (CTOVC), Hunger Safety Net Program (HSNP and Persons with Severe Disability Cash Transfer (PWSD-CT).

113. These programs have grown over the years; however, it is still not possible to cover all the poor households that qualify for them. Generally, two main steps drive these selection processes. First, the programs target geographical areas. Second, a selection of the poor households within these areas is made. The number of extremely poor households determines how many locations are supported in one constituency. Only one location is selected for the program in wealthier constituencies. With regard to household targeting, the number of extremely poor households determines how many locations are supported in one constituency. Only one location is selected for the program in wealthier constituencies.

Cash transfers under the KNSNP

114. **Orphans and Vulnerable Children:** The amount of funds allocated and disbursed to Orphans and Vulnerable Children from 2016/17 to 2020/21 is shown in Table 5 in the Annexures. **The Older Persons Cash Transfer (OPCT):** Disbursement of funds by the Older Persons Cash Transfer programme from 2016/17 to 2020/21 is shown in Table 6 in the Annexures. **Cash Transfer to Persons with Severe Disabilities (PWSD-CT):** Table 7 in the Annexures shows the disbursement of funds by Cash Transfer to Persons with Severe Disabilities from 2016/17 to 2020/20. In this respect, the government continues to support vulnerable groups through the Social Safety Nets Programmes (Inua Jamii). The government continues to protect this vulnerable segment and in the Budget for FY 2022/2023, the government has proposed an allocation of Ksh 39.5 billion (330,488,402.50 USD) for social protection and affirmative actions in this budget. Out of this allocation, 17.5 billion (146,418,912.50 USD) will cater for cash transfers to elderly persons, Ksh 7.9 billion

(66,097,680.50 USD) for Orphans and Vulnerable Children and Ksh 1.2 billion (10,029,254.53 USD) for persons living with severe disabilities.

115. The Hunger Safety Net Programme (HSNP), under the Kenya National Safety Net Programme (NSNP), implements a scaled-up integrated effective government-led and financed safety net programme to support the most vulnerable and poor households in Northern Kenya. The overall objective of HSNP is to reduce extreme hunger and vulnerability by delivering regular and unconditional cash transfers of Kshs. 5,400 (USD 45.13) every two months (starting from July 2016) to targeted households. Currently, HSNP is supporting 100,000 households among the poorest and vulnerable groups in four Arid Counties of Turkana, Mandera, Wajir and Marsabit. In the FY 2022/2023, the government allocated Ksh 5.1 billion (USD 42,624,320.49) for the Programme.

116. To ensure a more efficient and effective running of the Programme, Kenya's Single Registry for social protection was launched in 2016. The Registry is a software platform designed to manage and provide integrated oversight of the principal social protection programmes in Kenya.⁷ The Single Registry contains data on 465,000 beneficiaries from the World Food Programme's Jenga Jamii and 839,000 households from the National Safety Net Programme. The system aggregates and analyses this information to support planning, coordination, accountability and both programme and policy-level decision-making.⁸ To date, over one million beneficiary details have been run against the National Population Register.

Increase coverage of NSSF and NHIF

117. The role of NSSF is to provide Social Security Protection to all workers in the formal and informal sectors in retirement. The GOK has come up with several initiatives to ensure universal social security coverage. There is a proviso by NSSF for voluntary membership that caters for people in the informal sector. The Haba Haba initiative was launched in November 2019 to expand Social Security coverage to include members in the informal sector. Haba Haba gives members a chance to save a minimum of Ksh. 25 a day (USD 0.21), with the option of withdrawing 50% of their contribution after consistently contributing for a minimum of 5 years.⁹

118. The NSSF has begun a crusade to register the members of the Matatu Stage Welfare Association as members. The Matatu Stage Welfare Association has a total of 96,733 registered members countrywide. The initiative was initially rolled out in Nyahururu on 1st April 2019 and working closely with Branch Managers in the Central/Eastern Region the initiative is fast spreading to other regions.¹⁰ The GoK has also developed a mortgage scheme to assist its employees in house development and ownership. All public servants as of January 2016 have access to house mortgages and car loans.¹¹

119. Initiatives under the National Health Insurance Fund (NHIF) fund include; the redesigned policy launched in October 2016 under the name Linda Mama (Swahili for "Protect the Mother"). This is a free Maternity Care Programme that has made it possible for more pregnant women to receive skilled care at birth.¹² It provides a package of basic health services accessed by all in the targeted population based on need and not ability to pay, positioning Kenya on the pathway to Universal Health Coverage (UHC).

120. Another key development by the state was the signing of a contract in 2018 between the Ministry of Education and NHIF to offer a unique Comprehensive Medical Insurance Cover for Public Secondary School Students during the duration of Study known as Edu

⁷ <https://www.socialprotection.or.ke/single-registry>.

⁸ Ibid ; ref 27.

⁹ Available at <https://www.nssf.or.ke/haba-haba>.

¹⁰ Available at <https://www.nssf.or.ke>.

¹¹ Available at https://www.labourmarket.go.ke/labour/social_security_services/.

¹² <http://www.nhif.or.ke/healthinsurance/lindamamaServices>.

Afya.¹³ The scheme covers all public secondary students captured under the National Education Management Information System (NEMIS)¹⁴ and registered with NHIF.

121. This cover has ensured that all children especially those from the informal sector are catered for in the instance they fall sick.

122. The government also rolled out Kenya's first comprehensive insurance cover for civil servants and the National Youth Service (NYS)¹⁵ which enhanced insurance cover with the inclusion of Work Injury Benefits and Group Accident Cover. The cover is also to be extended to include a comprehensive Group Life cover to cater for all causes of death including death arising from critical illnesses such as COVID-19.

17. Domestic violence

123. The Protection against Domestic Violence (PADV) Act defines domestic violence as abuse that includes – (i) child marriage; (ii) female genital mutilation; (iii) forced marriage; (iv) forced wife inheritance; (v) interference from in-laws; (vi) sexual violence within marriage; (vii) virginity testing; and (viii) widow cleansing. The regulations that will operationalize the Act have been prepared and are awaiting Parliament's approval and enactment.

124. While there are a number of domestic violence cases reported to the police every year, the State continues to face some challenges with regard to the actual prosecution of the same. In a majority of cases, the victims, perpetrators and other family members reach out-of-court settlements making it extremely difficult for prosecutors to sustain the cases in court.

