

# Kenya

## Mid-term Implementation Assessment



*Promoting and strengthening  
the Universal Periodic Review*  
<http://www.upr-info.org>



## Introduction

### 1. Purpose of the follow-up programme

*The second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the development of the human rights situation in the State under review.*

A/HRC/RES/16/21, 12 April 2011 (Annex I C § 6)

The Universal Periodic Review (UPR) process takes place every four and half years; however, some recommendations can be implemented immediately. In order to reduce this interval, we have created an update process to evaluate the human rights situation two years after the examination at the UPR.

Broadly speaking, *UPR Info* seeks to ensure the respect of commitments made in the UPR, but also, more specifically, to give stakeholders the opportunity to share their opinion on the commitments. To this end, about two years after the review, *UPR Info* invites States, NGOs, and National Institutions for Human Rights (NHRI) to share their comments on the implementation (or lack thereof) of recommendations adopted at the Human Rights Council (HRC) plenary session.

For this purpose, *UPR Info* publishes a Mid-term Implementation Assessment (MIA) including responses from each stakeholder. The MIA is meant to show how all stakeholders are disposed to follow through on, and implement their commitments. States should implement the recommendations that they have accepted, and civil society should monitor that implementation.

While the follow-up's importance has been highlighted by the HRC, no precise directives regarding the follow-up procedure have been set until now. Therefore, *UPR Info* is willing to share good practices as soon as possible, and to strengthen the collaboration pattern between States and stakeholders. Unless the UPR's follow-up is seriously considered, the UPR mechanism as a whole could be adversely affected.

The methodology used by UPR Info to collect data and to calculate index is described at the end of this document.

Geneva, 1st March 2013



## Follow-up Outcomes

### 1. Sources and results

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All data are available at the following address:

<http://followup.upr-info.org/index/country/kenya>

We invite the reader to consult that webpage since all recommendations, all stakeholders' reports, as well as the unedited comments can be found at the same internet address.

19 stakeholders' reports were submitted for the UPR. 24 NGOs were contacted. 1 UN agency was contacted. The Permanent Mission to the UN was contacted. The domestic NHRI was contacted as well.

12 NGOs responded to our enquiry. 1 UN agency responded. The State under Review provided us with a mid-term report. The domestic NHRI responded to our enquiry as well.

The following stakeholders took part in the report:

1. State of Kenya
2. The Kenya National Commission on Human Rights (NHRI)
3. UNCT Kenya (OHCHR)
4. NGOs: (1) Africa Platform for Social Protection (APSP) (2) Article 19 (A19) (3) CRADLE (CRADLE) (4) Cultural Survival (CS) (5) Edmund Rice International, Franciscans International and Marist Foundation for International Solidarity (joint) (FI+ERI+FMSI) (6) International Publishers' Association (IPA) (7) Ogiek People Development Programme (OPDP) (8) PEMA Kenya (PEMA) (9) PEN International (PEN)

*IRI:* 77 recommendations are not implemented, 65 recommendations are partially implemented, and 24 recommendations are fully implemented. All recommendations were commented upon.



## 2. Index

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Hereby the issues which the MIA deals with:

rec. n°	Issue	page	IRI
1	Migrants, International instruments,	page 31	not impl.
2	Poverty, ESC rights - general,	page 12	fully impl.
3	Technical assistance	page 89	not impl.
4	Internally displaced persons	page 25	partially impl.
5	Rights of the Child, Development,	page 68	partially impl.
6	Internally displaced persons	page 27	partially impl.
7	Special procedures	page 32	fully impl.
8	Women's rights, Torture and other CID treatment, Rights of the Child, Internally displaced persons, Asylum-seekers - refugees,	page 68	partially impl.
9	Torture and other CID treatment, Rights of the Child, Migrants, International instruments, Enforced disappearances, Disabilities,	page 32	not impl.
10	Women's rights, International instruments, ESC rights - general,	page 32	not impl.
11	International instruments, Death penalty,	page 32	not impl.
12	CP rights - general	page 9	fully impl.
13	Death penalty	page 39	not impl.
14	Justice, International instruments, Elections,	page 40	partially impl.
15	Women's rights, Rights of the Child,	page 71	partially impl.
16	Rights of the Child, Death penalty,	page 72	partially impl.
17	Justice	page 42	partially impl.
18	Death penalty	page 39	not impl.
19	Elections	page 9	partially impl.
20	Justice, International instruments,	page 40	partially impl.
21	Justice	page 48	partially impl.
22	International instruments, CP rights - general,	page 32	not impl.
23	International instruments, Death penalty,	page 32	not impl.
24	Human rights violations by state agents	page 48	not impl.
25	Justice	page 49	fully impl.
26	Poverty, Development,	page 13	fully impl.
27	Justice	page 49	fully impl.
28	Rights of the Child, Labour,	page 73	not impl.
29	Internally displaced persons	page 27	partially impl.
30	Women's rights, ESC rights - general,	page 73	partially impl.
31	Death penalty	page 39	not impl.
32	Human rights violations by state agents	page 49	not impl.
33	Technical assistance, Special procedures,	page 33	not impl.
34	Technical assistance, Right to education,	page 14	partially impl.
35	Poverty, International instruments,	page 16	not impl.



rec. n°	Issue	page	IRI
36	Indigenous peoples	page 28	not impl.
37	Poverty	page 17	partially impl.
38	Justice	page 50	partially impl.
39	Technical assistance	page 89	partially impl.
40	Special procedures	page 34	not impl.
41	Justice, International instruments,	page 34	not impl.
42	Human rights education and training	page 50	partially impl.
43	Women's rights	page 75	partially impl.
44	Migrants, International instruments,	page 32	not impl.
45	Technical assistance	page 90	not impl.
46	ESC rights - general, Development,	page 17	partially impl.
47	Technical assistance, Poverty, Development,	page 17	partially impl.
48	Right to health, Right to education,	page 14	partially impl.
49	Sexual Orientation and Gender Identity	page 65	not impl.
50	Women's rights, Torture and other CID treatment, Rights of the Child, Human rights education and training,	page 76	partially impl.
51	Human rights violations by state agents, Human rights education and training,	page 50	partially impl.
52	Torture and other CID treatment, International instruments,	page 35	fully impl.
53	Rights of the Child	page 77	partially impl.
54	Women's rights, Minorities, Migrants,	page 51	fully impl.
55	International instruments, Human rights defenders, Freedom of opinion and expression,	page 10	not impl.
56	Torture and other CID treatment, International instruments,	page 32	not impl.
57	Justice	page 52	partially impl.
58	Special procedures, Extrajudicial executions,	page 53	not impl.
59	Special procedures, International instruments, Indigenous peoples,	page 35	not impl.
60	Torture and other CID treatment, Human rights violations by state agents,	page 53	not impl.
61	National plan of action	page 90	fully impl.
62	Development	page 18	partially impl.
63	Technical assistance, ESC rights - general,	page 90	not impl.
64	Justice, Human rights education and training,	page 19	partially impl.
65	Justice	page 40	partially impl.
66	International instruments	page 54	not impl.
67	Justice	page 54	partially impl.
68	Sexual Orientation and Gender Identity	page 66	not impl.
69	Women's rights	page 78	not impl.
70	International instruments, Enforced disappearances,	page 36	not impl.
71	Justice	page 55	fully impl.
72	Human rights violations by state agents, Human rights defenders,	page 55	not impl.
73	Death penalty	page 39	not impl.
74	Rights of the Child, National plan of action,	page 79	not impl.
75	Women's rights, Torture and other CID treatment, Rights of the Child,	page 80	fully impl.



rec. n°	Issue	page	IRI
76	Justice, Corruption,	page 56	fully impl.
77	Rights of the Child, International instruments,	page 57	not impl.
78	Torture and other CID treatment, International instruments,	page 32	not impl.
79	Death penalty	page 39	not impl.
80	Women's rights, Rights of the Child,	page 80	not impl.
81	Women's rights, Rights of the Child,	page 80	not impl.
82	Corruption	page 58	fully impl.
83	Women's rights, Torture and other CID treatment, Rights of the Child, Human rights education and training,	page 81	partially impl.
84	Technical assistance, Rights of the Child, Right to education,	page 20	not impl.
85	NHRI	page 90	partially impl.
86	Death penalty	page 39	not impl.
87	Rights of the Child, Right to education,	page 20	not impl.
88	Justice, International instruments, Human rights defenders,	page 40	partially impl.
89	Women's rights, Torture and other CID treatment, Rights of the Child,	page 81	partially impl.
90	Justice	page 58	fully impl.
91	Justice	page 42	partially impl.
92	Poverty, Development,	page 20	partially impl.
93	Technical assistance, Development,	page 21	not impl.
94	Rights of the Child, Poverty, Development,	page 21	partially impl.
95	Rights of the Child, International instruments,	page 82	partially impl.
96	National plan of action	page 91	fully impl.
97	Technical assistance, Poverty, Development,	page 91	not impl.
98	Indigenous peoples	page 29	not impl.
99	Women's rights, Trafficking, Rights of the Child, Impunity, Justice, Human rights education and training,	page 82	partially impl.
100	Special procedures, Internally displaced persons,	page 30	not impl.
101	Technical assistance, Elections,	page 91	not impl.
102	Special procedures, International instruments, Indigenous peoples,	page 30	not impl.
103	Technical assistance, Development,	page 17	partially impl.
104	Special procedures, Extrajudicial executions,	page 59	not impl.
105	Justice	page 58	fully impl.
106	Justice	page 42	partially impl.
107	Corruption	page 59	partially impl.
108	Sexual Orientation and Gender Identity	page 66	not impl.
109	Impunity	page 60	partially impl.
110	International instruments	page 33	not impl.
111	General	page 91	fully impl.
112	Women's rights	page 73	partially impl.
113	Women's rights, Rights of the Child, Right to education,	page 83	not impl.
114	Technical assistance	page 92	not impl.
115	Technical assistance	page 92	not impl.
116	Right to land, International instruments, Indigenous peoples,	page 35	not impl.



rec. n°	Issue	page	IRI
117	Justice, International instruments,	page 40	partially impl.
118	Freedom of opinion and expression	page 11	not impl.
119	UPR process, Civil society,	page 12	fully impl.
120	Special procedures, Human rights defenders,	page 36	not impl.
121	Human rights defenders, Freedom of the press,	page 61	not impl.
122	Justice, Elections, Civil society,	page 61	not impl.
123	Justice, International instruments,	page 37	partially impl.
124	General	page 92	fully impl.
125	Justice, Elections,	page 40	partially impl.
126	Rights of the Child, National plan of action,	page 84	partially impl.
127	Human rights education and training	page 21	partially impl.
128	Minorities	page 30	not impl.
129	Poverty	page 21	partially impl.
130	General	page 92	not impl.
131	Women's rights, Torture and other CID treatment, Rights of the Child, Human rights education and training,	page 76	partially impl.
132	Rights of the Child, Justice, Detention conditions,	page 85	not impl.
133	Detention conditions	page 62	partially impl.
134	Right to education	page 14	partially impl.
135	Rights of the Child	page 22	not impl.
136	Women's rights, Torture and other CID treatment, Rights of the Child,	page 86	partially impl.
137	Asylum-seekers - refugees	page 31	not impl.
138	International instruments, Death penalty,	page 37	not impl.
139	Right to water, Right to food,	page 22	partially impl.
140	Torture and other CID treatment, Special procedures, Rights of the Child, International instruments, Enforced disappearances, Disabilities,	page 38	not impl.
141	Human rights violations by state agents	page 55	partially impl.
142	Women's rights, International instruments, ESC rights - general, CP rights - general,	page 33	not impl.
143	International instruments, Death penalty,	page 39	not impl.
144	Justice	page 63	partially impl.
145	Rights of the Child, Right to education, Poverty, Labour,	page 86	not impl.
146	Justice	page 63	not impl.
147	Human rights defenders	page 58	fully impl.
148	Impunity	page 42	partially impl.
149	Women's rights, Right to health,	page 86	partially impl.
150	Human rights defenders	page 58	fully impl.
151	Justice, International instruments,	page 41	partially impl.
152	Justice	page 64	fully impl.
153	Impunity, Extrajudicial executions,	page 42	partially impl.
154	Justice	page 64	fully impl.
155	Justice	page 58	fully impl.
156	Justice	page 64	partially impl.
157	Sexual Orientation and Gender Identity	page 66	not impl.



<b>rec. n°</b>	<b>Issue</b>	<b>page</b>	<b>IRI</b>
158	Trafficking, Rights of the Child,	page 87	partially impl.
159	International instruments, Enforced disappearances,	page 39	not impl.
160	International instruments, Death penalty,	page 39	not impl.
161	Women's rights, International instruments,	page 39	not impl.
162	Death penalty	page 39	not impl.
163	Rights of the Child, Labour,	page 88	not impl.
164	Technical assistance, Poverty,	page 24	partially impl.
165	Justice	page 65	partially impl.
166	Technical assistance	page 93	not impl.





### 3. Feedbacks on recommendations

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## CP Rights

Recommendation n<sup>o</sup>12: *Strengthen and promote respect for civil and political rights through the judicial process regarding complaints initiated regarding the violation of such rights (Recommended by Argentina)*

IRI: *fully implemented*

Article 19 (A19) response:

Partially implemented

Kenya National Commission on Human Rights (NHRI) response:

Implemented, particularly through replicating ICCPR in the 2010 Constitution and setting up of a Constitutional and Human Rights Division

Recommendation n<sup>o</sup>19: *Consider establishing an independent investigative authority that can effectively investigate the violence related to the 2007 elections and the alleged involvement of the police and public prosecutor (Recommended by Austria)*

IRI: *partially implemented*

State of Kenya response:

#### **Setting up of a Multi Agency Taskforce on post election violence cases:**

The Director of Public Prosecutions established a Multi Agency Taskforce to undertake a countrywide audit of all the local post election violence (P.E.V) cases under investigation and pending before courts of law with a view to recommending ways and means of ensuring their fair and speedy determination. The team was also required to advise on other alternative dispute resolution mechanisms which include reconciliation, mediation, arbitration and other traditional dispute resolution strategies. The Agency reviewed slightly over 6000 files that had been opened on the PEV cases. The number of cases fully investigated, prosecuted and finalized so far is 445. 41 cases are pending before court. However, the agency's findings are that most of these cases are unlikely to be prosecuted for lack of evidence.

The number of perpetrators so far convicted is 26 and the offences include house breaking and stealing, murder, possession of stolen property, stealing stock, arson, taking part in a riot, and possession of offensive weapons. A number of victims are pursuing civil remedies.

#### **Appointment of the Committee of the Judicial Service Commission on the establishment of an International Crimes Division:**

On 9 May 2012, the Judicial Service Commission appointed a committee whose mandate included examining:

- the modalities of establishing an International Crimes Division of the High Court for post election cases; and



- Expanding jurisdiction of the Division to also deal with international and transnational crime.

The Committee has recommended the establishment of the International Crimes Division of the High Court with an independent well facilitated prosecution unit focused on international crimes headed by a special prosecutor.

The jurisdiction of the division shall include post election violence crimes, crimes against humanity, genocide, war crimes, human trafficking and organized crime.

A19 response:

Not implemented

NHRI response:

Not implemented

*Recommendation n°55: Review its national legislation on freedom of expression so that it fully complies with the relevant provisions of the International Covenant on Civil and Political Rights, and ensure the effective protection of human rights defenders against harassment or persecution (Recommended by Czech Republic)*

*IRI: not implemented*

International Publishers' Association (IPA) response:

Kenya's new Constitution provides for the freedom to seek, receive, and impart ideas and information in Article 33. The Freedom of Information Bill would align the country's freedom of expression legislation with ICCPR standards, but it hasn't been passed yet. A Communications Commission Bill was introduced at the end of 2010 to instate an independent regulatory body for the broadcasting sector; however, this bill has not yet been passed.