125. Training programmes have been introduced to (a) train police officers to deal with family-related matters or domestic violence; (b) facilitate the reporting process so that complainants may report to the police without fear or otherwise; and (c) ensure that complaints are processed expediently and efficiently. Gender desks manned by trained police officers (male and female) have been established in all police stations as per Section 6(4) of the PADV Act. "Policare" launched in 2021 is a one-stop centre model established to ensure that victims of both Sexual and Gender Based Violence (SGBV) and domestic violence can access counselling, medical and legal services from one place. The model by the National Police Service hosts all stakeholders involved in delivering justice to offenders, preserves the dignity of the victims and ensures the evidence is kept. The Kenya Police Service Toll free number for reporting SGBV cases is 0800730999. This hotline is coordinated and controlled by the police under the Integrated Command, Control and Communication Centre (ICCC) system which directs all calls to the command centres and then subsequently redirected to relevant agencies for prompt action.

126. In 2021, The State Department for Gender together with its partners introduced a sexual and gender-based violence digital mobile application platform called 'Komesha Dhuluma' which brings together key elements associated with SGBV, to improve access to service delivery. The main objective of the application is to provide an emergency toolkit that gives users first-hand information on procedures to take when they are faced by such situations including referral pathways.

127. The State Department for Gender in partnership with Healthcare Assistance Kenya (HAK) also operates a sexual and gender-based violence rapid response system and hotline –1195 in the country. The hotline is toll-free to access and it is linked to local facilities that provide medical treatment and prevention of medical infections, legal aid and rescue centers. The Healthcare Assistance Kenya (HAK) is a national humanitarian non-profit making organization that supports survivors of sexual and gender-based violence to access rapid sexual and gender-based violence services through referrals. HAK partners with Nairobi

¹³ <http://www.nhif.or.ke>.

¹⁴ National Education Management Information System (NEMIS), is a platform that has been deployed to aid digital registration of all primary and secondary school students.

¹⁵ <http://www.nhif.or.ke>.

women's Hospitals' Gender Based Violence Recovery Centers, Communication Authority of Kenya, Legal Aid and mobile service providers.

18. Government efforts towards the eradication of female genital mutilation(FGM)

128. Kenya hosted the International Conference for Population Development in 2019 (Nairobi) where, Kenya, Uganda, Tanzania, Ethiopia and Somalia adopted the Declaration and Action Plan to End Cross-border FGM and committed to strengthening coordination and cooperation to eliminate Female Genital Mutilation, including cross border practices.

129. In December 2020, Kenya adopted the National Policy for the Eradication of Female Genital Mutilation (FGM). The Policy provides strategic interventions to accelerate the eradication of FGM including strengthening multi-sectoral interventions through coordination, networking, partnership and community participation; addressing emerging trends and practices largely aimed at avoiding the enforcement of the law; eliminating gender inequality by promoting the empowerment of girls and women; and strengthening research, data collection, information and knowledge management on FGM. The Policy also outlines strategies to end cross border practices including dialogue, exchange of information, and collaboration between the East African Community towards the eradication of FGM.

130. County Anti-FGM Steering Committees are an integral part of county multi-sectorial coordination of Anti-FGM programmes. The Committees have been established in FGM prone areas including Wajir, Garissa and Tana River. The Anti-FGM Board has mapped the Civil society organizations which will assist in the implementation of Anti-FGM programmes.

131. Other efforts to strengthen the process include the formation and operationalization of a national multi-agency technical implementation team where senior Kenyan government law enforcement officers are members. The team is composed of members from the Ministry of Interior, National Police Service, Children department, and the former provincial administration among others. The main objective of this team is to plan, coordinate, implement and enhance the tracking of Anti-FGM programmes amongst various ministries, departments and agencies.

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Efforts made to strengthen the enforcement of the Prohibition of Female Genital Mutilation Act and the conviction of perpetrators.

133. The ODPP has strengthened the prosecutions of Female Genital Mutilation (FGM) cases by enhancing reporting and collaboration between law enforcers and prosecutors. Further the prosecution of cases has been intensified. The table below outlines the statistics for the prosecutions period 2016–2021.

<i>Period</i>	<i>Filed</i>	<i>Conviction</i>	<i>Acquittal</i>	<i>Withdrawal</i>
2020/2021	495	254	42	22
2019/2020	85	41	5	12
2018/2019	124	32	28	13
2017/2018	114	34	10	22
2016/2017	95	16	8	5

134. To further strengthen the prosecutions of FGM cases the ODPP has come up with Standard Operating Procedures for the prosecution of FGM cases. The creation of awareness is targeted at law enforcers, duty bearers, resource persons and communities. At the same

time sensitization is undertaken through face-to-face fora, brochures, IEC materials, and mainstream social media.

135. Courts in Kenya also continue to affirm protection against FGM as a harmful cultural practice. In *Tatu Kamau vs Attorney General & 2 others* Petition 244 of 2019; *Equality Now & 9 others* (interested parties); *Katiba Institute & Amicus Curiae* (2021) the petitioner sought a declaration that the Anti-FGM Act is unconstitutional for violating the right of an adult woman to consent to culture, health and equality. The court found that the human rights listed can be justifiably limited by the Anti-FGM Act due to the nature of the harm resulting from FGM to individuals' health and well-being. The court stated that the state has a responsibility to regulate harmful cultural practices. On the question of an individual's consent to FGM, the court took into account the realities of FGM, including the pressures that the victims are subjected to. The evidence evaluated by the court demonstrated that adult women, who may consent to FGM, were not acting as free agents. They acted under severe patriarchal traditional and economic constraints described in the evidence presented by the respondents and interested parties throughout the proceedings.

Training and awareness-raising of FGM

136. The FGM Board has noted that the FGM prevalence rates in Garissa, Mandera, Tana River and Wajir were quite high mainly due to cultural and religious factors. The Board continues to engage both religious and cultural leaders in these areas in a campaign against the practice.

137. The Board continuously engages and sensitizes national county administrative officers who include county commissioners, assistant county commissioners, chiefs and assistant chiefs on provisions of the Prohibition of FGM Act. During the forums, the officers pledged to enforce the Anti-FGM Act.

138. Other efforts taken by the State to enhance awareness-raising campaigns on the negative impact of FGM particularly at the community level include the following:

- (a) Supporting the capacity building of duty bearers and communities on the provisions of the Prohibition of Female Genital Mutilation Act, 2011 for effective implementation;
- (b) Supporting girls and women with life skills to enable them to reject FGM and support Anti-FGM campaigns;
- (c) Organizing women, girls, reformed cutters, victims and survivors into saving and loaning groups;
- (d) Engaging religious leaders and custodians of culture to support Anti-FGM campaigns;

19. Poverty eradication (Refer to information on Right to Social Security)

139. The Comprehensive Poverty Report¹⁶ was prepared in 2020 to measure poverty in a comprehensive manner, including multidimensional and monetary approaches, for different population groups – notably children, the youth, women, men and the elderly using the 2015/16 Kenya Integrated Household Budget Survey covering national, rural, urban and county levels. The report identifies the most vulnerable population groups that are both multidimensional and monetary poor and sheds light on geographical inequalities with the realisation of rights and fulfillment of basic needs. In addition to addressing the existing data gaps on well-being in Kenya, the findings of the report are readily usable for monitoring Kenya's progress in achieving Sustainable Development Goals (SDGs) targets 1.1 and 1.2, SDG 5 targets and for continuous monitoring of the Vision 2030 and the "Big Four" Agenda among other programmes.

140. The report makes several recommendations to address poverty in the country, including addressing poverty by mainstreaming monetary and multidimensional poverty

¹⁶ https://www.genderinkenya.org/wp-content/uploads/2020/08/CPR-Report-10_08_2020.pdf.

indicators in the national development strategies. This has contributed to enhanced public finances for children, youth, women and other population groups through the usage of evidence; enhanced socio-economic inclusion through improvements in accessibility and availability of basic services, and investments in infrastructure; foster equitable growth that prioritizes socio-economic inclusion of the most vulnerable and marginalized groups, tackle monetary poverty and other deprivations, establish a minimum social protection floor gradually for addressing vulnerabilities across different stages of the life cycle and against different contingencies; and improve data collection tools to enhance policy making, budgeting and advocacy.

141. The 'Big Four Agenda' encompasses the priority developmental projects directly related to Kenya's Vision 2030. The agenda items are targeted towards improving the living standards of Kenyans and growing the economy. The four pillars of the agenda are food security, affordable housing, universal health care, manufacturing and Job creation. The agenda will ensure an ordinary Kenyan is employed or has a reliable source of livelihood, owns a home, has enough food and can access universal health care.

142. The government has introduced several initiatives to reduce the impact of disasters in the country; reduce drought vulnerability and; enhance adaptation to climate change. These initiatives include: the establishment of the National Disaster Management Unit under the Ministry of Interior and Coordination of National government, the establishment of a disaster loss databases as a tool for drought risk reduction planning, new investment for pastoral reinforcement and transformation, the establishment of the National Drought Management Authority and Arid and Semi-Arid Lands (ASAL) focused institutions, the establishment of a drought and disaster contingency fund, the establishment of regional and global linkages and setting-up framework for drought risk management have been undertaken.

143. The ASALs make up 89% of the country, with approximately 38% of Kenya's Population. These areas are particularly susceptible to droughts and flooding, which have dire implications for food security and livelihoods, thus resulting in high poverty levels.

144. The National Drought Management Authority (NDMA) exercises overall coordination over all matters relating to drought management including the implementation of policies and programmes relating to drought management. The Authority has established offices in 23 ASAL counties considered vulnerable to drought. A Drought and Disaster Contingency Fund has also been established.

145. The 50,000m³ Bulto Abarufa water pan is one of the drought preparedness projects implemented by the National Drought Management Authority (NDMA) as part of building capacities of local communities to cope with drought episodes. The pan, excavated in 2018 with finances from the European Union-funded Ending Drought Emergencies-Support to Drought Risk Management and Coordination Project, benefits residents of Wayu Location and the surrounding communities.

146. The State is also up scaling the Enhancing Community Resilience against Drought (ECORAD II) Programme (2017–2022). The objective of the programme is to improve resilience against drought in targeted sites in the county. This is enhanced through sustainable range lands management using groundwater based on pastoralists behavioral characteristics on a scientific basis, and preparation of alternative livelihood in addition to pasturage by targeted communities for an increase in the standard of living level, mitigation of damages, and early recovery from damages.

147. Agriculture is key to Kenya's economy, contributing 33 per cent of the Gross Domestic Product (GDP) and another 27 per cent of GDP indirectly through linkages with other sectors. The agriculture sector employs more than 40 per cent of the total population and 70 per cent of the rural population. The government has been procuring and distributing fertilizer at a subsidized rate to farmers across the country to stabilize fertilizer prices. This is a three-tiered fertilizer cost reduction programme involving purchasing and supply chain improvements in the market for this input and the blending and local manufacture of fertilizer.

148. The government in partnership with Toyota Tsusho East Africa as the strategic investor has built a three-phased fertilizer plant. This is yet another Public-Private Partnership

(PPP) by the government to locally manufacture the farm inputs, which will go a long way in reducing the affordability and supply of quality fertilizer.

149. To increase productivity in the livestock sector six liquid nitrogen plants were established. This has led to improved accessibility and reduced the cost of delivery of A.I services from an average of Kshs 1,000 (8.36 USD) to Kshs 500 (4.18USD) with 880,000 straws of semen produced and availed to farmers. The Kenya Veterinary Vaccine Production Institute (KEVEVAPI) was upgraded to produce affordable and quality vaccines through efficient and effective technologies.

150. Expansion of Irrigation Coverage: The area under irrigation expanded from 119,000 to 159,000 hectares in smallholder as well as large schemes namely; Bura, Hola, Kano, Bunyala, Pekere and Mwea.

151. The GoK is employing the use of digital technology to facilitate the delivery of information and services that promote wages and self-employment, raises productivity and improve the quality of employment generation, and poverty-alleviating projects implemented by governments. For instance, financial and insurance services are being built on the M-PESA platform. A good example is the Kilimo Salama scheme launched in 2010, which is a climate-smart crop-index insurance scheme helping smallholding farms face the risks posed by adverse weather.