State of Kenya response:

A Bill has been developed to provide for the establishment of the Kenya Freedom of Information Commission; to provide for access to information in the possession of public authorities; to provide for a proactive publication and dissemination of information; and for connected purposes. The Bill is currently undergoing stakeholder consultations. The objects of the Bill are:

- to give effect to the citizen's right of access to information as provided under Article 35 of the Constitution;
- to give effect to the citizen's right of access to information– held by or on behalf of public authorities, or to which public authorities are entitled by law to have access, including information relating to national security matters, subject only to specific and limited exemptions necessary to prevent identifiable harm to legitimate state interests or to the private and business interests of persons whose information is collected and held by public authorities;
- to require public bodies to proactively disclose information that they hold and to provide information on request;
- to create a right of access to information held by private bodies if those bodies are public contractors or if such bodies hold information required for the exercise or protection of any right protected by the Constitution and the laws of Kenya;



- to bar public authorities from imposing sanctions on employees or members of the public for releasing information of compelling public interest in good faith.

A19 response:

Not implemented

NHRI response:

Not implemented

PEN International (PEN) response:

Kenyan law has yet to be made fully compliant with Article 19 of the ICCPR. For example, defamation has not yet been completely decriminalised as the Kenyan State promised in 2005. With regards to human rights defenders' right to peaceful assembly (Article 21), there is still a need to clarify the procedure for notifying the police ahead of public demonstrations, to ensure that both the police and demonstrators are aware of their respective rights and responsibilities, and to institute checks and balances against the abuse of police discretion.

Recommendation n<sup>o</sup>118: *Enact as a matter of urgency the Freedom of Information Bill (Recommended by Norway)*

*IRI: not implemented*

IPA response:

A new Freedom of Information Bill was drafted in early 2012, following the promulgation of the new Constitution in August 2010. The draft will be considered by the Constitutional Implementation Committee and then by stakeholders before being passed on to Parliament. There is currently no deadline for its enactment.

State of Kenya response:

A Bill has been developed to provide for the establishment of the Kenya Freedom of Information Commission; to provide for access to information in the possession of public authorities; to provide for a proactive publication and dissemination of information; and for connected purposes. The Bill is currently undergoing stakeholder consultations. The objects of the Bill are:

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- to require public bodies to proactively disclose information that they hold and to provide information on request;
- to create a right of access to information held by private bodies if those bodies are public contractors or if such bodies hold information required for the exercise or protection of any right protected by the Constitution and the laws of Kenya;
- to bar public authorities from imposing sanctions on employees or members of the public for releasing information of compelling public interest in good faith.

A19 response:

Not implemented even though the Constitution of Kenya 2010 has elaborated provisions on freedom of information.

NHRI response:

Not implemented

PEN response:

As of November 2012 the Freedom of Information bill had not been enacted and far as PEN is aware this is still the case.

Recommendation n°119: *Engage in a participatory and inclusive process with civil society in the implementation of universal periodic review recommendations* (Recommended by Norway)

IRI: *fully implemented*

A19 response:

Partially implemented

NHRI response:

Implemented. The state drew up an action plan on the UPR with the assistance of the Kenya National Commission on Human Rights and Civil Society organizations. The action plan has however not been implemented.

## ESC Rights

Recommendation n°2: *Continue its efforts to promote economic, social and cultural rights and intensify national and anti-poverty programmes* (Recommended by Algeria)

IRI: *fully implemented*

Africa Platform for Social Protection (APSP) response:

There has been incremental budgetary allocation for cash transfer programmes older persons, children, persons with disabilities and the urban poor.

State of Kenya response:

The Women Enterprise Fund has successfully provided funds to 98,173 women across the country, and continues to train women on entrepreneurship.

Vulnerable households: Over 170,000 poor vulnerable households are benefitting from cash transfer programme (120,000) households under the OVC Programme, 33,000 households under the Older Persons Programme and 14,700 under the Disability Fund).

The Youth Enterprise Development Fund was conceived in 2006 as one of the strategies of addressing youth unemployment. The objectives of the Fund are to



provide loans to existing micro-finance institutions (MFIs), registered non-governmental organizations (NGOs) involved in micro financing, and savings and credit co-operative organizations (SACCOs) for on-lending to youth enterprises. It also facilitate investment in micro, small and medium enterprises oriented commercial infrastructure such as business or industrial parks, markets or business incubators that will be beneficial to youth enterprises. The Youth Fund has recorded tremendous achievements since its conception. By 2012 the Fund had disbursed 5.9 billion shillings to over 157,000 youth enterprises across the country. These enterprises have grown and are employing many Kenyans as well as contributing to the Government exchequer. These efforts have also resulted in the creation of over 300,000 new jobs. Furthermore, the Fund has, with its partners, trained over 200,000 youth in entrepreneurship besides facilitating them with access to markets for their products. It has also helped to integrate thousands of young Kenyans into mainstream financial services. Moreover 6,000 young people have been facilitated to obtain employment outside Kenya through the fund.

**Fish farming Enterprise Productivity Programme:** The Government through the Ministry of Fisheries Development launched the Ksh1.12 billion programme in the 2009/2010 to construct 200 fish farming ponds in 140 constituencies as a move to reduce poverty through the Economic Stimulus Programme. It also seeks to improve nutrition and create 120,000 employment and income opportunities. The fish farming project has improved nutrition in the country and created over 120,000 employment and income opportunities has been one of the more successful components. During the 2010/2011 financial year, the Government allocated Sh 2.866 billion for Phase 11 of the Fish Farming Programme. These funds were used in the construction of 300 ponds in an 20 additional constituencies, and construction of another 100 ponds in 140 constituencies that were under phase 1.

A19 response:

Partially implemented through the Constitution of Kenya, 2010 progressive Bill of Rights.

NHRI response:

Partly implemented through inclusion of Economic, Social and Cultural Rights in the 2010 constitution. Article 43 of the Constitution now guarantees the Right to Housing, Education, Water and Health.

**Recommendation n°26: *Continue to put in place effective national policies to alleviate poverty and unemployment (Recommended by Azerbaijan)***

*IRI: fully implemented*

APSP response:

Kenya National Policy on Social Protection passed in 2012.

State of Kenya response:

[See response to recommendation n°2]



Recommendation n°34: *Develop education policies that ensure quality education, particularly for the poor, marginalized and vulnerable segments of its population, and request international assistance to that end* (Recommended by *Bolivia*)

IRI: *partially implemented*

+

Recommendation n°48: *Continue to develop programmes and measures aimed at ensuring quality and free education and health services for its population* (Recommended by *Cuba*)

IRI: *partially implemented*

+

Recommendation n°134: *Strengthen its educational policy to guarantee the required quality of education, accessible to all members of its population, especially the marginalized and most vulnerable groups* (Recommended by *Slovakia*)

IRI: *partially implemented*

#### State of Kenya response:

The Constitution, 2010 has provided for right to Education as a human right to every Kenyan child. A Task Force on the alignment of the Education Sector to the new Constitution and Vision 2030 was constituted in 2011 and mandated to review the current education system to ensure that the it is in tandem with the current global trends in education, the Constitution and Vision 2030 in order to make the Kenyan education system globally competitive and market driven.

The Task Force reviewed the education system and proposed strategies to:

- address policy, content and governance issues in education;
- address challenges related to access, quality, equity, relevance, wastage and efficiency;
- the development of a national education master plan,
- the review of the Education Act,
- the development of a policy on education; and
- and establishment of a Education Reform Implementation Committee (EdRIC) to drive the reform process.

Policies on education: The Government is in the process of implementing the Task Force recommendations. A draft Policy Framework for Education that aligns Education and Training to the Constitution of Kenya (2010) and Kenya Vision 2030 and beyond has already been developed.

Other recommendations already realized include: The Kenya Sessional Paper on Education, 2012 which has been finalized and will soon be tabled in Cabinet; the Teachers Service Commission Bill, 2012 has been approved by Cabinet. It will be published for tabling in Parliament shortly; and the Education Bill, 2012 which has been finalized and is going through stakeholder consultations.

The Government is also in the process of reviewing the education sector policies with the aim of aligning them with the new constitution to make them implementable frameworks with the devolved governments. These include:



- Gender in Education policy which aims at eliminating gender disparities and achieving gender equity and equality in relation to access, retention, completion and transition in primary and secondary education by 2015.
- The Early Childhood Development Education Policy (ECDE) whose intention is to mainstream ECDE into primary school cycle so that no child is left out of basic education.
- The HIV and AIDS policy which recognizes that although the ministry has domesticated the National HIV and AIDS policy AIDS continues to be a threat to education achievements. An impact assessment on HIV and AIDS has been undertaken and the results once disseminated to stakeholders, will inform the policy review.

Child Friendly Schools (CFS): The school is a significant personal and social environment in the lives of its students. The Government has ensured that the education environments are safe, healthy and protective and are endowed with trained teachers, adequate resources and appropriate physical, emotional and social conditions for learning. It further accepts that schools shall respond to diversity by meeting differing circumstances and needs of children based on gender, social class, ethnicity and level of ability

Special needs institutions: According to the school mapping data set there are 3,464 special needs institutions (38.2% ECDE, 3.4% NFE, 54.1% primary and 4.3% Secondary) in the country with 2,713 integrated institutions and 751 Special Schools. Among these, there are 10 public secondary schools for learners with hearing impairments, 3 for learners with physical handicaps and 4 for learners with visual impairments making a total of 17 secondary schools for learners with disabilities throughout Kenya. These figures show that access and participation of children with special needs is relatively low across the country.

The emphasis on academic performance and examinations creates an unfavourable learning environment for children with special needs and disabilities and even moderate learning difficulties. This poses a challenge to the integration and inclusion of children with such disabilities in regular schools.

To address these challenges the government A Special Needs Education (SNE) policy framework has now been launched by the government of Kenya. The policy addresses how the government will work with stakeholders to transition to an inclusive education approach in line with Education for all by 2015.

Construction of new schools: Further in order to increase access to education 420 new primary schools have been constructed across the country.

Mobile schooling is a key strategy in the nomadic areas of Kenya, enabling children to access education even in nomadic lifestyles. To improve the quality of learning, 20 mobile schools have been constructed and equipped with basic learning materials, such as books/Access to education: The government has taken steps through the formulation of the education policy to ensure access to education by both the girl and boy child. However, statistics show that although the number of girls enrolling in



primary school is on the increase, the trend decreases after completion of primary school and fewer girls enrol in secondary schools. This is due to various reasons such as poverty, early marriages, lack of sanitary pads and in some instances of Female Genital Mutilation (FGM). The enactment of the Prohibition of Female Genital Mutilation Act, 2011 which criminalizes this practice will go a long way in eradicating the practise.

**Early marriages:** The Constitution of Kenya forbids harmful cultural practices and prohibits early marriages by directing espouse that marriage will only be between consenting adults.

**Provision of sanitary pads to all primary school girls:** The Government introduced Free Day Secondary Education in 2008. Since then enrollment has increased from 800, 000 to 1.7 million students in 2012. As a result the transition rate from primary to secondary has risen from 47% in 2003 to 72.5% in 2012 .This is above the UNESCO benchmark of 70%. However despite the remarkable increases in access at primary and secondary school, statistics show that a big proportion of girls are left out. Studies have shown that one of the reasons why girls miss classes or drop out altogether is maturation or the onset of puberty. It is due to this realization that the Government introduced the sanitary towels programme starting in the financial year 2011/2012 and expected to be a continuing programme in the subsequent financial years. The Government allocated the Ministry of Education Ksh. 240 Million in the Financial Year 2011/2012 for provision of sanitary towels. This will benefit 443,858 girls in public primary drawn from 82 targeted districts.

A19 response:

Partially implemented

NHRI response:

Not implemented. Education for the marginalized and vulnerable populations remains a challenge. Children with Disabilities are especially hard-hit , with very few schools able to accommodate them. The Special Schools do not have adequate resources or personnel to cater for the needs of children with disabilities.

Recommendation n<sup>o</sup>35: *Ensure that public policies for combating poverty are in accordance with the rights recognized in the International Covenant on Economic, Social and Cultural Rights and that they are not negatively affected by commitments that might be undertaken in the context of trade and investment agreements (Recommended by Bolivia)*

**IRI: not implemented**

A19 response:

Partially implemented

Cultural Survival (CS) response:

Kenya has ratified the ICESCR and is therefore bound to its articles. In this regard, Kenya should recognize the indigenous pastoralist tribes' right to free, prior and informed consent regarding any infrastructure or development project that would affect their lands, natural resources, property, cultural expression, and sacred sites;





as well as require all development projects, including the road construction, oil exploration and exploitation, and tourism development projects underway or planned in Samburu East and Isiolo Districts, to meet the highest international standards and best practices in regard to their environmental and social impacts.

NHRI response:

Not implemented.

Recommendation n°37: *Continue its implementation of the poverty alleviation policies, in particular through the Kazi Kwa Vijana programme, and share its experiences in this regard* (Recommended by Botswana)

IRI: *partially implemented*

+

Recommendation n°46: *Continue its strategies for social and economic recovery, and promote social peace and sustainable development* (Recommended by China)

IRI: *partially implemented*

+

Recommendation n°47: *Continue to pursue development and anti-poverty policies, step up international cooperation, and intensify its efforts to alleviate poverty* (Recommended by China)

IRI: *partially implemented*

+

Recommendation n°103: *Continue the implementation of the Vision 2030 strategy, the Kazi Kwa Vijana programme and the Constituency Development Fund, and seek the technical and financial assistance that it will require to that end* (Recommended by Morocco)

IRI: *partially implemented*

APSP response:

Kazi kwa Vijana programme has been revised in collaboration with the Kenya Private Sector Association (KEPSA). The Programme will now offer internship to the youth.

State of Kenya response:

The Women Enterprise Fund has successfully provided funds to 98,173 women across the country, and continues to train women on entrepreneurship.

**Vulnerable households:** Over 170,000 poor vulnerable households are benefitting from cash transfer programme (120,000) households under the OVC Programme, 33,000 households under the Older Persons Programme and 14,700 under the Disability Fund).

The Youth Enterprise Development Fund was conceived in 2006 as one of the strategies of addressing youth unemployment. The objectives of the Fund are to provide loans to existing micro-finance institutions (MFIs), registered non-governmental organizations (NGOs) involved in micro financing, and savings and credit co-operative organizations (SACCOs) for on-lending to youth enterprises. It also facilitate investment in micro, small and medium enterprises oriented commercial infrastructure such as business or industrial parks, markets or business



incubators that will be beneficial to youth enterprises. The Youth Fund has recorded tremendous achievements since its conception. By 2012 the Fund had disbursed 5.9 billion shillings to over 157,000 youth enterprises across the country. These enterprises have grown and are employing many Kenyans as well as contributing to the Government exchequer. These efforts have also resulted in the creation of over 300,000 new jobs. Furthermore, the Fund has, with its partners, trained over 200,000 youth in entrepreneurship besides facilitating them with access to markets for their products. It has also helped to integrate thousands of young Kenyans into mainstream financial services. Moreover 6,000 young people have been facilitated to obtain employment outside Kenya through the fund.

**Fish farming Enterprise Productivity Programme:** The Government through the Ministry of Fisheries Development launched the Ksh1.12 billion programme in the 2009/2010 to construct 200 fish farming ponds in 140 constituencies as a move to reduce poverty through the Economic Stimulus Programme. It also seeks to improve nutrition and create 120,000 employment and income opportunities. The fish farming project has improved nutrition in the country and created over 120,000 employment and income opportunities has been one of the more successful components. During the 2010/2011 financial year, the Government allocated Sh 2.866 billion for Phase 11 of the Fish Farming Programme. These funds were used in the construction of 300 ponds in an 20 additional constituencies, and construction of another 100 ponds in 140 constituencies that were under phase 1.