152. Twiga Foods was founded in 2014 and works to connect farmers with vendors to allow for food to be sourced and delivered across Kenya. The platform sources fresh fruits and vegetables from rural farmers and delivers these to urban vendors who have registered on the platform. In doing this it has cut down on the number of intermediaries that would otherwise be costly. By on-boarding farmers and vendors on its platform, Twiga is transforming interactions between farmers and vendors within the country.¹⁷

153. Another digital platform is AgroCare which is a mobile application that provides tailored fertilizer recommendations to farmers using soil data collected using a portable scanner. This ensures farmers apply fertilizers more economically, focusing on problem areas, thereby reducing waste and increasing outputs.¹⁸

20. Adequate food and malnutrition

154. The National Nutrition Fact Sheet, Programmatic Guidelines and Policies on Maternal, Infant and Young Child Nutrition outlines a range of supportive measures authorities and communities can take, to promote the health and well-being of children. To prevent and control Micro Nutrient Deficiency Disorders, all children aged 6–59 months are given vitamin A supplements once every six months. Within four weeks of delivery, all women are given a single dose of vitamin A supplements, and all pregnant women attending antenatal services receive iron/folate tablets daily for 90 days.

155. The GOK developed the Guidelines for the Management of Moderate and Severe Acute Malnutrition to prevent malnutrition. Healthcare providers are required to care for and support children at the facility level to ensure maximum recovery and minimal mortality. The support for appropriate infant feeding and complementary feeding practices and lifestyle practices to prevent over and under nutrition, strengthen the regular growth monitoring for all children for prevention and early detection of malnutrition, and promote improved recipes and preparation methods for home-based locally available foods, including home fortification to address moderate and mild malnutrition.

156. Low birth weight (LBW) is one of the key contributing factors to neonatal and infant death, illness, and malnutrition. The government has taken the following measures to prevent LBW: promoting Kangaroo mother care for skin-to-skin contact between the mother and baby to keep the baby warm and ensure reduced risk of hypothermia; promoting, protecting and supporting exclusive breastfeeding or exclusive breast milk cup-feeding of expressed breast milk for the first six months of life and sustained breastfeeding for two years and

¹⁷ <https://twiga.com/> < accessed on 19th September 2021.

¹⁸ <https://www.agrocares.com/about-us/> < accessed on 19th September 2021.

beyond, and encourage and assist mothers of low birth weight infants who cannot suckle well to express breast milk and give it by cup, spoon or naso-gastric tube.

157. The following National Policies and Strategies have been formulated to provide comprehensive and coherent measures for achieving the goals of the covenant and ensuring food security for all Kenyans.

(a) The Big Four Agenda on Food Security and Nutrition: This is aimed at increasing large scale production of staple food and to empower small scale farmers to increase their productivity;

(b) Kenya Nutrition Action Plan (2018–2022): The second Kenya Nutrition Action Plan (KNAP) was developed to further accelerate and scale-up efforts towards the elimination of malnutrition as a problem of public health significance in Kenya by 2030;

(c) Agricultural Sector Transformation and Growth Strategy (2019–2029) prioritizes three anchors to drive the 10-year transformation: Anchor 1: Increase small-scale farmer, pastoralist and fisherfolk incomes; Anchor 2: Increase agricultural output and value add and Anchor 3: Increase household food resilience;

(d) The Kenya Agri-Nutrition Strategy (2020 to 2024): This focuses on securing access to safe, diverse and nutritious food, by strengthening the national food chain and community production;

(e) The Scaling Up Nutrition (SUN) Business Network Kenya Strategy (2019 to 2023). This recognises the role of the private sector in making safe and nutritious food available and affordable;

(f) The Kenya Nutrition Monitoring and Evaluation Framework (2018 to 2022). This ensures government and partners can monitor the progress and success of the KNAP;

(g) The National Nutrition Fact Sheet, Programmatic Guidelines and Policies on Maternal, Infant and Young Child Nutrition outline a range of supportive measures authorities and communities can take, from breastfeeding-friendly workplaces to vitamin A supplementation.

21. Right to housing

158. Kenya's Affordable Housing Programme was launched in December 2017 as one of the national government's 'Big Four Agenda' item (2018 to 2022). The government is in the process of constructing 500,000 low-cost houses in a partnership scheme with the private sector. Apart from offering low-income Kenyans access to housing, the scheme will help to create over 300,000 jobs, while providing a good market for local manufacturers and suppliers. The government also plans to make mortgage more easily accessible to Kenyans, thus making it easier for them to borrow or extend their mortgage loans. The Covid-19 pandemic has taken a toll on the economy and slowed the progress of affordable housing and other Big Four agenda item: food security, manufacturing and universal healthcare.

159. 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 the State 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; 40% portion for Civil Servants in lower salary scales has already been allocated to them.

160. 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 pipeline; 3500 water connections; and 14 ablution blocks.

161. Measures taken to implement the right to housing of nomadic and semi-nomadic people with full respect for their cultural identity include the use of Appropriate Building Materials Technology (ABMT). This 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.

22. Forced evictions

162. The Constitution guards every person's right to acquire and own property in Kenya. Both the Constitution and the Land Act, 2012 only permit compulsory acquisition where the land is acquired for a public purpose or in the public interest followed by the prompt payment of just compensation.

163. However, where there is unlawful occupation, the eviction must be carried out humanely. In this regard, the government enacted the Land Law (Amendment) Act, 2016. The Land Act Regulations 2017 prescribe the procedures and methodology for evictions which must be conducted in a humane manner.

164. The Nairobi City County Evictions, Resettlement and Demolitions Control Bill, 2020 seeks to make it illegal to carry out evictions and demolitions on weekends and during the rainy season. If passed, the county government will be required to resettle affected persons on public land.

165. The Community Land Act, 2016 limits the compulsory acquisition by the State of any interest in, or right over community land only in the instance where the compulsory acquisition is, first, in accordance with the law, second, for a public purpose and third, upon prompt payment of a just compensation to the person or persons, in full or by negotiated settlement.

166. Further, on 11th May 2020, the government declared a moratorium on evictions for the period of the COVID-19 pandemic.

23. Water and sanitation

167. Kenya is a water-scarce country with less than 1000 cubic metres per capita of renewable freshwater resources. The government recognizes the need to do more to scale up clean water accessibility. About 56 per cent of Kenyans have access to reliable clean water, while 70 per cent have access to clean sanitation. The economic and social developments anticipated by Vision 2030 – Kenya's development blueprint – sets a target of universal access to water and basic sanitation for all by 2030.

168. The policy and legislative framework on the right to water includes the National Water Policy, 2018, the Water Act, 2016, the Irrigation Act, 2019 and the Hydrologists Act, 2017.

169. The National Metropolitan Service working together with Athi Water Works Development Agency, has since 2020 sunk 93 boreholes in the informal settlements of Kibra, Mukuru and Mathare.

170. The Kenya Integrated Water, Sanitation and Hygiene (KIWASH) Project is a \$51 million five-year activity funded by USAID/Kenya and East Africa (USAID/KEA) to improve water services, in nine counties in: Busia, Nyamira, Migori, Siaya, Kisumu and Kakamega counties in the Lake Victoria Focus Area, and Kitui, Makeni, and Nairobi counties in Tana/Athi Focus Area. These interventions have achieved the following outcomes:

- (a) More than 1,000,000 people have gained access to improved water services.
- (b) Access to improved water increased by 1.0 per cent per year above the current trend (1.9 per cent overall increase).
- (c) Access to improved sanitation increased by 1.0 per cent per year above the current trend (1.2 per cent overall increase).

- (d) 2.2 per cent reduction in the population in target counties that practice open defecation.
- (e) 5 per cent increase over baseline in households with water and cleansing agent at a hand washing station.
- (f) At least 50,000 households gain access to irrigation and nutrition services
- (g) At least 100,000 children between six and twenty-three months old receive a minimally acceptable diet.

24. Access to healthcare services

Enhance access to health services

171. The right to health is a fundamental human right guaranteed under Article 43 (1) (a) of the Constitution which provides that every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care. Kenya has taken significant measures to extend financial risk protection and service coverage for all, including the poor and vulnerable groups, by designing and implementing health care policy reforms. To this end, the government devolved healthcare services to all counties, rolled out a universal healthcare programme, provided free maternity services, abolished user-fees at primary level facilities and extended grants with a focus on improving access to quality Primary Health Care (PHC) and Reproductive, Maternal, Neonatal, Child and Adolescent Health (RMNCAH) services by supporting operation and maintenance costs of primary health care facilities. The Kenya Slum Upgrading Programme¹⁹ addresses the social and economic challenges facing slum dwellers to access health care services with 11 mobile clinics operational. A health insurance subsidy for the poor, vulnerable, and the old was also introduced to reduce OOPs (Out of pocket payments).

172. The Kenya Health Policy, 2014–2030 gives directions on how to improve the overall status of health in Kenya in line with the Constitution of Kenya 2010, the country’s long-term development agenda, Vision 2030 and global commitments. To implement the Policy, the Government of Kenya rolled out the Universal Health Coverage (UHC) to allow Kenyans to access quality health services without financial hardship. The UHC expands health services, promotes inclusivity, and reduces out-of-pocket payments when accessing health services. The UHC programme was initially piloted in Nyeri, Kisumu, Machakos and Isiolo Counties in 2018. The abolition of all fees at local and secondary level [county referral] health facilities widely expanded access to health services in the four counties that were selected because of a high prevalence of communicable and non-communicable diseases, high population density, high maternal mortality, and high incidence of road traffic injuries. In addition, 200 community health units have been set up in the counties. 7700 community health volunteers and over 700 health workers have been in the counties. The first year of the pilot phase saw over 1.6 million more hospital visits recorded.

173. In February 2022, the national scale-up of the Universal Health Coverage (UHC) which seeks to ensure that all Kenyans access quality healthcare was launched.

174. There are various initiatives to ensure the successful implementation of UHC including investment in health infrastructure and the development of a digital health platform, to support the effective monitoring of the health sector. The investments the government has made since 2013 have seen an increase of 43 per cent in public health facilities from a stock of 4,429 facilities in 2013 to 6,342 in 2022.

175. In addition, community health coverage has also increased from 10 per cent in 2013 to the current 91 per cent, reflecting the enhanced capacity of the community health workforce to cater for the 8,663 Community Health Units across the country.

¹⁹ The Kenya Slum Upgrading Programme (KENSUP) is a collaborative initiative that draws on the expertise of a wide variety of partners in order to redress the issue of slums. Some of the goals and objectives of the Programme include the provision of social infrastructure: schools, health centres, community centres and recreational facilities in slums.

176. In the same period, the intensive care unit capacity has increased by an impressive 502 per cent; and total hospital bed capacity has also increased significantly by 47 per cent. The government has also fully funded the upgrading of hospitals across all the 47 counties as national referral hospitals with specialized state-of-the-art medical equipment. The Kenya Essential Medicines List, the Essential Medicals Supplies List and the Kenya Medical Laboratory List have been developed to enhance the availability of essential medicines and supplies.

177. The Ministry of Health has recruited and trained 31,780 community health volunteers in all 47 counties. This will ensure full coverage of community health services in the country, which will support home-based isolation and care for the COVID-19 Pandemic, and the achievement of Universal Health Care. In 2018, there was a launch of the Accelerated Immunization Outreach campaign to promote the health and well-being of the Kenyan children. The objective of the immunization programme was to guide the provision of quality immunization services by improving access to and utilization of immunization in all the 47 Counties in Kenya and to reduce morbidity and mortality from vaccine-preventable diseases.

178. In the past 10 years, the total number of health workers in the public and private sectors increased by 41 per cent to address the human resource shortage. 15,234 healthcare workers were recruited under the UHC and COVID-19 management programs. Additionally, efforts to enhance access to health services at both the county and national levels include the purchase of ambulances by counties for emergency services, the provision of disability-friendly beds in all facilities for mothers with disabilities and to increase access and utilization of health services for the poor.

Other initiatives under the NHIF are as follows

179. “Linda Mama” cover is a publicly funded healthcare scheme launched by the National Hospital Insurance Fund (NHIF) in 2016. The main aim of this initiative is to achieve universal maternal and child health services and contribute to the country’s progress towards UHC.

180. The objective of the Kenya Health Financing Strategy 2020–2030 is to ensure that the entire population is covered with some form of insurance. The strategy underscores adequacy, efficiency and fairness in the financing of health services in a manner that guarantees all Kenyans access to essential high-quality health services they require. The strategy identifies National Health Insurance (NHI), funded through the payroll and general taxes, as the ultimate financing arrangement for universal coverage in the country. The NHIF is regarded as the “vessel” that will enable the transition and lead the country towards UHC.