A19 response:

partially implemented

NHRI response:

Implementation of Vision 2030 strategy on-going. The Kazi Kwa Vijana Program and Constituency Development Fund have not however progressed well.

Recommendation n°62: *Follow through with the implementation of its national development agenda under Vision 2030 (Recommended by Egypt)*

IRI: *partially implemented*

APSP response:

In progress regarding various programmes

A19 response:

partially implemented

UNCT Kenya (OHCHR) response:

This is on course and the UN is currently involved in the formulation of the second Medium Term Plan of the Vision 2030.

NHRI response:

Implementation on-going



Recommendation n°64: *Better educate security and law enforcement authorities at all levels about the basic rights of the citizens, take each reported case seriously and impartially investigate and punish those found guilty of such actions (Recommended by Finland)*

IRI: *partially implemented*

State of Kenya response:

The National Police Service is established by the National Police Service Act of 2011. The Service holds a constitutional duty to train its staff to respect human rights, fundamental freedoms and dignity of the human person. The Police must comply with constitutional standards of human rights and fundamental freedoms. The Act defines and criminalizes acts of torture or any cruel, inhuman and degrading treatment of punishment committed by police officers. It also provides sanctions for the offence.

The Police service has a new training curriculum. The curriculum extends the period of training from 9 to 15 months of basic training and introduces an additional 6 months cadet training for University graduate recruits. It also expands the content by introducing new training modules in the areas of human rights, gender, public relations, ICT, Community Policing and service delivery. The curriculum has also introduced an internship program that allows trainees to go for practical exposure during the period of training.

The government also has a policy to train all prison officers on constitutionalism and the application of human rights. Indeed, during recruitment, professionals such as lawyers and councillors are hired to support the human right promotion in the prisons.

A19 response:

not implemented

CS response:

In 2010, police officers being sent to Samburu East District were given human rights training, opened by the Commissioner of the District. The trainings focused heavily on the new Constitution of Kenya, which contains strong safeguards against the abuse of power as well as regional and international human rights standards on policing and the rights of citizens. The National Police Service is established by the National Police Service Act of 2011. The Service holds a constitutional duty to train its staff to respect human rights, fundamental freedoms and dignity of the human person. The Police must comply with constitutional standards of human rights and fundamental freedoms. National trainings should take place for all police officers, judges, prison guards and other enforcement officers, especially those working in districts populated by indigenous and other marginalized minorities. Investigations need to take place into the police violence against the Samburu people, and those responsible for the extrajudicial killings need to be punished.

NHRI response:

Partially implemented. The Independent Police Oversight Authority has been established and will be responsible for investigating complaints made against the police



Recommendation n°84: *Seek the support of the international community and cooperate with it to formulate policies aimed at further broadening access to free and compulsory education, particularly for children from poor households (Recommended by Indonesia)*

IRI: *not implemented*

A19 response:

Partially implemented through constituency bursaries and schools capitation quotas

NHRI response:

Not implemented

Recommendation n°87: *Develop and implement a specific education policy which would cover all children with special needs (Recommended by Ireland)*

IRI: *not implemented*

State of Kenya response:

**The National Special Education Policy Framework:** A Special Needs Education (SNE) policy framework was launched by the government of Kenya, in 2010. The policy addresses how the government will work with stakeholders to transition to an inclusive education approach in line with Education for All by 2015.

The Policy Framework addresses critical issues related to education for learners with special needs. It provides a framework that is essential to guide the work of all actors involved in provision of special needs education to ensure consistency and a coordinated implementation. The policy is important in the elimination of disparities and enhancement of equity and equality for all learners, especially inclusion of learners with special needs and disabilities in the education system. According to the school mapping data set there are 3,464 special needs institutions (38.2% ECDE, 3.4% NFE, 54.1% primary and 4.3% Secondary) in the country with 2,713 integrated institutions and 751 Special Schools.

However the full implementation of the policy has been hampered by several factors: Lack of resources to enable registration to be done within a specified timeframe; Stigmatization – parents especially in rural areas still hide their children in some counties and do not take them to school; and lack of specialized teachers.

The government has however initiated a number of awareness campaigns to sensitize communities on the value of education for those with special needs.

A19 response:

not implemented

NHRI response:

Not yet implemented.

Recommendation n°92: *Pursue its efforts to achieve the highest possible level of social justice and find adequate solutions to the problems of poverty and unemployment (Recommended by Kuwait)*

IRI: *partially implemented*

+



Recommendation n°129: *Strengthen the fight against poverty* (Recommended by Senegal)

IRI: *partially implemented*

State of Kenya response:

[See response to recommendation n° 37]

A19 response:

partially through draft policies on social protection

NHRI response:

Not implemented

Recommendation n°93: *Seek from the international community the technical assistance necessary to ensure capacity-building in various development fields, in particular those creating work opportunities for young people in cities and rural areas* (Recommended by Kuwait)

IRI: *not implemented*

A19 response:

Not implemented

NHRI response:

Not implemented

Recommendation n°94: *Pursue the implementation of the national programmes for alleviating poverty and improving living conditions, which will result in improvements in the lives of Kenyan children* (Recommended by Libya)

IRI: *partially implemented*

State of Kenya response:

[See response to recommendation n° 37]

A19 response:

partially implemented through the Orphans and Vulnerable children programme

NHRI response:

Not implemented

Recommendation n°127: *Continue human rights education and training* (Recommended by Senegal)

IRI: *partially implemented*

State of Kenya response:

[See response to recommendation n° 64]

A19 response:

Partially implemented

NHRI response:

Not implemented



Recommendation n<sup>o</sup>135: *Take all appropriate measures to ensure for street children, who are vulnerable to various forms of violence, appropriate care and protection (Recommended by Slovenia)*

IRI: *not implemented*

A19 response:

Not implemented

NHRI response:

Not implemented

Recommendation n<sup>o</sup>139: *Ensure the equitable distribution of water and food to the entire population, especially during times of drought (Recommended by Spain)*

IRI: *partially implemented*

State of Kenya response:

The Constitution of Kenya now recognizes the right to clean and safe water as a basic human right. The State is required to take legislative, policy and other measures to ensure the progressive realization of this right. To ensure full compliance with the constitution the government has taken the following steps:

- The Water Act 2012: A draft water Bill has been prepared to provide will provide for the efficient management of water resources and development of water and sewerage services.
- A draft Water Policy has been developed and takes into consideration vision 2030 and the constitutional provisions on access to clean and safe water of a sufficient quantity.
- Water master plan: The ministry of Environment and Mineral Resources in collaboration with the ministry of Water and Irrigation are in the process of developing a new water master plan under the 2030 development goals. The plan seek to come up with strategies to alleviate the effect of low water levels during the dry seasons

The Government of Kenya is strongly committed to reducing hunger and malnutrition. This includes efforts to build self-reliance to reduce chronic food insecurity, as well as measures to assist those in need when emergencies occur. Linking relief with longer-term development efforts helps mitigate the potential impact of future emergencies.

The new National Food and Nutrition Security Policy 2011 provides an overarching framework covering the multiple dimensions of food security and nutrition improvement. The broad objectives of the FNSP are:

- To achieve good nutrition for optimum health of all Kenyans.
- To increase the quantity and quality of food available, accessible and affordable to all Kenyans at all times.
- To protect vulnerable populations using innovative and cost-effective safety nets linked to long-term development

**Water Harvesting for Crop Production:** The objective of this is construction of water pans and micro-dams for crop production to address food security. Over KES 200 million has been disbursed for the programme has disbursed over KES 200 million and constructed 145 water pans.

**Boosting food production through irrigated agriculture projects**

The emergency food production project is targeting to increase food production specifically maize and rice to enable the country to be food secure in the light of the continuing drought condition in the country.

Implementation has been carried out through the 8 schemes: Bura Irrigation, Hola Irrigation Scheme, Perkerra Irrigation Scheme, Tana Delta Irrigation Scheme, Ahero irrigation Scheme, West Kano Irrigation Scheme, Bunyala Irrigation Scheme, Mwea irrigation Scheme, and the South West Kano Irrigation Scheme.

**Promotion of “Orphan Crops”:** In Kenya alarm over food insecurity is raised only when there is insufficient maize harvested. The Government has developed strategies to promote cultivation/rearing and utilization of other crops and livestock to increase the food security base. Multiplication and production of orphan crops seeds that perform well even with little moisture, promotion of rearing of such small emerging livestock as ostrich, guinea fowls are examples. Crops under this programme include; cow peas, pigeon peas, Green grams, cassava, sweet potatoes, millets, sorghums, beans and early maturing open pollinated varieties of maize. The programme promotes indigenous crops that can do well across a range of agro-ecological zones including Arid and Semi-arid lands, hence suitable for food security.

**Land use:** The National Land Commission of Kenya was established in 2011 as a constitutional commission. The Commission shall manage land on behalf national and county governments and is expected to ensure that land in Kenya is used in a manner that is sustainable and productive.

A19 response:

partially implemented

Edmund Rice International, Franciscans International and Marist Foundation for International Solidarity (joint) (FI+ERI+FMSI) response:

Partially implemented. The Government of Kenya has adopted a new National Food and Nutrition Security Policy (2011) that addresses issues of a strategic food reserve and food trade as well as cultural, social and political factors in accessing food and increase the quantity, quality of food available, accessible and affordable at all times. However, as a matter of fact, the policy in its resolve to respond to critical food emergencies falls short of an express commitment to tackle food distribution during times of drought. This is evidenced by the fact that private citizens had to mobilize themselves to contribute and distribute food to the drought stricken areas with the support of the Kenya Red Cross in 2011. Many of the initiatives on water security in the semi-arid and drought stricken areas of the country are largely launched and implemented by NGOs.

NHRI response:

Not Implemented



Recommendation n°164: *Continue to increase and consolidate programmes and social measures that will lead to and are essential for the urgent reduction of poverty and social exclusion levels, with the fair distribution of national wealth, to permit the best possible well-being of its population, and, if necessary to that end, seek international assistance and solidarity (Recommended by Venezuela)*

IRI: *partially implemented*

State of Kenya response:

The Women Enterprise Fund has successfully provided funds to 98,173 women across the country, and continues to train women on entrepreneurship.

Vulnerable households: Over 170,000 poor vulnerable households are benefitting from cash transfer programme (120,000) households under the OVC Programme, 33,000 households under the Older Persons Programme and 14,700 under the Disability Fund).

The Youth Enterprise Development Fund was conceived in 2006 as one of the strategies of addressing youth unemployment. The objectives of the Fund are to provide loans to existing micro-finance institutions (MFIs), registered non-governmental organizations (NGOs) involved in micro financing, and savings and credit co-operative organizations (SACCOs) for on-lending to youth enterprises. It also facilitate investment in micro, small and medium enterprises oriented commercial infrastructure such as business or industrial parks, markets or business incubators that will be beneficial to youth enterprises. The Youth Fund has recorded tremendous achievements since its conception. By 2012 the Fund had disbursed 5.9 billion shillings to over 157,000 youth enterprises across the country. These enterprises have grown and are employing many Kenyans as well as contributing to the Government exchequer. These efforts have also resulted in the creation of over 300,000 new jobs. Furthermore, the Fund has, with its partners, trained over 200,000 youth in entrepreneurship besides facilitating them with access to markets for their products. It has also helped to integrate thousands of young Kenyans into mainstream financial services. Moreover 6,000 young people have been facilitated to obtain employment outside Kenya through the fund.

Fish farming Enterprise Productivity Programme: The Government through the Ministry of Fisheries Development launched the Ksh1.12 billion programme in the 2009/2010 to construct 200 fish farming ponds in 140 constituencies as a move to reduce poverty through the Economic Stimulus Programme. It also seeks to improve nutrition and create 120,000 employment and income opportunities. The fish farming project has improved nutrition in the country and created over 120,000 employment and income opportunities has been one of the more successful components. During the 2010/2011 financial year, the Government allocated Sh 2.866 billion for Phase 11 of the Fish Farming Programme. These funds were used in the construction of 300 ponds in an 20 additional constituencies, and construction of another 100 ponds in 140 constituencies that were under phase 1.

A19 response:

partially implemented





NHRI response:  
Not Implemented

## Indigenous & Minorities

Recommendation n°4: *Sustain its efforts with regard to the resettlement of internally displaced persons, and ensure their access to basic human rights and social services (Recommended by Algeria)*

IRI: *partially implemented*

### State of Kenya response:

In order to address the issue of IDPs comprehensively, a Parliamentary Select Committee on Resettlement of Internally Displaced Persons was set on November 17, 2010. The Committee's term finally expired on 17th December, 2011.

The Committee's mandate was established with the following Terms of Reference:

- Look into how the Government has addressed the current plight of IDPs in terms of basic food rations, shelter, education, health and compensation;
- Review existing institutions and organs addressing forced displacements;
- Examine policies and laws governing all forms of forced displacement with the aim of promoting protection and improving the well being of forced migrants;
- Establish the causes of forced displacements since the onset and the action taken by the State including the financial outlays;
- Identify and categorize IDPs (those in camps, integrated, pastoralists, forest evictees) and assess their current numbers, situation and location;
- Come up with a draft Bill on forced displacements;
- Review international treaties and legal regimes governing IDPs and Refugees; and
- Make recommendations on the way forward.

The Committee came up with recommendations that the Government is currently implementing. These include:

- a) The undertaking of a re-vetting exercise of IDPs to ascertain the genuine ones and resettle them forthwith. The vetting exercise should be public, inclusive and be conducted by a committee that includes but not limited to; village elders, IDPs representatives, the local chiefs, religious leaders and the area Member of Parliament.
- b) The Government to recognize all categories of IDPs including the integrated IDPs.
- c) The Kenya National Bureau of Statistics should release data on the profiled IDPs to the public.
- d) The Government should start a comprehensive programme of profiling, resettlement and compensation of all displaced persons as a result of pastoral conflicts, floods, droughts and famine.
- e) The Government must accelerate peace building, reconciliation and psychosocial efforts by increasing funding to District Peace and Security Committees in all the counties.



f) The Mandate of the Humanitarian Fund for mitigation of effects and resettlement of victims of post 2007 election violence should be expanded to cover all IDPs including but not limited to, resettlement of 1992, 1997 and 2002 IDPs, forest evictees, historical IDPs, all squatters, pastoral conflict IDPs, victims of floods, landslides, droughts and famines among others.

g) The Government to establish a legal and policy framework on internal displacements through the formulation of policy and development of a draft bill on prevention, protection and assistance of IDPs which have both been approved by Cabinet. This legal framework takes into account the UN Guiding Principles, the AU Convention (Kampala Protocol) and Great Lakes Protocol on Protection and Assistance of IDPs.

Much as the deadline of May 2012 has not been achieved in respect of all the recommendations on resettlement, the programme is on course and the authorities concerned have pledged to finalize these by December, 2012.

A19 response:

Partially implemented . IDP law passed in Dec 2012

FI+ERI+FMSI response:

Partially implemented. Kenya has intensified its efforts to ensure the resettlement of internally displaced persons, especially of those affected by the 2007/08 post-election violence. In this regard, the government has developed a draft policy and a draft bill on internal displacement and has reinforced its cooperation with the United Nations. The Government of Kenya hosted the UN Special Rapporteur on the Human Rights of Internally Displaced Persons in September 2011. Despite some progress in facilitating the return and resettlement of a considerable number of IDPs, there are many IDPs still unsettled. At least 2000 of the unsettled IDPs are in the semi-arid lower Subukia area. Those who have been resettled have had to struggle with non-arable land allocated to them and the building materials are either inadequate or not up to standard. Particularly, our coalition expresses concerns as regards IDPs of Ndatho Camp in Lower Subukia. These persons were displaced as a result of the 2007/08 post-election violence and came from all around Kenya and are still facing challenges concerning their reintegration and resettlement. Around 113 families live in the camp, 840 persons in all. The IDPs were not reintegrated in their places of origin nor were they resettled in the places where they sought initial shelter. A durable solution for the IDPs is urgently needed in order to ensure that the human rights of Ndatho IDPs are upheld, and in particular as concerns their right to access to education, to health facilities and to safe drinking water.

NHRI response:

Implementation on-going. Some 730 IDP families are yet to be resettled.

Ogiek People Development Programme (OPDP) response:

The Government has failed to resettle the Ogiek living along roadside at Seregonik, Uasin Gishu area. They are more than 1,500 people.



Recommendation n°6: *Ensure that the policies aimed at assisting displaced persons take into account the Guiding Principles on Internal Displacement (Recommended by Argentina)*

IRI: *partially implemented*

State of Kenya response:

In order to address the issue of IDPs comprehensively, a Parliamentary Select Committee on Resettlement of Internally Displaced Persons was set on November 17, 2010. The Committee's term finally expired on 17th December, 2011. The Committee came up with recommendations that the Government is currently implementing. These include:

g) The Government to establish a legal and policy framework on internal displacements through the formulation of policy and development of a draft bill on prevention, protection and assistance of IDPs which have both been approved by Cabinet. This legal framework takes into account the UN Guiding Principles, the AU Convention (Kampala Protocol) and Great Lakes Protocol on Protection and Assistance of IDPs.

Much as the deadline of May 2012 has not been achieved in respect of all the recommendations on resettlement, the programme is on course and the authorities concerned have pledged to finalize these by December, 2012.

A19 response:

Partially-resettlement done for some but ensuring ECOSOC rights not implemented.

NHRI response:

Partly Implemented. An Internally Displaced Persons (IDP) policy, incorporating the Guiding Principles was developed and adopted by cabinet. The resettlements carried out between 2010-2012 did not however benefit from the policy as it had not been drafted.

OPDP response:

Kenya government has no guidelines before eviction or displacement.

Recommendation n°29: *Continue efforts to resolve the problems of internally displaced persons, and take all measures necessary to implement the Government's National Reconciliation and Emergency Social and Economic Recovery Strategy and the National Cohesion and Integration Act of 2008 (Recommended by Belarus)*

IRI: *partially implemented*

State of Kenya response:

[See response to recommendation n°4]

A19 response:

Partially implemented

NHRI response:

Not implemented.

OPDP response:

There is a wide gap of discrimination while settling the IDPs. The ones from the central Kenya are provided with water, electricity, security and materials for building besides relief food. While the IDPs from the Mau are just being dumped in the roadside without any support.

*Recommendation n°36: Implement the recommendations and decisions of its own judicial institutions and of the African Commission on Human and Peoples' Rights, particularly those relating to the rights of indigenous peoples (Recommended by Bolivia)*

*IRI: not implemented*

State of Kenya response:

The Constitution of Kenya 2010 provides avenues for the pursuit and strengthening of indigenous peoples' personal and collective rights.

It characterizes indigenous people as marginalized and places on the state the duty to address the needs of vulnerable groups within society which includes minorities and marginalized groups and to take affirmative action to redress any disadvantage suffered by individuals or groups in the past. It recognizes traditional communities who wish to preserve their unique culture and identity from assimilation.

The Government is in the process of designing and prioritizing affirmative measures to implement constitutional provisions that relate to marginalized people. In this regard the Government has developed the National Community Land Bill to provide a legal framework for the protection of community land in accordance with constitutional imperatives. Further a more in the draft national policy and action plan on human rights the State undertakes to adopt legislative and affirmative action to ensure that minorities and marginalized groups realize all the rights and fundamental freedoms as set out in the Bill of Rights, on a basis of equality, taking into account their identity, way of life, special circumstances and needs.

With regard to the Endorois judgment the Attorney General of Kenya and the Ministry of Lands are currently working on the necessary modalities to implement the judgment.

A19 response:

Not implemented

CS response:

In 2010 the Working Group on Indigenous Peoples/Communities of the African Commission on Human and Peoples Rights visited Kenya and recommended that Kenya implement the rulings of the African Commission on the case of the Endorois people, return their ancestral land and respect their right to unrestricted access to Lake Bogoria. This lack of implementation is in despite of the fact that Kenya adopted a new Constitution in August 2010, which, together with a new National Land Policy, supported the Commission's decision in recognizing indigenous peoples' ancestral lands. As of February 2012, not one meeting between the community, its representatives and government officials has taken place. Included in the



recommendation by the African Commission include, recognize the rights of ownership of the Endorois and restitute Endorois ancestral land; ensure that the Endorois community has unrestricted access to Lake Bagoria and surrounding sites for religious and cultural rites and for grazing their cattle; pay adequate compensation to the community for all the loss suffered; pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve; grant registration to the Endorois Welfare Committee, engage in dialogue with the complainants for the effective implementation of these recommendations. The government was asked to report on the implementation of these recommendations three months from the date of notification, so far no report has been done.

NHRI response:

Not implemented. The Endorois Decision of the African Commission (Communication Number 276 of 2003) remains unimplemented to date.

OPDP response:

Implementation of African Commission decisions including for the case of Endorois people from lake bogoria and other general recommendations made to Kenya has been assumed, overlooked.

Recommendation n°98: *Further strengthen relations with the indigenous communities with a view to promoting and protecting their rights and assisting them in their development initiatives (Recommended by Malaysia)*

*IRI: not implemented*

State of Kenya response:

[See response to recommendation n° 36]

A19 response:

not implemented

CS response:

The new Constitution and National Land Policy strengthen the rights of indigenous peoples. National consultations should take place between indigenous communities, their representatives and government officials to further develop national policies and action to implement the rights of indigenous peoples. In consultation with the pastoralist communities of northern Kenya, a universal disarmament process should be authorized, to be carried out under the guidance of traditional elders, government-appointed-chiefs, district peace committees, and human rights organizations. This would strengthen the relations between indigenous communities and the state government and its representatives and institutions.

NHRI response:

Not implemented

OPDP response:



Its only in Kenya where indigenous people are not recognised. Even the reports of the UN special Rapporteur on Indigenous issues have been neglected since the year 2006. Effort should be made for realisation of this through dialogue and follow-up.

*Recommendation n°100: Follow up on the recommendations made by the Representative of the Secretary-General on the human rights of internally displaced persons, particularly those relating to the need to adopt measures for reconciliation and to implement a comprehensive strategy for the internally displaced (Recommended by Mexico)*

*IRI: not implemented*

State of Kenya response:

[See response to recommendation n°4]

A19 response:

partially implemented

NHRI response:

Not implemented

OPDP response:

Nothing has been done to date.

*Recommendation n°102: Support the United Nations Declaration on the Rights of Indigenous Peoples, and devote attention to the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, after her visit to the country (Recommended by Mexico)*

*IRI: not implemented*

State of Kenya response:

[See response to recommendation n°36]

NHRI response:

Not implemented

*Recommendation n°128: Continue to devote great attention to the situation of the most vulnerable groups (Recommended by Senegal)*

*IRI: not implemented*

State of Kenya response:

**Protection of most vulnerable groups:** The Government of Kenya through its Ministry of Gender, Children and Social Development developed a National Plan of Action (2007-2013) on Orphans and Vulnerable Children( OVC) which helps to strengthen the capacity of families to protect and care for OVCs, provide economic, psychosocial and other forms of social support, as well as mobilize and support community based responses to increase OVCs access to essential services such as food and nutrition, education, health care, housing, water and sanitation. A key aspect of the policy is the provision of a direct predictable and regular cash subsidy of Kshs 1,500 per month to households caring for OVC. The program is in its second year of implementation.



The National Development Fund aims to eradicate the link between poverty and disability by providing financial support to organizations and individuals. The Fund's economic empowerment programme aims to enable people with disabilities to establish and grow their own businesses.

A19 response:

Not implemented

CS response:

The new Constitution and National Land Policy strengthen the rights of indigenous peoples. These need to be fully implemented into national action in consultation with all indigenous and other marginalized minorities.

NHRI response:

Not implemented

OPDP response:

Vulnerable people have remain marginalized and discriminated and no attention are being directed to them.

*Recommendation n°137: Continue the current policy vis-a-vis Somali refugees, based on solidarity and the protection of fundamental human rights (Recommended by Somalia)*

*IRI: not implemented*

A19 response:

Not implemented

NHRI response:

Not Implemented

OPDP response:

Kenya has Somali refugees and security is being accorded to them than the rest of marginalised communities.

## International Instruments

*Recommendation n°01: Consider ratifying ICRMW (Recommended by Algeria)*

*IRI: not implemented*

A19 response:

Not implemented

OHCHR response:

The Government of Kenya postponed ratifying all instruments and protocols until the Ratification of Treaty's Law comes into place. This is after Kenya passed a new



constitution which provides for modalities of such ratifications. The Ratification of Treaty's Law is yet to come into Law.

NHRI response:  
Not Implemented

Recommendation n°7: *Extend an open and standing invitation to all United Nations special procedures* (Recommended by Argentina)

IRI: *not implemented*

A19 response:  
Partially implemented as invited SP on IDPs Chaloka Beyani

NHRI response:  
Not implemented.

Recommendation n°9: *Ratify the OP-CAT, the Optional Protocol to CRPD, OP-CRC-SC, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and CED* (Recommended by Argentina)

IRI: *not implemented*

+

Recommendation n°10: *Ratify the Optional Protocol to ICESCR, OP-CEDAW* (Recommended by Argentina)

IRI: *not implemented*

+

Recommendation n°11: *Ratify the Second Optional Protocol to ICCPR* (Recommended by Argentina)

IRI: *not implemented*

+

Recommendation n°22: *Ratify the first Optional Protocol to ICCPR* (Recommended by Austria)

IRI: *not implemented*

+

Recommendation n°23: *Ratify the Second Optional Protocol to ICCPR* (Recommended by Austria)

IRI: *not implemented*

+

Recommendation n°44: *Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ICRMW* (Recommended by Burkina Faso)

IRI: *not implemented*

+

Recommendation n°56: *Consider ratifying OP-CAT* (Recommended by Denmark)

IRI: *not implemented*

+

Recommendation n°78: *Sign and ratify OP-CAT in the near future* (Recommended by Germany)

IRI: *not implemented*

+





Recommendation n°110: *Accede to the human rights conventions and protocols to which Kenya is not yet a party* (Recommended by Niger)

IRI: *not implemented*

+

Recommendation n°142: *Sign and ratify the first Optional Protocol to the International Covenant on Civil and Political Rights ICCPR, the International Covenant on Social, Economic and Cultural Rights ICESCR and the Convention on the Elimination of All Forms of Discrimination against Women CEDAW* (Recommended by Spain)

IRI: *not implemented*

State of Kenya response:

A Treaties Bill has been developed. This is intended to give effect to Article 2 (6) of the Constitution as read with Article 94(5) to provide the procedure for ratification of international treaties by Kenya and related matters. Once enacted, the Country will be able to ratify treaties that it has not.

+

The ratification of all treaties and protocols in Kenya await the enactment of a comprehensive legislative framework for the signing, ratification and accession of treaties, protocols and other instruments by Kenya. This follows the provisions of the new Constitution which gives exclusive power to the National Assembly to make laws. The Constitution of Kenya, 2010 provides that any treaties ratified by Kenya form part of the laws of Kenya. The proposed legislation provides the necessary procedures that must be undertaken before a treaty is ratified signed or acceded to by the Government.

A19 response:

Not implemented

OHCHR response:

The Government of Kenya postponed ratifying all instruments and protocols until the Ratification of Treaty's Law comes into place. This is after Kenya passed a new constitution which provides for modalities of such ratifications. The Ratification of Treaty's Law is yet to come into Law.

NHRI response:

Not implemented. Ratification of International Instruments was halted awaiting the enactment of a Ratification of Treaties Bill, which happened in September 2012. Since 2010, no Optional Protocol has been ratified.

Recommendation n°33: *Continue to take all efforts necessary to implement the recommendations of United Nations special procedures who have visited the country, and request international assistance to that end, if deemed necessary* (Recommended by Bolivia)

IRI: *not implemented*

CS response:

Many important recommendations from the Special Rapporteur have not been implemented, such as; constitutionally recognizing indigenous peoples, the creation of effective mechanisms to address historical injustices and settle current land and



natural resource disputes resulting from dispossession of lands traditionally owned by pastoralists and hunter-gatherers, the Government should adopt the current draft ASAL policy and fully implement it with the participation of pastoralist communities. Efforts should be made to protect the languages of the smaller indigenous communities from extinction, by appropriate educational, linguistic and cultural policies. The national conflict resolution mechanism should include leaders from indigenous peoples' communities and be linked to local conflict resolution mechanisms. The Working Group of Indigenous Peoples/Communities of the African Commission on Human and Peoples Rights also visited the country in 2010, reinforcing the recommendations of the Special Rapporteur and adding; Observe the standpoints of the African Commission on Human and Peoples Rights on indigeneity and the rights of indigenous peoples in Africa as stipulated in the 2003 Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities adopted by the African Commission at its 28th Ordinary Session in 2003, 12; Compensate and pay reparations to indigenous peoples for the loss of their ancestral land through gazettement of national parks, reserves, forests, wild life conservation and tourism ventures.

NHRI response:

Not implemented.

A19 response:

Not implemented

Recommendation n<sup>o</sup>40: *Consider issuing a standing invitation to special procedures (Recommended by Brazil)*

IRI: *not implemented*

A19 response:

not implemented

NHRI response:

Not implemented

Recommendation n<sup>o</sup>41: *Consider ratifying the Convention on the Prevention and Punishment of the Crime of Genocide (Recommended by Brazil)*

IRI: *not implemented*

A19 response:

not implemented

CS response:

Kenya has yet to sign and ratify the Convention on the Prevention and Punishment of the Crime of Genocide. This remains to be, although since 1998, Kenya has stated its intention to accede to the convention soon, and that necessary procedures have already been initiated.

OHCHR response:

The Government of Kenya postponed ratifying all instruments and protocols until the Ratification of Treaty's Law comes into place. This is after Kenya passed a new



constitution which provides for modalities of such ratifications. The Ratification of Treaty's Law is yet to come into Law.

NHRI response:

Not implemented

Recommendation n<sup>o</sup>52: *Introduce in its national legislation the definition of torture, reflecting that set out in article 1 of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, and accede to its Optional Protocol OPCAT (Recommended by Czech Republic)*

IRI: *fully implemented*

State of Kenya response:

The National Police Service Act defines torture in accordance article 1 of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. It also provides for the penalties.

+

A Treaties Bill has been developed. This is intended to give effect to Article 2 (6) of the Constitution as read with Article 94(5) to provide the procedure for ratification of international treaties by Kenya and related matters. Once enacted, the Country will be able to ratify treaties that it has not.

A19 response:

Not implemented

NHRI response:

Implemented through the National Police Service Commission Act

Recommendation n<sup>o</sup>59: *Implement all recommendations put forward by the Special Rapporteur on the rights of indigenous people following his visit to Kenya in 2007, as well as ratify ILO Convention No. 169 (Recommended by Denmark)*

IRI: *not implemented*

+

Recommendation n<sup>o</sup>116: *Consider ratifying ILO Convention 169, and take steps to implement the United Nations Declaration on the Rights of Indigenous Peoples, including through constitutional and statutory recognition of land and resource rights and effective political participation (Recommended by Norway)*

IRI: *not implemented*

State of Kenya response:

The Constitution of Kenya 2010 provides avenues for the pursuit and strengthening of indigenous peoples' personal and collective rights. It characterizes indigenous people as marginalized and places on the state the duty to address the needs of vulnerable groups within society which includes minorities and marginalized groups and to take affirmative action to redress any disadvantage suffered by individuals or groups in the past. It recognizes traditional communities who wish to preserve their unique culture and identity from assimilation.