181. The Health Insurance Subsidy Program (HISP) was designed under the auspices of the National Hospital Insurance Fund (NHIF) and serves as a mechanism for the government to subsidize insurance coverage for the poorest households in Kenya, including the older persons and persons with severe disabilities.

182. NHIF has cumulatively paid over KES 700 million (5,847,800 USD) in benefits. HISP beneficiaries access outpatient and inpatient care at NHIF accredited public, faith-based and low-cost private health facilities.

183. NHIF Supa Cover is the largest, most reliable, affordable, and accessible medical cover that ensures that a significant number of Kenyans enjoy health benefits. For Ksh. 500 (4.17USD) per month each month, all medical bills for outpatient services and inpatient services are covered by the scheme.

Policy framework

184. Kenya, as a member of World Health Organization (WHO), has also committed to adopting Health in all Policies, which has been included in the Kenya Health Policy for the period 2014–2030. The State further provides healthcare to its citizens through a network of public and private facilities under a system called the Kenya Essential Package for Health. Approximately 25% of Kenyans are covered by public, private or community-based health insurance schemes.

185. Kenya Mental Health Policy 2015–2030 guides the GOK in ensuring that the mental health system for service delivery is affordable, equitable, accessible, of good quality and sustainable.

186. In 2019, a Mental Health Taskforce²⁰ was set up to address the mental health concerns of Kenyans and help guide the government on resource allocation for mental health. The government is in the process of implementing the recommendations of the Taskforce, which include programmes to address the mental health needs of refugees, the LGBT population, and persons living with disabilities.

187. Other policy frameworks which promote health care include; the Kenya Cancer Policy 2020, Primary Health Care Strategic Framework 2019–2024, The Kenya Quality Model for Health, The Kenya Environmental Sanitation and Hygiene Policy 2016–2030 and the Kenya Community Health policy 2020–2030.

Health Budget

188. The National government’s healthcare Budget for the period 2016/17 to 2020/21 is presented in Table 8 of the Annexures.

189. Table 9 in the Annexures presents the County Governments’ budget on health services from 2016/17 to 2020/21.

The Health Act, 2017

190. Refer to paragraph 9 of this report.

Implementing the decision of the High Court in PAO and 2 others v. Attorney-General (2012) and amending the Anti-Counterfeit Act

191. The High court in PAO and 2 others v. Attorney General (2012) ruled that sections 2, 32 and 34 of the Anti-Counterfeit Act, 2008 were unconstitutional, therefore null and void to the extent of these provisions, due to the negative impact they had on the ability of people living with HIV and AIDS to access affordable and essential medicines including generic anti-retro viral medications.

192. The OAG&DOJ is in the process of drafting a proposal for the amendment of sections 2, 32 and 34 of the Anti-Counterfeit Act, 2008 to remove the impugned sections from the statute book.

25. Sexual and reproductive health

Amend anti-abortion legislation

193. The jurisprudence on matters concerning abortion was clarified in the case of PAK & another v Attorney General & 3 others (Constitutional Petition E009 of 2020) [2022] KEHC 262 (KLR). The High Court in Malindi ruled that abortion is a fundamental right but it cannot be said to be absolute in light of Article 26(4)²¹ of the Constitution. It can only be undertaken in strict adherence to Constitutional imperatives.

194. In the 2019 case of Federation of Women Lawyers (FIDA – Kenya) & 3 others v Attorney General & 2 others; East Africa Center for Law & Justice & 6 others [2019] Eklr, the court clarified that pregnancies resulting from rape and defilement may be terminated under the exceptions provided under Article 26 (4) of the Constitution.

195. According to 26 (4) of the constitution, abortion can only be performed if in the opinion of a trained health professional, the pregnancy poses a danger to the life or the health of the mother. This, therefore, means that the question of whether or not to perform an

²⁰ <https://mental.health.go.ke/download/mental-health-and-wellbeing-towards-happiness-national-prosperity-a-report-by-the-taskforce-on-mental-health-in-kenya/>.

²¹ Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.

abortion falls squarely within the mandate of trained medical professionals. The professional must decide whether the pregnancy obtained from rape or incest poses a danger to the life or the health of the mother and therefore may be terminated under the exceptions provided in the supreme law.

Free maternal healthcare services to prevent the incidence of post-delivery detention in healthcare facilities

196. The Free Maternity Programme dubbed ‘Linda Mama’ is a publicly funded healthcare scheme launched by the National Hospital Insurance Fund (NHIF) in 2016. ‘Linda Mama’ provides a package of basic health services accessed by mothers in the targeted population based on need and not ability to pay, positioning Kenya on the pathway of UHC. This has contributed to a notable improvement in maternal and neonatal indicators thus a reduction in maternal and infant deaths. Mothers are covered for; pregnancy care, delivery in hospital, post-delivery care and outpatient baby care. 62% of births now occur in health facilities and 65% of pregnant women are delivered by skilled health personnel.

197. In 2020, the government made an investment of Ksh4.5B (USD 37,593,000) towards basic maternity and Lab equipment for the Primary Health Facilities (PHFs). The introduction of free maternity services has also largely eliminated post-delivery detention in public health care facilities across the country.

Contraceptives use in Kenya

198. The government is committed to ensuring universal availability and security of contraceptive methods, to meet the demands of Kenyans of reproductive age in managing and attaining their desired family sizes. Kenya as an FP2030 commitment maker has pledged to take specific actions to increase the use of voluntary, rights-based contraception in the country. The contraceptive prevalence rate among married women has increased to 58% from 46% in the last decade. Rather than adjust this target, the government has decided to focus its efforts to expand equitable access to quality care at the county level, where the ideal family size ranges from nine children in the north eastern part of the country to three children in the Nairobi region.

199. The National Adolescent Sexual and Reproductive Health Policy (ASRH) provides strategies to enhance the Sexual Reproductive Health status of adolescents in Kenya and contributes towards the realization of their full potential in national development. The Policy brings Adolescent Sexual and Reproductive Health and Rights issues into the mainstream of health and development.

Reinstate the standards and guidelines on safe abortion

200. The government, through the Ministry of Health is conducting multiple consultations with relevant stakeholders with a view to reviewing the guidelines to give meaningful effect to the letter and spirit of Article 26 (3) and (4) of the Constitution of Kenya.