The Government is in the process of designing and prioritizing affirmative measures to implement constitutional provisions that relate to marginalized people. In this



regard the Government has developed the National Community Land Bill to provide a legal framework for the protection of community land in accordance with constitutional imperatives. Further a more in the draft national policy and action plan on human rights the State undertakes to adopt legislative and affirmative action to ensure that minorities and marginalized groups realize all the rights and fundamental freedoms as set out in the Bill of Rights, on a basis of equality, taking into account their identity, way of life, special circumstances and needs

A19 response:

not implemented

CS response:

To date, ILO Convention 169 has not been ratified by Kenya, nor has there been consultation with indigenous peoples in the country to ensure the Conventions ratification. Many important recommendations from the Special Rapporteur have not been implemented, such as; constitutionally recognizing indigenous peoples, the creation of effective mechanisms to address historical injustices and settle current land and natural resource disputes resulting from dispossession of lands traditionally owned by pastoralists and hunter-gatherers, the Government should adopt the current draft ASAL policy and fully implement it with the participation of pastoralist communities.

+

Kenya also remains one of the few states in the world that has not endorsed the UN Declaration on the Rights of Indigenous Peoples despite recommendations from the first round of UPR and the Special Rapporteur on the rights of indigenous peoples.

NHRI response:

Not implemented

Recommendation n°70: *Ratify, as soon as possible, the International Convention for the Protection of All Persons from Enforced Disappearance (Recommended by France)*

*IRI: not implemented*

A19 response:

Not implemented

NHRI response:

Not implemented

Recommendation n°120: *Extend an invitation to the Special Rapporteur for human rights defenders (Recommended by Norway)*

*IRI: not implemented*

A19 response:

Not implemented

NHRI response:

Not implemented



Recommendation n°123: *Continue its cooperation with the International Criminal Court, in accordance with its responsibilities as a State party to the Rome Statute, namely regarding access for Court officials to investigate, the implementation of witness protection programmes and the implementation of warrants that might be issued by the Court (Recommended by Portugal)*

IRI: *partially implemented*

State of Kenya response:

The International Crimes Act 2008 which is in force and binding domesticates the Rome Statute obligations in Kenya, especially the issue of cooperation with the Court. On the 3rd of September 2010, Kenya entered into a cooperation Agreement with the ICC vide exchange of letters. The Court was granted immunities and privileges which are given to other international organizations accredited to Kenya.

The Legal Notice No. 170 giving effect to the Agreement was officially gazetted on 29th September 2010 in the Kenya Gazette. Since this matter arose, senior Court officials have visited Kenya without any impediment, and their entry, stay and requests for meetings have been effectively facilitated. This includes a number of meetings between the Prosecutor and Government officials at the highest level. The Court has also been able to deploy investigators into regions affected and the Government has done everything possible to facilitate their work.

Pursuant to the cooperation Agreement, and in order to establish an operational base in Kenya, the Court has recently deployed officials in Kenya who conducted thorough investigations, identified and presented their evidence to the court which indicted the suspects. Kenya has kept its door open to ensure that the ICC is able effectively conduct its business and in May, 2012 the Court's lawyers and investigators made a fresh visit to the hotspot areas in Eldoret, Naivasha and Nakuru to collect more evidence.

A19 response:

Partially Implemented

NHRI response:

Not implemented

Recommendation n°138: *Amend national legislation to abolish the death penalty so it is completely prohibited, and sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (Recommended by Spain)*

IRI: *not implemented*

State of Kenya response:

- In the fulfilment of the Constitutional right of a fair trial, the courts now grant bail even in capital offences.
- The Constitution establishes an Advisory Committee on the Prerogative of Mercy which has the function of advising the President where a person has been sentenced to death (otherwise than by a court-martial) for an offence on the exercise of powers. The Advisory Committee may take into account the views of the victims of the offence in respect of which it is considering making recommendations to the president.



- There have been no capital punishments carried out during the review period.
- The KNCHR has commenced a survey on the effects of capital punishment with a view to using the results for engagement with the public on the desirability of its abolition.

+

A Treaties Bill has been developed. This is intended to give effect to Article 2 (6) of the Constitution as read with Article 94(5) to provide the procedure for ratification of international treaties by Kenya and related matters. Once enacted, the Country will be able to ratify treaties that it has not.

A19 response:

not implemented

NHRI response:

Not Implemented

Recommendation n<sup>o</sup>140: *Extend an open and standing invitation to all special procedures and sign and ratify the Convention on the Rights of Persons with Disabilities CRPD and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment CAT, and sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance CED and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography OP-CRC-SC (Recommended by Spain)*

*IRI: not implemented*

State of Kenya response:

A Treaties Bill has been developed. This is intended to give effect to Article 2 (6) of the Constitution as read with Article 94(5) to provide the procedure for ratification of international treaties by Kenya and related matters. Once enacted, the Country will be able to ratify treaties that it has not.

+

The ratification of all treaties and protocols in Kenya await the enactment of a comprehensive legislative framework for the signing, ratification and accession of treaties, protocols and other instruments by Kenya. This follows the provisions of the new Constitution which gives exclusive power to the National Assembly to make laws. The Constitution of Kenya, 2010 provides that any treaties ratified by Kenya form part of the laws of Kenya. The proposed legislation provides the necessary procedures that must be undertaken before a treaty is ratified signed or acceded to by the Government.

A19 response:

not implemented

NHRI response:

Not Implemented



Recommendation n<sup>o</sup>143: *Sign and ratify the second Optional Protocol to ICCPR* (Recommended by *Spain*)

IRI: *not implemented*

+

Recommendation n<sup>o</sup>159: *Ratify CED* (Recommended by *Uruguay*)

IRI: *not implemented*

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Recommendation n<sup>o</sup>160: *Ratify ICCPR-OP2* (Recommended by *Uruguay*)

IRI: *not implemented*

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Recommendation n<sup>o</sup>161: *Ratify OP-CEDAW* (Recommended by *Uruguay*)

IRI: *not implemented*

A19 response:

not implemented

NHRI response:

Not Implemented

## Justice

Recommendation n<sup>o</sup>13: *Suspend the application of the death penalty and definitely abolish it* (Recommended by *Argentina*)

IRI: *not implemented*

+

Recommendation n<sup>o</sup>18: *Abolish the death penalty* (Recommended by *Austria*)

IRI: *not implemented*

+

Recommendation n<sup>o</sup>31: *Establish a de jure moratorium on capital punishment, with a view to abolishing the death penalty* (Recommended by *Belgium*)

IRI: *not implemented*

+

Recommendation n<sup>o</sup>73: *Abolish the death penalty* (Recommended by *Germany*)

IRI: *not implemented*

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Recommendation n<sup>o</sup>79: *Continue to review its legislation concerning the death penalty* (Recommended by *Holy See*)

IRI: *not implemented*

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Recommendation n<sup>o</sup>86: *Abolish the death penalty* (Recommended by *Ireland*)

IRI: *not implemented*

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Recommendation n<sup>o</sup>162: *Take all measures to abolish the use of the death penalty* (Recommended by *Uruguay*)

IRI: *not implemented*



State of Kenya response:

- In the fulfilment of the Constitutional right of a fair trial, the courts now grant bail even in capital offences.
- The Constitution establishes an Advisory Committee on the Prerogative of Mercy which has the function of advising the President where a person has been sentenced to death (otherwise than by a court-martial) for an offence on the exercise of powers. The Advisory Committee may take into account the views of the victims of the offence in respect of which it is considering making recommendations to the president.
- There have been no capital punishments carried out during the review period.
- The KNCHR has commenced a survey on the effects of capital punishment with a view to using the results for engagement with the public on the desirability of its abolition.

A19 response:

partially implemented as most courts do not automatically give death sentences for capital offences

NHRI response:

De facto moratorium but not abolished

Recommendation n°14: *Cooperate with the International Criminal Court's investigation and take measures to ensure that those responsible for post-election violence are held accountable* (Recommended by Australia)

IRI: *partially implemented*

+

Recommendation n°20: *Cooperate fully with the International Criminal Court investigation, and ensure the protection of witnesses from intimidation and violence* (Recommended by Austria)

IRI: *partially implemented*

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Recommendation n°65: *Fully cooperate with the International Criminal Court and its investigations, as well as ensure an independent and reliable witness protection programme* (Recommended by Finland)

IRI: *partially implemented*

+

Recommendation n°88: *Ensure that human rights defenders and witnesses are protected and can freely talk to the International Criminal Court investigative team so that the Court can carry out its mission successfully* (Recommended by Ireland)

IRI: *partially implemented*

+

Recommendation n°117: *Cooperate fully with the International Criminal Court throughout the process* (Recommended by Norway)

IRI: *partially implemented*

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Recommendation n°125: *Fully cooperate with the International Criminal Court to seek accountability against persons bearing the greatest responsibility for crimes,*





*particularly crimes against humanity, committed during the 2007 general elections in Kenya (Recommended by Republic of Korea)*

IRI: *partially implemented*

+

*Recommendation n°151: Cooperate fully with the ICC investigation, in accordance with Kenya's obligations under the Rome Statute, and establish a credible local tribunal in parallel (Recommended by United Kingdom)*

IRI: *partially implemented*

State of Kenya response:

**Cooperation with the International Criminal Court:** The International Crimes Act 2008 which is in force and binding domesticates the Rome Statute obligations in Kenya, especially the issue of cooperation with the Court. On the 3rd of September 2010, Kenya entered into a cooperation Agreement with the ICC vide exchange of letters. The Court was granted immunities and privileges which are given to other international organizations accredited to Kenya.

The Legal Notice No. 170 giving effect to the Agreement was officially gazetted on 29th September 2010 in the Kenya Gazette. Since this matter arose, senior Court officials have visited Kenya without any impediment, and their entry, stay and requests for meetings have been effectively facilitated. This includes a number of meetings between the Prosecutor and Government officials at the highest level. The Court has also been able to deploy investigators into regions affected and the Government has done everything possible to facilitate their work. Pursuant to the cooperation Agreement, and in order to establish an operational base in Kenya, the Court has recently deployed officials in Kenya who conducted thorough investigations, identified and presented their evidence to the court which indicted the suspects. Kenya has kept its door open to ensure that the ICC is able effectively conduct its business and in May, 2012 the Court's lawyers and investigators made a fresh visit to the hotspot areas in Eldoret, Naivasha and Nakuru to collect more evidence.

**Appointment of the Committee of the Judicial Service Commission on the establishment of an International Crimes Division:** On 9 May 2012, the Judicial Service Commission appointed a committee whose mandate included examining:

- the modalities of establishing an International Crimes Division of the High Court for post election cases; and
- Expanding jurisdiction of the Division to also deal with international and transnational crime.

The Committee has recommended the establishment of the International Crimes Division of the High Court with an independent well facilitated prosecution unit focussed on international crimes headed by a special prosecutor. The jurisdiction of the division shall include post election violence crimes, crimes against humanity, genocide, war crimes, human trafficking and organized crime.

+

- The Witness Protection Agency has been operationalised, independent of the Attorney General's office.



- The Kenya National Commission for Human Rights has been fully operationalised as a Constitutional Commission with the requisite powers.

Keeping in mind the protection that the Constitution of Kenya, 2010 gives for the protection of the individual, and recognizing that the Country now has robust institutions like those mentioned in this report including the Judiciary and the Independent Police Oversight Authority, it is hoped that no individual will allow violations of any of their rights. There are many protective mechanisms that any human rights defender or any whistle blower can take legal advantage of.

A19 response:

partially implemented

NHRI response:

Not implemented. Co-operation has been peace-meal, efforts have leaned towards trying to get the cases back to the country or to the East African Court of Justice ( EALA) rather than co-operating with the ICC

Recommendation n<sup>o</sup>17: *Take measures to comprehensively address long-standing issues identified under agenda item 4 of the Kenya National Dialogue and Reconciliation, including with regard to judicial and police reform* (Recommended by Australia)

IRI: *partially implemented*

+

Recommendation n<sup>o</sup>91: *Move forward on reform similar to that of the police of the judicial system, which has to this point proved inadequate to handle the cases of those suspected of involvement in the violence* (Recommended by Japan)

IRI: *partially implemented*

+

Recommendation n<sup>o</sup>106: *Strengthen efforts to implement the key reforms, including the police reform* (Recommended by Netherlands)

IRI: *partially implemented*

+

Recommendation n<sup>o</sup>148: *Take effective steps to improve accountability with a view to eradicating impunity* (Recommended by Sweden)

IRI: *partially implemented*

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Recommendation n<sup>o</sup>153: *Set out how it will act against the culture of impunity, including for perpetrators of extrajudicial killings* (Recommended by United Kingdom)

IRI: *partially implemented*

State of Kenya response:

Since the adoption of the UPR outcome document, the government has made significant progress in the implementation of the recommendations of the National Taskforce on Police Reforms, established by the President in 2009. The promulgation of the new Constitution on August 27th, 2010 provided additional momentum for reforms in the Police as it introduced fundamental changes in both the structure and command of the Police Service, and established the Kenya Police and the Administration Police Services under a unified command of the Inspector



General. The two Services are each placed under the command of a Deputy Inspector-General with distinct roles and responsibilities. Further, the Constitution of Kenya demands the highest standards of professionalism, transparency, accountability and discipline amongst police officers. It also demands compliance with constitutional standards of human rights and fundamental freedoms to foster and promote relationships with the broader society. The sum total of these provisions redefines the overall policing architecture in Kenya. It is in this context that the ongoing Police Reforms outlined in this report have been implemented.

### **Legislative Reforms**

In order to realise the envisaged reforms, the following Acts of Parliament have been enacted:-

- The National Police Service Act 2011;
- The National Police Service Commission Act 2011; and
- The Independent Policing Oversight Authority Act 2011.

The following Bills have also been drafted and submitted to the Commission on Implementation of the Constitution as they are considered crucial for policing in Kenya.

**The National Coroner's Service Bill 2010:** The State has also prepared the National Coroners Bill to provide for a National Coroner's Service which shall have jurisdiction to investigate the cause of death where the deceased person is reported to have died: a violent or an unnatural death; a sudden death of which the cause is unknown; in police custody; in prison, or in such a place and in such circumstances as to require an inquest under any other law, and shall as soon as practicable hold an inquest into such death.

It also provides that whenever a person dies while in custody, the person in charge shall forthwith notify the coroner with jurisdiction in the area where the prison is situated and shall not dispose of the body except with a warrant issued by such coroner. The bill is currently undergoing stakeholders' consultations.

**The Prevention of Torture Bill:** The draft Prevention of Torture Bill is currently with the Commission on the Implementation of the Constitution whose main mandate is to review all legislations and ensure their consistency and coherence with the Constitution. The Bill seeks to provide the necessary legal framework for the prevention, prohibition and punishment of acts of torture and ill treatment.

Due to the huge number of constitutional bills before the Commission the enactment of the Prevention of Torture Bill has been delayed. It is instructive to note that The National Police Service Act 2011 defines torture in accordance with the provisions of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment.

### **Policy Reforms**

**Police Code of Conduct:** To establish standards of professional behaviour for all police officers and to foster an environment of mutual trust and respect between police officers and the general public, a Code of Conduct for the National Police Service was developed and operationalized.



The following drafts have been developed and are ready for adoption:

- Community Policing Policy; and
- Internal Affairs Accountability Unit Guidelines.

### **Institutional Reforms**

#### i) The National Police Service Commission

The National Police service Commission established by the National Police Service Commission Act, of 2011, has been operationalized and at the time of finalizing this report, had started interviews for the top positions in the National Police service.

#### ii) The National Police Service

The National Police Service is established by the National Police Service Act of 2011. The Service holds a constitutional duty to train its staff to respect human rights, fundamental freedoms and dignity of the human person. The Police must comply with constitutional standards of human rights and fundamental freedoms. The Act defines and criminalizes acts of torture or any cruel, inhuman and degrading treatment of punishment committed by police officers. It also provides sanctions for the offence.

### **Police accountability reforms**

#### i) The Independent Policing Oversight Authority

The Independent Police Oversight Authority, created by the Independent Police Oversight Authority Act 2011 has now been operationalised. It is a crucial institution to ensure accountability for police functions

#### ii) Internal Affairs Unit.

An Internal Affairs Unit (IAU) has been established under section 87 of the National Police Service Act 2011 to provide for an internal mechanism to receive and investigate complaints against police by the public and police against police. The Unit is also expected to promote uniform standards of discipline and good order in the Service and keep a record of complaints or investigations made. The Unit has recruited competitively. The appointment of Investigators, location of office outside Police Service headquarters and development of operating systems and procedures are at an advanced stage.

### **Community policing reforms**

Since the introduction of community policing in Kenya in 2005, the Community Policing programme has faced several challenges. These include:

- Lack of a national legal framework and guidelines on Community Policing;
- Multiple complaints by the police and the communities levelled against each other;
- Low levels of trust and confidentiality;
- Lack of cooperation and low levels of awareness; and
- Emergence of illegal groups and gangs with parallel informal community security structures.

In order to revamp Community Policing, the following has been achieved:

- i) Community Policing mainstreamed in the National Police Service Act 2011.
- ii) Community Policing Policy guidelines developed.



- iii) Capacity building and in-service retraining programme for police officers in advanced courses in Community Policing commenced. Under this programme 42 officers have already been trained
- iv) A pilot project was initiated in Kikuyu and Kajiado Police Station to demonstrate best practice in Community Policing following benchmarking and training to countries with best practices in community policing.
- v) Introduced a Unit in the new Police training curriculum to equip all police recruits with basic skills and competencies in Community Policing during their basic and cadet training in Police Training Colleges.

**Police Training Curriculum:** The Police service has a new training curriculum. The curriculum extends the period of training from 9 to 15 months of basic training and introduces an additional 6 months cadet training for University graduate recruits. It also expands the content by introducing new training modules in the areas of human rights, gender, public relations, ICT, Community Policing and service delivery. The curriculum has also introduced an internship program that allows trainees to go for practical exposure during the period of training

**Vetting of Police Officers:** There is need to ensure that all ranks in police service are subjected to a vetting process against set criteria on professionalism, integrity, track record of performance and psychological fitness. The criterion is to be developed jointly by the Public Service Commission, the Kenya Anti Corruption Authority and the National Security Intelligence Service. The vetting process has also been provided for in the National Police Service Act 2011.

The vetting exercise was started in June 2011 and a total of 1112 officers in the rank of Superintendent and above were subjected to the first stage of vetting through psychometric testing. The exercise was however put on hold to await the operationalization of the National Police Service Commission whose mandate includes vetting of police officers. The Commission has prioritised this exercise.

## **JUDICIARY REFORMS**

The Government of Kenya has largely implemented all the recommendations of the Judicial Task Force Report which were further buttressed by the Constitution of Kenya. The enactment of the Constitution of Kenya, 2010, resulted in the adoption of critical legislation and administrative measures that have greatly enhanced the integrity, efficiency and transparency of the judiciary- transforming it into an independent establishment capable of effectively administering justice, checking impunity, upholding and enforcing the Bill of Rights.

The reconstitution of the Judicial Service Commission has led to progress within the judiciary with decreasing executive influence. It was reconstituted within 60 days of the Constitution's promulgation.

The Judicial Service Commission is established under Article 171 of the Constitution and consists of the following 11 members:

- the Chief Justice, who shall be the chairperson of the Commission;
- one Supreme Court judge elected by the judges of the Supreme Court;



- one Court of Appeal judge elected by the judges of the Court of Appeal;
  - one High Court judge and one magistrate, one a woman and one a man, elected by the members of the association of judges and magistrates;
  - the Attorney-General;
  - two advocates, one a woman and one a man, each of whom has at least fifteen years' experience, elected by the members of the statutory body responsible for the professional regulation of advocates;
  - one person nominated by the Public Service Commission; and
  - one woman and one man to represent the public, not being lawyers, appointed by the President with the approval of the National Assembly.
- The Chief Registrar of the Judiciary is the Secretary to the Commission.

Among responsibilities of the commission is to investigate and remove from office or discipline judicial officers, as prescribed by an Act of Parliament. No longer will the commission wait to receive complaints from the public regarding the conduct of its officers. They will now have the power to initiate investigations if there are credible grounds to do so.

**Vetting of judges and magistrates:** The Vetting of Judges and Magistrates Act, 2011 (the Act) which came into force on 22nd March, 2011 establishes an independent board Judges and Magistrates Vetting Board (“the Board”). The functions of the Board are, ‘To vet judges and magistrates in accordance with the provisions of the Constitution and this Act’. The term ‘vetting’ is defined as ‘the process by which the suitability of a serving judge or magistrate to continue serving in the judiciary is determined in accordance with this Act’

The vetting process commenced on 23rd February, 2012 with the most senior judge of the Court. Although the Boards work have faced challenges in Courts on their mandate, the process is still on course and at the time of finalizing this report, the Board is vetting the high Court Judges having finalized with the Supreme Court and the Court of Appeal judges.

**Enhanced capacity building:** The Judiciary has historically faced severe capacity gaps in its infrastructure and human resource. In the past year, the Judiciary has invested heavily in tackling this problem by growing technological, organisational, institutional and human resource capabilities.

In line with the requirements of the law, as well as access to justice demands, the number of Judicial Officers (judges and magistrates) increased from 417 to 451 in the 2011/2012 financial year. To further increase justice access, the number of Judicial Officers will increase to 925 by 2014/2015 (a 103% increase on the current quota). In 2012/13 alone, 275 Judicial Officers will be hired, representing a 70% increase over the current establishment. This includes 15 Judges for the Court of Appeal, 30 High Court Judges, 15 Industrial Court Judges, 30 Judges for the new Land and Environment Court, 24 Kadhis and 161 Magistrates.

The Judiciary is required by law to have a High Court in every County and a Magistrates’ Court in every District in Kenya. Currently, 17 High Court Stations exist



(against a requirement of 47), while 111 Magistrates' Courts are in place (against a requirement of 285).

**The Judiciary Fund:** The Constitution has secured not only the operational independence of the Judiciary, but also its financial autonomy. The establishment of the Judiciary Fund to cover administrative expenses and other purposes necessary for the discharge of institutional functions was operationalised when Parliament allocated Ksh15.9 billion in the 2011/2012 financial year. In addition, for the current (2011/12) financial year, in recognition of the greater new responsibilities envisaged under the new constitution, the Budget Committee increased the Judiciary's budget by over 250%, from KShs 3.9 billion to KShs 9.3 billion.

**National Council for the Administration of Justice:** For a long time, the administration of justice in Kenya has been hindered by lack of coordination among key institutions charged with the responsibility of ensuring access to justice. The enactment of the Judicial Service Act, 2011, paved the way for the National Council on the Administration of Justice (NCAJ), which was launched in August 2011. The NCAJ seeks to establish a unified justice sector that serves the people while upholding the values of collective responsibility, inter-dependence, service, constitutionalism and mutual accountability. Section 35 of the Judicial Service Act, 2011, empowers the Council to formulate policies relating to the administration of justice; implement, monitor, evaluate and review strategies for the administration of justice; facilitate the establishment of Court Users Committees (CUCs) at the county level; and mobilise resources for purposes of the efficient administration of justice.

**The Judiciary Transformation Framework (2012-2016):** In order to fulfil its constitutional mandate, the Judiciary has developed and is in the process of implementing a comprehensive, four-year transformation programme. The Judiciary Transformation Framework 2012 – 2016 (JTF), which was launched on May 31, 2012, is the blueprint for the institution's turnaround to make it a fit-for-purpose State organ as envisaged by the Constitution.

The transformation of the Judiciary targets to achieve at least three objectives:

- to reposition itself, based on the principle of independence and constructive interdependence thus resetting the relationship between the Judiciary and other arms of government, within the acceptable confines of the Constitution.
- to change the Judiciary's organisational culture and tailor it to prevailing social realities, while modernising its institutional design and leadership style.
- to emerge as a service institution that focuses on the people.

A19 response:

Partially implemented

NHRI response:

Partly implemented through undertaking judicial reforms. Police reforms still underway



Recommendation n°21: *Effectively implement the recent legislation on police reform and witness protection* (Recommended by Austria)

IRI: *partially implemented*

State of Kenya response:

[See response to recommendation n°17]

+

- The Witness Protection Agency has been operationalised, independent of the Attorney General's office.
- The Kenya National Commission for Human Rights has been fully operationalised as a Constitutional Commission with the requisite powers.

Keeping in mind the protection that the Constitution of Kenya, 2010 gives for the protection of the individual, and recognizing that the Country now has robust institutions like those mentioned in this report including the Judiciary and the Independent Police Oversight Authority, it is hoped that no individual will allow violations of any of their rights. There are many protective mechanisms that any human rights defender or any whistle blower can take legal advantage of.

A19 response:

Partially implemented

Recommendation n°24: *Take effective measures against police violence, in particular by ensuring comprehensive investigations and the prosecution of alleged offenders within the police and security forces* (Recommended by Austria)

IRI: *not implemented*

State of Kenya response:

[See response to recommendation n°17]

A19 response:

Partially implemented

CS response:

As stated by the Special Rapporteur on Extrajudicial Killings, 'Unambiguous public orders should be issued that under no circumstances will unlawful killings by the security forces be tolerated.' The situation in Samburu East and Isiolo Districts should be investigated, and those found responsible punished. The special rapporteur also recommended that Kenya; 'A review of the use of force provisions in the Constitution of Kenya, the Police Act, and the Standing Force Orders should be undertaken to bring them into line with Kenya's obligations under international law,' and 'Across-the-board vetting of the current police is necessary. This needs to be part of a comprehensive reform of the police, including the creation of a Police Service Commission, as recommended by the Waki Commission.' These recommendations should be implemented.

NHRI response:

Not implemented





Recommendation n°25: *Take legislative and practical measures to ensure the independence and effectiveness of the judiciary* (Recommended by Austria)

IRI: *fully implemented*

State of Kenya response:

[See response to recommendation n°17]

A19 response:

Implemented to a large extent

OHCHR response:

A lot of reforms have taken place in the judiciary including vetting of all judges to remove judges who don't meet the integrity standards. So far about 13 judges have been recommended for removal. To further ensure independence of the judiciary a new chief justice, deputy chief justice and supreme court judges were openly interviewed and appointed transparently. The judiciary is one of the institutions in Kenya where reforms are clearly on course.

NHRI response:

Implemented. All Judges and Magistrates vetted to determine their suitability to remain in office. A new Chief Justice appointed. The Judicial Service Commission empowered and appointments to the Judiciary are undertaken in a transparent and fair manner. The Judiciary is currently in the process of devolving with the court of appeal already sitting in 3 regions.

Recommendation n°27: *Further promote good governance* (Recommended by Azerbaijan)

IRI: *fully implemented*

State of Kenya response:

The Constitution of Kenya 2010 provides comprehensive guidelines against corruption. Chapter 6 uniquely sets the guiding lights, principles of leadership and integrity that will underpin those to serve in the public service. The leadership and integrity standards were included in the Constitution to ensure transparency and accountability and good governance in the management of public affairs for the welfare of the sovereign people of Kenya. State Officers are required discharge their public duties in accordance with the leadership principles and the thresholds of integrity enshrined in the Constitution.

A19 response:

partially implemented

NHRI response:

Difficult to assess

Recommendation n°32: *Strengthen the law on the use of firearms by police officers, by introducing a policy of zero tolerance for their abusive use* (Recommended by Belgium)

IRI: *not implemented*

A19 response:

partially implemented with the ongoing police reforms

NHRI response:

Not implemented.

Recommendation n°38: *Remain unswerving in pursuing measures geared at addressing the challenges that the Government identifies in its national report, in particular relating to good governance and respect for the rule of law (Recommended by Botswana)*

IRI: *partially implemented*

State of Kenya response:

The Constitution of Kenya 2010 provides comprehensive guidelines against corruption. Chapter 6 uniquely sets the guiding lights, principles of leadership and integrity that will underpin those to serve in the public service. The leadership and integrity standards were included in the Constitution to ensure transparency and accountability and good governance in the management of public affairs for the welfare of the sovereign people of Kenya. State Officers are required discharge their public duties in accordance with the leadership principles and the thresholds of integrity enshrined in the Constitution.

A19 response:

partially implemented

NHRI response:

Not implemented

Recommendation n°42: *Provide human rights training to judges, police officers, prison guards and all law enforcement officers (Recommended by Brazil)*

IRI: *partially implemented*

+

Recommendation n°51: *Establish a human rights education system for members of the police and detention and prison staff, together with systems for the full and independent investigation and regular punishment of human rights violations by such personnel (Recommended by Czech Republic)*

IRI: *partially implemented*

State of Kenya response:

The National Police Service is established by the National Police Service Act of 2011. The Service holds a constitutional duty to train its staff to respect human rights, fundamental freedoms and dignity of the human person. The Police must comply with constitutional standards of human rights and fundamental freedoms. The Act defines and criminalizes acts of torture or any cruel, inhuman and degrading treatment of punishment committed by police officers. It also provides sanctions for the offence.

Police Training Curriculum: The Police service has a new training curriculum. The curriculum extends the period of training from 9 to 15 months of basic training and introduces an additional 6 months cadet training for University graduate recruits. It also expands the content by introducing new training modules in the areas of human



rights, gender, public relations, ICT, Community Policing and service delivery. The curriculum has also introduced an internship program that allows trainees to go for practical exposure during the period of training

The government also has a policy to train all prison officers on constitutionalism and the application of human rights. Indeed, during recruitment, professionals such as lawyers and councillors are hired to support the human right promotion in the prisons.

A19 response:

On course for full implementation

CS response:

In 2010, police officers being sent to Samburu East District were given human rights training, opened by the Commissioner of the District. The trainings focused heavily on the new Constitution of Kenya, which contains strong safeguards against the abuse of power as well as regional and international human rights standards on policing and the rights of citizens. Also, the National Police Service was established by the National Police Service Act of 2011. The Service holds a constitutional duty to train its staff to respect human rights, fundamental freedoms and dignity of the human person. The Police must comply with constitutional standards of human rights and fundamental freedoms. National trainings should take place for all police officers, judges, prison guards and other enforcement officers, especially those working in districts populated by indigenous and other marginalized minorities.

NHRI response:

Not implemented

*Recommendation n°54: Review its national laws so that they fully uphold the principle of nondiscrimination, in particular on grounds of gender, personal status and citizenship (Recommended by Czech Republic)*

*IRI: fully implemented*

State of Kenya response:

**The National Gender and Equality Commission**

This Commission is expected to spearhead the processes that will ensure that Kenya is able to fully implement this loaded recommendation. The Commission has the mandate, among others to:

- promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution;
- monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions;
- act as the principal organ of the State in ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalized persons, women, persons with disabilities, and children;
- co-ordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalised groups in national development and to advise the Government on all aspects thereof; and



- monitor, facilitate and advise on the development of affirmative action implementation policies as contemplated in the Constitution.