26. HIV/AIDS

201. In recent decades, Kenya has registered significant success in HIV prevention in the region. It was one of the first countries to approve the use of Pre- exposure prophylaxis (PrEP) and has led the way in providing Voluntary Medical Male Circumcision (VMMC). As a result, new infections have fallen dramatically in recent years. The Kenyan government has also implemented various programmes to encourage male involvement in Prevention of Mother to Child Transmission (PMTCT), including accompanying their partners to prenatal appointments and receiving HIV testing at the same time.

202. In 2018, 69% of adults living with HIV in Kenya were accessing treatment. However, treatment coverage among children aged under 15 was lower, at 61%. Although awareness of HIV and AIDS is high in Kenya, many people living with HIV face high levels of stigma and discrimination which prevent people from accessing HIV services and have posed a challenge in the support to persons living with HIV/AIDS.

203. To prevent new HIV infections, integrated prevention mechanisms have been implemented countrywide. These include structural, behavioral and bio-medical interventions– Voluntary Medical Male Circumcision, Prevention of Mother to Child Transmission and Condom programming, Increased Anti-Retro Viral Therapy uptake at 97%; and the development of policy documents to address stigma and violence towards key populations.

Amendment to the HIV and AIDS Prevention and Control Act in accordance with the High Court decision (Petition No. 97, 2010)

204. On 18th March 2015, in the case of Aids Law Project v Attorney General & 3 others [2015] eKLR, the High Court of Kenya declared section 24 of the HIV and AIDS Prevention and Control Act unconstitutional and therefore null and void to the extent of this provision. The petitioner claimed that the HIV law could be interpreted to criminalize women living with HIV/AIDS who expose or transmit the virus to their child during pregnancy, delivery or breastfeeding.

27. Right to education

Enhanced Access to Free Education

205. Kenya has ensured that education for primary schools and tuition for day secondary schools is free and accessible to all students. The introduction of the free tuition for day secondary schools has significantly increased literacy rates, enhanced completion rates at the secondary level and ensured 100 per cent transition of all pupils from primary to secondary education. Furthermore, access to education has been boosted by laws such as the Basic Education Act which penalizes parents who fail to take their children to school, and the Prohibition from Female Genital Mutilation Act which criminalizes female genital mutilation, thus allowing girls, and children in the Arid and Semi-Arid Land Areas (ASALs) and marginalized communities to remain in school. In 2020, the Pupil Completion Rate (PCR) increased by 9.2% points to 94.6% from 85.4% in 2019. The Primary Secondary Transition Rate (PSTR) stood at 91.0% in 2020, representing a rise of 5.5 percentage points. The transition rate presented is based on the enrolment of Standard 8 pupils in 2019 and the enrolment of Form 1 students in 2020.²² (Refer to Table 10 in the annexures).

206. Total enrolment in secondary schools recorded a growth of 8.0 per cent to 3,520.4 thousand in 2020 of which 50.3 per cent were girls. The increase was attributed to the government policy of ensuring 100 per cent transition from primary to secondary schools. (Refer to Table 11 in the annexures).

207. With regard to higher education, the Higher Education Loans Board (Amendment) Bill, 2021 seeks to amend the Higher Education Loans Board (HELB) Act to waive the imposition of interest on the principal amount of a loan advanced to youth or persons with disabilities until such a time that they have secured their first employment. The Bill provides that the HELB can only charge the penalty on the default of a loan after the loanee secures the first job after completing their studies. The Bill aims to reduce the financial burden borne by fresh graduates.

208. The State has facilitated the chartering of more Universities and Colleges within the country and within different counties. This has ensured that there is fair and equal access to higher learning institutions regardless of where one may be. Kenya has experienced phenomenal growth in university education with the public and private sectors growing side by side and complementing each other in the drive to make higher education more accessible in the country.

209. In collaboration with development partners and other stakeholders, the Ministry of Education has also developed a policy for the inclusion of refugees and asylum seekers into the national education and training system. Learning together promotes peace and social cohesion.

²² Kenya National Bureau of Statistics, Economic Survey Report, 2021.

210. Currently, all schools located in refugee camps follow the Kenyan curriculum. Primary and secondary schools in the camps are headed by Principals registered by the Teachers Service Commission. Teachers who teach refugees receive extra allowances as incentives. Two universities- Kenyatta University and Masinde Muliro -offer online training in their satellite campuses in Dadaab and Kakuma refugee camps respectively. Refugee learners also participate in co-curricular activities and have been included in national scholarship programmes.²³

211. The State through the Kenya Institute of Curriculum Development (KICD) developed a new curriculum known as the Competency-Based Curriculum (CBC) in 2019 to replace the 8-4-4 system. The CBC aims to be a more student-based system, with more focus on the ability of the student to self-learn and develop relevant skills required for any engagement carried out.

Budget allocation

212. The GOK has continued to increase the budget allocation to the education sector as summarized in the following table:

<i>Sector</i>	<i>Budgetary allocation per financial year (Billions)</i>				
	<i>2017/18</i>	<i>2018/19</i>	<i>2019/20</i>	<i>2020/21</i>	<i>2021/22</i>
Education	420.2	460.4	500.6	489.36	503.9

213. The budget is used for the Free Primary Education (FPE) programs and free tuition for secondary school education, training and facilitation of teachers, the school feeding programs, the roll-out of the Competence-Based Curriculum, and the Digital Literacy Program. Regarding capital expenditure, the budget covers infrastructure development and safe learning in schools, construction and equipment of technical training institutes and vocational training centres.

214. Additionally, the National Treasury allocates funds to the Teachers Service Commission (TSC) for University Education, the High Education Loans Board (HELB) and the promotion of youth employment.

Registration for Alternative Provision of Basic Education and Training

215. Section 76 of the Basic Education Act of 2013 provides that all basic education providers must be accredited and registered as per the provisions of the law. For some time in Kenya, there existed a category of schools known as Alternative Provision of Basic Education and Training (APBET) institutions that did not meet the registration criteria set by the Ministry of Education, Science and Technology (MoEST) with regard to acreage, staffing, facilities among others. As a result, over half a million children, youth and adults were receiving education in institutions that were operating informally. The government recognized the critical role that APBET plays in increasing access to basic education, especially in informal settlements and other marginalised areas. Consequently, in 2015 the Registration Guidelines for Alternative Provision of Basic Education and Training (APBET) guidelines were developed to facilitate the registration of APBET institutions and ensure recognition by the Ministry of Education, Science and Technology. The guidelines also apply to APBET Institutions as well as mobile and feeder schools in the Arid and Semi-arid nomadic counties.