### **Review of the Laws on Citizenship**

The Kenya Citizenship and Immigration Act, 2011 has gone a long way in addressing certain issues of discrimination that were a matter of concern with the earlier legislation on Immigration matters. The current law operationalises the constitutional provisions relating to non discrimination on passing of citizenship by parents to their children and the possibility of dual citizenship. It provides among others:

- A person born outside Kenya shall be a citizen by birth if on the date of the birth that person's mother or father was or is a citizen by birth.
- A citizen of Kenya by birth who acquires the citizenship of another country shall be entitled to retain the citizenship of Kenya subject to the provisions of this Act and the limitations, relating to dual citizenship, prescribed in the Constitution.

#### A19 response:

partially implemented as constitution and Gender Commission in force

#### NHRI response:

Implemented through Article 27 of the constitution which provides for equality and freedom from discrimination

*Recommendation n°57: Establish a national mechanism independent of the public prosecutor and the attorney general for the investigation and prosecution of crimes committed during and following the 2007 election period (Recommended by Denmark)*

*IRI: partially implemented*

#### State of Kenya response:

### **Setting up of a Multi Agency Taskforce on post election violence cases**

The Director of Public Prosecutions established a Multi Agency Taskforce to undertake a countrywide audit of all the local post election violence (P.E.V) cases under investigation and pending before courts of law with a view to recommending ways and means of ensuring their fair and speedy determination. The team was also required to advise on other alternative dispute resolution mechanisms which include reconciliation, mediation, arbitration and other traditional dispute resolution strategies. The Agency reviewed slightly over 6000 files that had been opened on the PEV cases. The number of cases fully investigated, prosecuted and finalized so far is 445. 41 cases are pending before court. However, the agency's findings are that most of these cases are unlikely to be prosecuted for lack of evidence.

The number of perpetrators so far convicted is 26 and the offences include house breaking and stealing, murder, possession of stolen property, stealing stock, arson, taking part in a riot, and possession of offensive weapons. A number of victims are pursuing civil remedies.



### **Appointment of the Committee of the Judicial Service Commission on the establishment of an International Crimes Division**

On 9 May 2012, the Judicial Service Commission appointed a committee whose mandate included examining:

- the modalities of establishing an International Crimes Division of the High Court for post election cases; and
- Expanding jurisdiction of the Division to also deal with international and transnational crime.

The Committee has recommended the establishment of the International Crimes Division of the High Court with an independent well facilitated prosecution unit focused on international crimes headed by a special prosecutor.

The jurisdiction of the division shall include post election violence crimes, crimes against humanity, genocide, war crimes, human trafficking and organized crime.

#### A19 response:

Partially Implemented

#### NHRI response:

Not implemented. A task-force established to review the files from the post-election violence but the task-force has so far only issued an interim report in which it states that most of the cases do not meet the evidential threshold for prosecution

*Recommendation n°58: Immediately implement all the recommendations put forward by the Waki Commission and the Special Rapporteur on extrajudicial killings (Recommended by Denmark)*

*IRI: not implemented*

#### A19 response:

Not implemented

#### NHRI response:

Not implemented

*Recommendation n°60: Take all steps available to eradicate the use of torture and ill treatment by public officials, and prosecute and punish those responsible (Recommended by Denmark)*

*IRI: not implemented*

#### State of Kenya response:

The National Police Service Act defines torture in accordance article 1 of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. It also provides for the penalties. The establishment of the Independent Police Oversight Authority will enhance this protection.

#### A19 response:

Not implemented

#### NHRI response:

Not implemented. No prosecutions have taken place as torture was only recently( in 2011) defined in the National Police Service Act as a crime attracting a penalty



Recommendation n°66: *Undertake specific measures to ensure the implementation of international United Nations and African human rights conventions, and develop and streamline domestic legislation ensuring the constitutional rights of citizens (Recommended by Finland)*

IRI: *not implemented*

A19 response:

Partially implemented

CS response:

No measures have been taken to sign or ratify ILO Convention 169. The African Charter on Democracy, Elections and Governance has been signed but has yet to be ratified by Kenya, this instrument became binding this year with the required number of state ratifications.

NHRI response:

Not implemented

Recommendation n°67: *Accelerate the judicial and police reform processes (Recommended by France)*

IRI: *partially implemented*

State of Kenya response:

The Government of Kenya has largely implemented all the recommendations of the Judicial Task Force Report which were further buttressed by the Constitution of Kenya. The enactment of the Constitution of Kenya, 2010, resulted in the adoption of critical legislation and administrative measures that have greatly enhanced the integrity, efficiency and transparency of the judiciary- transforming it into an independent establishment capable of effectively administering justice, checking impunity, upholding and enforcing the Bill of Rights.

Since the adoption of the UPR outcome document, the government has made significant progress in the implementation of the recommendations of the National Taskforce on Police Reforms, established by the President in 2009. The promulgation of the new Constitution on August 27th, 2010 provided additional momentum for reforms in the Police as it introduced fundamental changes in both the structure and command of the Police Service, and established the Kenya Police and the Administration Police Services under a unified command of the Inspector General. The two Services are each placed under the command of a Deputy Inspector-General with distinct roles and responsibilities. Further, the Constitution of Kenya demands the highest standards of professionalism, transparency, accountability and discipline amongst police officers. It also demands compliance with constitutional standards of human rights and fundamental freedoms to foster and promote relationships with the broader society. The sum total of these provisions redefines the overall policing architecture in Kenya.

A19 response:

Partially implemented-judicial reforms and police reforms ongoing

OHCHR response:

The reforms are on course however police reforms are still moving at a very slow pace.

NHRI response:

Police reforms yet to take place. Judicial reforms implemented

Recommendation n°71: *Reinforce the inquiries regarding the electoral unrest as well as the national reconciliation mechanisms, in particular through an independent review of their effectiveness* (Recommended by France)

IRI: *fully implemented*

State of Kenya response:

[See response to recommendation n° 57]

A19 response:

Implemented to a large extent

NHRI response:

Not implemented

Recommendation n°72: *Take every useful measure to investigate human rights violations committed by the police, in particular extrajudicial killings, in order to bring to justice the perpetrators of such acts and ensure the effective protection of human rights defenders and witnesses* (Recommended by France)

IRI: *not implemented*

+

Recommendation n°141: *Intensify its efforts to investigate and punish those responsible for punishable violence, especially that perpetrated by security forces and armed forces* (Recommended by Spain)

IRI: *partially implemented*

State of Kenya response:

**The National Coroner's Service Bill 2010:** The State has also prepared the National Coroners Bill to provide for a National Coroner's Service which shall have jurisdiction to investigate the cause of death where the deceased person is reported to have died: a violent or an unnatural death; a sudden death of which the cause is unknown; in police custody; in prison, or in such a place and in such circumstances as to require an inquest under any other law, and shall as soon as practicable hold an inquest into such death. It also provides that whenever a person dies while in custody, the person in charge shall forthwith notify the coroner with jurisdiction in the area where the prison is situated and shall not dispose of the body except with a warrant issued by such coroner. The bill is currently undergoing stakeholders' consultations.

**The Prevention of Torture Bill:** The draft Prevention of Torture Bill is currently with the Commission on the Implementation of the Constitution whose main mandate is to review all legislations and ensure their consistency and coherence with the Constitution. The Bill seeks to provide the necessary legal framework for the prevention, prohibition and punishment of acts of torture and ill treatment. Due to the



huge number of constitutional bills before the Commission the enactment of the Prevention of Torture Bill has been delayed. It is instructive to note that The National Police Service Act 2011 defines torture in accordance with the provisions of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment.

The National Police Service is established by the National Police Service Act of 2011. The Service holds a constitutional duty to train its staff to respect human rights, fundamental freedoms and dignity of the human person. The Police must comply with constitutional standards of human rights and fundamental freedoms. The Act defines and criminalizes acts of torture or any cruel, inhuman and degrading treatment of punishment committed by police officers. It also provides sanctions for the offence.

Police accountability reforms

i) The Independent Policing Oversight Authority created by the Independent Police Oversight Authority Act 2011 has now been operationalised. It is a crucial institution to ensure accountability for police functions

ii) Internal Affairs Unit (IAU) has been established under section 87 of the National Police Service Act 2011 to provide for an internal mechanism to receive and investigate complaints against police by the public and police against police. The Unit is also expected to promote uniform standards of discipline and good order in the Service and keep a record of complaints or investigations made. The Unit has recruited competitively. The appointment of Investigators, location of office outside Police Service headquarters and development of operating systems and procedures are at an advanced stage.

A19 response:

Not implemented

NHRI response:

Not implemented. The Independent Police Oversight Authority, established in 2012, may be helpful towards investigations, so far , no prosecutions have taken place

*Recommendation n<sup>o</sup>76: Develop an administration of justice policy that would address principles of access to justice and public interest education, and take reform measures to address corruption, in particular within the judicial system (Recommended by Germany)*

*IRI: fully implemented*

State of Kenya response:

The Constitution of Kenya 2010 provides comprehensive guidelines against corruption. Chapter 6 uniquely sets the guiding lights, principles of leadership and integrity that will underpin those to serve in the public service. The leadership and integrity standards were included in the Constitution to ensure transparency and accountability and good governance in the management of public affairs for the welfare of the sovereign people of Kenya. State Officers are required discharge their public duties in accordance with the leadership principles and the thresholds of integrity enshrined in the Constitution.

**The Leadership and Integrity Act 2012:** In this regard, Parliament enacted the Leadership and Integrity Act 2012 to establish procedures and mechanisms for the





effective administration of Chapter Six of the Constitution and to promote ethics, integrity and servant leadership among State officers.

The Ethics and Leadership Commission is established under Section 3 (1) of the Ethics and Anti-Corruption Commission Act, 2011. The Commission is mandated to combat and prevent corruption through enforcement of the law, educating the public and enlisting their support against corruption and providing preventive services through promotion/ development of good practices to seal opportunities and loop holes that facilitate corruption. The Ethics and Anti-Corruption Commission is mandated to fight corruption through law enforcement, prevention and public education. The Commission engages in multiple programmes aimed at raising awareness among the public on ethics, integrity and Anti- corruption.

**Leadership and integrity policy:** The government of Kenya is in the process of developing a national Policy on leadership and integrity.

Sensitization and awareness programme for the judiciary: Kenya Anti-Corruption Commission, the precursor to the Ethics And Leadership Commission conducted various sensitization seminars on corruption and economic crimes to different target groups including the Media, the Judiciary, the KACC, the religious sector and the members of the public .

Human rights based sensitization and awareness campaign programmes for the public: The Kenya National Integrated Civic Education Programme (K NICE) is an initiative under the Ministry of Justice, National Cohesion and Constitutional Affairs which has rolled out a nationwide campaign to sensitive Kenyans on the provisions of the constitution, which include the Bill of Rights anti-corruption and integrity issues.

A19 response:

Implemented to a large extent

NHRI response:

Implementation on-going

**Recommendation n<sup>o</sup>77: *Establish a comprehensive national policy and guidelines governing adoption in compliance with CRC (Recommended by Germany)***

**IRI: not implemented**

State of Kenya response:

The Children's Act was enacted in 2001 and seeks to enhance the welfare of children in Kenya. The Act gives effect to the provisions of the International Convention on the Right of the Child and the African Charter on the Rights and Welfare of the Child. The provisions of the Act have been implemented fully. In 2010 the government embarked on a holistic review of the Children's' Act, to bring its provisions in line with constitutional and generally accepted international standards. As a result, The Children's Act (Amendment bill) 2011, which proposes a number of modifications to the Children's Act was prepared. One of the changes sought is the raising of the age of criminal responsibility from eight to twelve years. Parliament is now in the process



of passing a high number of pending constitutional bills and the Children's Act (amendment bill) 2011 has been lined up for prompt attention.

A19 response:

Not implemented

NHRI response:

Not implemented

Recommendation n°82: *Give priority to combating corruption and incompetence in the judiciary, and provide sufficient human and material resources for the administration of justice* (Recommended by Hungary)

IRI: *fully implemented*

State of Kenya response:

[See response to recommendation n° 17]

A19 response:

Implemented to a large extent

NHRI response:

Not implemented

Recommendation n°90: *Establish, through these efforts to address the issue of witness protection legislatively and administratively, a witness protection system* (Recommended by Japan)

IRI: *fully implemented*

+

Recommendation n°105: *Provide adequate protection for witnesses of human rights violations* (Recommended by Netherlands)

IRI: *fully implemented*

+

Recommendation n°147: *Promptly take effective measures to safeguard the work of human rights defenders, including by ensuring that witness protection and the protection of human rights defenders who assist witnesses are a priority for the Government* (Recommended by Sweden)

IRI: *fully implemented*

+

Recommendation n°150: *Better protect witnesses giving evidence and human rights defenders* (Recommended by United Kingdom)

IRI: *fully implemented*

+

Recommendation n°155: *Establish an independent witness protection agency that is free of political influence* (Recommended by United States)

IRI: *fully implemented*

State of Kenya response:

- The Witness Protection Agency has been operationalised, independent of the Attorney General's office.



- The Kenya National Commission for Human Rights has been fully operationalised as a Constitutional Commission with the requisite powers.

Keeping in mind the protection that the Constitution of Kenya, 2010 gives for the protection of the individual, and recognizing that the Country now has robust institutions like those mentioned in this report including the Judiciary and the Independent Police Oversight Authority, it is hoped that no individual will allow violations of any of their rights. There are many protective mechanisms that any human rights defender or any whistle blower can take legal advantage of.

A19 response:

Partially Implemented

NHRI response:

Partly implemented through the establishment of a Witness Protection Agency. The Effectiveness of the Agency in protecting witnesses is however yet to be assessed.

Recommendation n<sup>o</sup>104: *Prevent extrajudicial killings and ensure compensation and justice for the families of victims, taking into account the recommendations of the United Nations Special Rapporteur on extrajudicial killings (Recommended by Netherlands)*

*IRI: not implemented*

A19 response:

Not implemented

CS response:

No compensation has been given to the Samburu families and communities who have suffered police attacks and killings since 2009. Implementation of the Special Rapporteurs recommendation need to be improved, especially; The Government should ensure that compensation is provided to the families of those victims unlawfully killed by the police or other security forces, and, for unlawful killings and other serious human rights abuses, the one-year statutory limitation period on suits in tort against public officials should be removed.

NHRI response:

Not implemented

Recommendation n<sup>o</sup>107: *Strengthen measures to address corruption (Recommended by Netherlands)*

*IRI: partially implemented*

State of Kenya response:

The Constitution of Kenya 2010 provides comprehensive guidelines against corruption. Chapter 6 uniquely sets the guiding lights, principles of leadership and integrity that will underpin those to serve in the public service. The leadership and integrity standards were included in the Constitution to ensure transparency and accountability and good governance in the management of public affairs for the welfare of the sovereign people of Kenya. State Officers are required discharge their



public duties in accordance with the leadership principles and the thresholds of integrity enshrined in the Constitution.

**The Leadership and Integrity Act 2012:** In this regard, Parliament enacted the Leadership and Integrity Act 2012 to establish procedures and mechanisms for the effective administration of Chapter Six of the Constitution and to promote ethics, integrity and servant leadership among State officers.

The Ethics and Leadership Commission is established under Section 3 (1) of the Ethics and Anti-Corruption Commission Act, 2011. The Commission is mandated to combat and prevent corruption through enforcement of the law, educating the public and enlisting their support against corruption and providing preventive services through promotion/ development of good practices to seal opportunities and loop holes that facilitate corruption. The Ethics and Anti-Corruption Commission is mandated to fight corruption through law enforcement, prevention and public education. The Commission engages in multiple programmes aimed at raising awareness among the public on ethics, integrity and Anti- corruption.