28. Access to the internet (especially for disadvantaged and marginalized individuals and groups)

216. The GoK has fully embraced internet technology to ensure the convenient, cheap, speedy and safe delivery of services. The Huduma Kenya Programme has seen the establishment of the “one-stop-shop” centres, which provide government services using

²³ <http://www.iiep.unesco.org/en/learning-together-inclusive-education-refugees-kenya-13451>.

digital technology. The centres set up across all counties offer national services relating to, among other areas, social security, health insurance, civil registration and business registration efficiently and conveniently. The ICT infrastructure and networks have been upgraded to enable a faster exchange of communications.

217. The GoK completed an upgrade of The National Optic Fibre Backbone Infrastructure (NOFBI) on Eldoret-Lodwar-Nadapal aimed at ensuring connectivity in all the 47 counties of Kenya to improve government service delivery in areas, such as the application of national identity cards, passports and registration of birth and death certificates. The project is being implemented in 2 phases: NOFBI Phase 1 (4,300 km) and NOFBI Phase 2 (2,100 km). To date, 1,200km out of the 1,600km of civil works are completed, and 900km of fibre has been laid in the National Optic Fibre backbone section. The section is now complete and fibre installed across the country.

218. Kenya and South Sudan governments are implementing the optic fibre cable system as part of the Eastern Africa Regional Transport, Trade and Development Facilitation Project, thus enhancing communication and inter-border trade.

219. M-KOPA Solar is an innovative model that provides “pay-as-you-go” energy for low-income off-grid customers who move from using non-renewable energy to affordable and sustainable practices while cutting down on pollution. M-KOPA loan, on the other hand, enables customers under-served by traditional financial services to secure financing. This financing model offers lower-income Kenyans instant access to the product while building ownership over time through flexible micro-payments.

220. The uptake of most digital services increased as a result of measures put in place to contain the COVID-19 pandemic. Activities of teleworking, on line learning, on line video streaming and e-commerce increased across the country and as a result, the uptake of digital tools went up significantly. The internet-based and bandwidth-intensive activities increased demand for high-quality connectivity while at the same time calling for digital reinforcement of a more inclusive approach to close the digital divide.

221. During the period under review, the number of licensed Internet Service Providers (ISPs) increased by 21.2 per cent to 366. Similarly, terrestrial mobile subscriptions rose by 11.6 per cent to 43.7 million while wireless data subscriptions increased by 44.4 per cent to 103,598 in the same period. Total fixed-wired internet subscriptions rose by 35.5 per cent to 579, 449 with Fibre optic growing by 49.0 per cent to 400,355 subscriptions in 2020²⁴ (Table 12 in the Annexures).

Part III

Other recommendations

Ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

222. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights is among a raft of treaties being examined by the OAG&DOJ with a view to advising GOK on the need to accede or ratify the treaties. The treaties are being considered against a laid down criteria, which include consistency with the Constitution, alignment with the national interests, requirements for implementation of the treaty, the policy, legislative, security and financial implications, and matters relating to counties.

223. For now, Kenya has adequate domestic legislation and a fully functioning and independent judiciary to protect the rights of all persons. To fully ensure the meaningful protection of the law, for all, without discrimination, the government through the judiciary continues to develop transformative strategies to promote effectiveness and efficiency in the administration of justice, access to justice and judicial performance.

²⁴ KNBS Economic Survey Report 2020.

Withdrawal of the reservation made with regard to paragraph 2 of article 10 of the Covenant

224. Paragraph 2 of article 10 of the Covenant, falls within the category of the treaties under examination as outlined in paragraph 216 above.

Development and application of Human Rights Indicators

225. Kenya has a number of developmental plans, surveys and policies which outlined human rights indicators to promote and monitor the implementation of human rights. However, the indicators so provided don't conform strictly to the structural-process-outcome indicators as outlined in the report of the Office of the High Commission Human Rights (HRI/MC/2008/3). The Government of Kenya is in consultations with the Kenya Bureau of Statistics (KBS) to work out a framework within which comprehensive human rights indicators could be incorporated in the reporting framework. However, there is a need for training and capacity building to ensure that the country has appropriate human rights indicators to use in human rights assessments and in furthering the implementation and realization of human rights in Kenya.

226. Some of the efforts taken so far taken to introduce indicators include: The national Reporting Indicators Handbook for the Medium Term Plans (MTPs) of the Kenya Vision 2030, provides a set of outcome/key outputs indicators for each sector based on the results framework defined in the Medium Term Plans. Each indicator has a baseline, annual targets for the period and the specific office which is responsible for tracking and reporting.

227. The 2014 Kenya Demographic and Health Survey (KDHS) provides data to monitor and evaluate the population and health status in Kenya. The survey contains various indicators to monitor fertility levels, marriage, sexual activity, fertility preferences, family planning methods, breastfeeding practices, nutrition, childhood and maternal mortality, maternal and child health, HIV/AIDS and other sexually transmitted infections (STIs), woman empowerment, female genital mutilation and domestic violence that can be used by program managers and policymakers to evaluate and improve existing programs. The preparation of the 2022 survey is underway.

228. The Economic Survey is an annual publication focusing on the socio-economic highlights of the economy for the last five years. The report forms an important source of input into the budgeting, planning, monitoring and policy formulation processes with guidance to national development policy and investment decisions.

229. The Kenya National Commission on Human Rights and the Kenya National Bureau of Statistics (KNBS) with support from OHCHR have agreed to develop human rights indicators to measure Sustainable Development Goals 16 (Peace, Justice and Strong Institutions).

The dissemination of the 2016 concluding observations

230. The OAG&DOJ disseminated the Concluding Observations to all implementing agencies, civil society organizations and the judiciary on 21st March 2017. The Concluding observations have also been uploaded on the website of the Attorney General. All organizations were encouraged to upload the same on their website. As far as possible all recommendations have been incorporated into Kenya's development plans and the implementing ministries' strategic plans. All relevant Ministries, Department and Departments (MDAs), Civil Society Organization (CSO) and national human rights Commissions were involved in the development of this report.

Submission of 6th periodic report.

231. Kenya's updated Common Core Document covering the period 2013-2021 was submitted in accordance with the harmonized guidelines on reporting under the international human rights treaties.