**Leadership and integrity policy:** The government of Kenya is in the process of developing a national Policy on leadership and integrity.

Sensitization and awareness programme for the judiciary: Kenya Anti-Corruption Commission, the precursor to the Ethics And Leadership Commission conducted various sensitization seminars on corruption and economic crimes to different target groups including the Media, the Judiciary, the KACC, the religious sector and the members of the public.

**Human rights based sensitization and awareness campaign programmes for the public:** The Kenya National Integrated Civic Education Programme (K NICE) is an initiative under the Ministry of Justice, National Cohesion and Constitutional Affairs which has rolled out a nationwide campaign to sensitive Kenyans on the provisions of the constitution, which include the Bill of Rights anti-corruption and integrity issues.

A19 response:

Not implemented

NHRI response:

Not yet implemented

Recommendation n<sup>o</sup>109: *Take further measures to prevent impunity of the perpetrators of the post-election violence (Recommended by Netherlands)*

*IRI: partially implemented*

State of Kenya response:

**Setting up of a Multi Agency Taskforce on post election violence cases:** The Director of Public Prosecutions established a Multi Agency Taskforce to undertake a countrywide audit of all the local post election violence (P.E.V) cases under investigation and pending before courts of law with a view to recommending ways



and means of ensuring their fair and speedy determination. The team was also required to advise on other alternative dispute resolution mechanisms which include reconciliation, mediation, arbitration and other traditional dispute resolution strategies. The Agency reviewed slightly over 6000 files that had been opened on the PEV cases. The number of cases fully investigated, prosecuted and finalized so far is 445. 41 cases are pending before court. However, the agency's findings are that most of these cases are unlikely to be prosecuted for lack of evidence.

The number of perpetrators so far convicted is 26 and the offences include house breaking and stealing, murder, possession of stolen property, stealing stock, arson, taking part in a riot, and possession of offensive weapons. A number of victims are pursuing civil remedies.

A19 response:  
Not implemented

NHRI response:  
Not implemented

Recommendation n°121: *Investigate harassment and attacks against journalists and human rights defenders in order to bring those liable to justice (Recommended by Norway)*

IRI: *not implemented*

A19 response:  
Not implemented

NHRI response:  
Not implemented

Pen response:  
Harassment and attacks against journalists and human rights defenders continue while investigations are frequently inadequate or non-existent.

Recommendation n°122: *Undertake credible and effective investigations as a matter of priority regarding the Mungiki killings, the Mount Elgon operation and the murders of two civil society activists in addition to the post-election violence (Recommended by Norway)*

IRI: *not implemented*

State of Kenya response:  
[See response to recommendation n° 109]

+

**Appointment of the Committee of the Judicial Service Commission on the establishment of an International Crimes Division:** On 9 May 2012, the Judicial Service Commission appointed a committee whose mandate included examining:

- the modalities of establishing an International Crimes Division of the High Court for post election cases; and
- Expanding jurisdiction of the Division to also deal with international and transnational crime.



The Committee has recommended the establishment of the International Crimes Division of the High Court with an independent well facilitated prosecution unit focussed on international crimes headed by a special prosecutor.

The jurisdiction of the division shall include post election violence crimes, crimes against humanity, genocide, war crimes, human trafficking and organized crime.

A19 response:

Not implemented

NHRI response:

Not implemented

Recommendation n°133: *Intensify its efforts to humanize its penitentiary system* (Recommended by *Slovakia*)

IRI: *partially implemented*

State of Kenya response:

The rights of persons detained, held in custody or imprisoned are now guaranteed under the Constitution of Kenya, which provides that such persons retain all the rights and freedoms contained in the Bill of Rights except where a particular fundamental right or freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned. To implement these constitutional requirements the Government has prepared the Persons Deprived of Liberty Bill 2012. The Bill provides for the humane treatment of persons detained, held in custody or imprisoned and gives effect to the provisions of international human rights instruments and rules on such persons. A Protection of Victim's Bill has also been prepared for the protection, rights and welfare of victims of offences.

**The following steps have been taken to humanize prisons:**

- 11 additional prisons have been constructed since 2010 and all old prisons have been and are still being continuously refurbished
- All ( 55,000) prisoners have been provided with new uniforms and a balanced diet
- Toilets facilities improved in all prisons
- All female ( 3,000)prisoners are provided with sanitary towels
- Every prison has a health facility with a medical officer within the prison and outside to cater for the community. There is a mental unit in kamiti and some prison patients are referred to Mathari. Since 2010 medical personnel have been recruited and other personnel are referred to prisons by the ministry of health. Recruitment is still ongoing.
- All prisons including remand homes have recreational facilities
- There are about 388 children countrywide who are benefitting a special diet and primary education.

The Judiciary and the Probation Department have achieved a tremendous decrease of congestion in prisons through the use of Community Service Orders provided for under the Community Service Orders Act. In addition, under the Power of Mercy Act (2011) the President on the advice of the Advisory Committee can amongst others,



pardon or postpone the carrying out of punishment: remit all or part of a punishment. It should be noted that, the constitution gives the power of mercy to the president but he works with the committee of experts which is independent, this is provided under article 133 of the constitution.

A19 response:

Not implemented

NHRI response:

Not implemented

Recommendation n<sup>o</sup>144: *Devote attention to transitional justice and national reconciliation as an approach used to contain disputes and prevent their recurrence (Recommended by Sudan)*

IRI: *partially implemented*

State of Kenya response:

**Appointment of the Committee of the Judicial Service Commission on the establishment of an International Crimes Division**

On 9 May 2012, the Judicial Service Commission appointed a committee whose mandate included examining:

- the modalities of establishing an International Crimes Division of the High Court for post election cases; and
- Expanding jurisdiction of the Division to also deal with international and transnational crime.

The Committee has recommended the establishment of the International Crimes Division of the High Court with an independent well facilitated prosecution unit focussed on international crimes headed by a special prosecutor. The jurisdiction of the division shall include post election violence crimes, crimes against humanity, genocide, war crimes, human trafficking and organized crime.

A19 response:

partially implemented

NHRI response:

Not Implemented

Recommendation n<sup>o</sup>146: *Resolve issues related to truth, justice and reconciliation within the national framework (Recommended by Sudan)*

IRI: *not implemented*

State of Kenya response:

Issues involving the Chair of the TJRC have been resolved and Commission is currently finalizing its work. The Commission collected over 30,000 statements and memoranda from victims of past injustice. Between April, 2011 and February, 2012, public hearings were conducted in all the forty seven counties of Kenya. Also hearing on key thematic areas such as the disabled, women were conducted in Nairobi. The final report on the recommendations is ready for submission at the envisaged reconciliation conference scheduled for February, 2013.

A19 response:

partially implemented

CS response:

The Truth, Justice and Reconciliation Commission of Kenya is a strong indication of commitment in this area. Considering violence committed against specific ethnic groups since 2008, especially the Samburu, the mandate of the Commission should be expanded to bring these issues into its work.

NHRI response:

Not implemented. The TJRC chair returned to the Commission in April 2011. The TJRC did not deliver its report in May 2011 as it was supposed to but kept seeking one extension after another. So far, no report has been forthcoming from the Truth-seeking body.

**Recommendation n°152: *Establish an independent, credible and authoritative Police Oversight Authority, with sufficient powers and resources (Recommended by United Kingdom)***

*IRI: fully implemented*

State of Kenya response:

The Independent Police Oversight Authority, created by the Independent Police Oversight Authority Act 2011 has now been operationalised. It is a crucial institution to ensure accountability for police functions.

A19 response:

Implemented to a large extent

NHRI response:

Implemented. The Independent Police Oversight Authority Act passed in 2011 and the Authority Board sworn in. The Authority is currently staffing and should begin operations in 2013

**Recommendation n°154: *Unite behind a new constitution through a fair referendum, and fully implement the result (Recommended by United Kingdom)***

*IRI: fully implemented*

A19 response:

Implemented

NHRI response:

Implemented and a new Constitution adopted in August , 2010

**Recommendation n°156: *Fully implement the proposals made by the National Task Force on Police Reforms (Recommended by United States)***

*IRI: partially implemented*

State of Kenya response:

The Government of Kenya has largely implemented all the recommendations of the Judicial Task Force Report which were further buttressed by the Constitution of Kenya. The enactment of the Constitution of Kenya, 2010, resulted in the adoption of





critical legislation and administrative measures that have greatly enhanced the integrity, efficiency and transparency of the judiciary- transforming it into an independent establishment capable of effectively administering justice, checking impunity, upholding and enforcing the Bill of Rights.

Since the adoption of the UPR outcome document, the government has made significant progress in the implementation of the recommendations of the National Taskforce on Police Reforms, established by the President in 2009. The promulgation of the new Constitution on August 27th, 2010 provided additional momentum for reforms in the Police as it introduced fundamental changes in both the structure and command of the Police Service, and established the Kenya Police and the Administration Police Services under a unified command of the Inspector General. The two Services are each placed under the command of a Deputy Inspector-General with distinct roles and responsibilities. Further, the Constitution of Kenya demands the highest standards of professionalism, transparency, accountability and discipline amongst police officers. It also demands compliance with constitutional standards of human rights and fundamental freedoms to foster and promote relationships with the broader society. The sum total of these provisions redefines the overall policing architecture in Kenya.

A19 response:

Partially implemented

NHRI response:

Not implemented

Recommendation n°165: *Continue to carry out the identified constitutional, judicial and police reforms* (Recommended by Zimbabwe)

IRI: *partially implemented*

State of Kenya response:

[See response to recommendation n° 17]

A19 response:

Partially implemented

NHRI response:

Partly implemented through constitutional and judicial reforms. Police reforms still lagging behind

## SOGI

Recommendation n°49: *Decriminalize same-sex activity between consenting adults* (Recommended by Czech Republic)

IRI: *not implemented*

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Recommendation n°157: *Repeal all legislative provisions which criminalize sexual activity between consenting adults (Recommended by United States)*

IRI: *not implemented*

A19 response:

Not implemented

PEMA Kenya (PEMA) response:

Sections 162, 163 and 165 of the Penal Code which criminalise same sex sexual activity between consenting adults are still in place. Though in practice these provisions are not enforced, they serve to:

- Drive discrimination and homophobia by non state actors.
- Used by State officials to violate fundamental rights and freedoms of LGBTI persons eg. Freedom of Movement, Housing, Health, education, etc.
- Fuel blackmail and extortion by both State and non-State actors;
- Non prosecution of perpetrators of crimes against LGBTI Persons;

Even though the State in its response claims that Kenyans are opposed to repealing of these provisions, it has failed to raise public awareness on issues of LGBTI.

Recent developments however point to changing attitudes eg. There is increased engagement by LGBTI groups with opinion shaping institutions eg Religious leaders, The bar, the bench, the police etc.

PEMA KENYA has undertaken sensitization of religious leaders on LGBTI issues and it took part in a week-long joint legal awareness function with the Law Society of Kenya and other organisation. It has opened negotiations with the police and the media to sensitize them as well. There is more understanding, acceptance and tolerance of LGBTI persons within the community.

The Kenyan constitution enacted in 2010, enjoins the State to observe, protect, promote and fulfill the rights and fundamental freedoms in the constitution without discrimination on any ground. The said constitution incorporates General Rules of International Law as well as Treaties and Conventions ratified by Kenya.

NHRI response:

Not implemented. Still stands rejected

Recommendation n°68: *Decriminalize homosexuality by abrogating the legal provisions currently punishing sexual relations between consenting individuals of the same sex, and subscribe to the December 2008 General Assembly Declaration on sexual orientation and human rights (Recommended by France)*

IRI: *not implemented*

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Recommendation n°108: *Take concrete steps to provide for the protection and equal treatment of lesbian, gay, bisexual and transgender persons (Recommended by Netherlands)*

IRI: *not implemented*

A19 response:

Not implemented

PEMA response:

Sections 162, 163 and 165 of the Penal Code which criminalise same sex sexual activity between consenting adults are still in place. Though in practice these provisions are not enforced, they serve to:

- Drive discrimination and homophobia by non state actors.
- Used by State officials to violate fundamental rights and freedoms of LGBTI persons eg. Freedom of Movement, Housing, Health, education, etc.
- Fuel blackmail and extortion by both State and non-State actors;
- Non prosecution of perpetrators of crimes against LGBTI Persons;

Even though the State in its response claims that Kenyans are opposed to repealing of these provisions, it has failed to raise public awareness on issues of LGBTI.

As consequence, we continue to witness:

- Members of the LGBTI community facing attacks, blackmail and extortion from both State actors eg the police; and non State actors;
- Eviction from houses, neighbourhoods and expulsion from schools and jobs;
- In Feb. 2012, a peer session attended by gays was attacked and several persons injured;
- In 2012, dozens of students were expelled from different schools on allegations that they were lesbians;
- In 2010, upon incitement by politicians and the clergy, youths went on a spree targeting LGBTI persons, homes and facilities offering services to LGBTI persons;
- In 2012, dozens of LGBTI Persons have been attacked and maimed;

In all these cases, the State has not investigated, or prosecuted the perpetrators, even when they are well known.

Curricula in public schools and universities continue to carry homophobic material thus fuelling homophobia.

The State has failed to enact an anti-discrimination Law.

The Children Act 2001 prohibits adoption by homosexual persons.

Gay couples or partners cannot bestow benefits on their partners under inheritance, indemnity etc.

NHRI response:

Not implemented. Still stands rejected



## Women & Children

Recommendation n°5: *Continue to implement the core elements of the Children's Act, which is a great step forwards in the achievement of the Millennium Development Goals (Recommended by Angola)*

IRI: *partially implemented*

State of Kenya response:

The Children's Act was enacted in 2001 and seeks to enhance the welfare of children in Kenya. The Act gives effect to the provisions of the International Convention on the Right of the Child and the African Charter on the Rights and Welfare of the Child. The provisions of the Act have been implemented fully.

The implementation of the Children's Act has also had positive effects in the protection of children against their trafficking and abduction. There is now statistical data on the number of children abducted and trafficked, therefore making it possible to have specific interventions.

CRADLE (CRADLE) response:

The State through the Ministry of Gender, Children & Social Development, stated the process of amending the Children Act, 2001. However, the Amendment Bill, 2011 got shelved soon after it was stated in 2011. The Ministry has not given any explanation as to why the process has been shelved or when they intend to resume

NHRI response:

Not implemented.

Recommendation n°8: *Implement measures to prevent, punish and eradicate all forms of violence against women, devoting special attention to the situation of women in communities of refugees and internally displaced persons, and also completely eradicate the practice of female genital mutilation (Recommended by Argentina)*

IRI: *partially implemented*

State of Kenya response:

**Measures against gender Based Violence:** Operationalization of a special Unit in the Office of the Director of Public Prosecutions (DPP)

The Office of the DPP has operationalized a Sexual Offences, Gender Violence and Victim's Rights Section and appointed Special Prosecutors (advocates with expertise) to prosecute selected complicated Sexual and Gender Based Violence cases. It has embarked on the following key initiatives:

- Training and sensitization of investigators, police prosecutors and judicial officers on Sexual and Gender based violence cases throughout the country aiming at enhancing capacity of law enforcement officers on the area and expectations;
- Specialized training on forensic investigations, crime scene management, collection, preservation and presentation of evidence in joint collaboration with



Women Justice and Empowerment Initiative (WJEI) the training included mock/moot court demonstrations;

- Development of regulations for Effective implementation of the Sexual Offences Act;
- Promotion and enhancement of Inter-agency Co-operation and Collaboration Mechanisms in the fight against Sexual and Gender Based Violence with partners including development partners, and Civil society organizations;
- Participated in several countrywide public forums in collaboration with the Task force on Implementation of the Sexual Offences Act to sensitize the general public on Sexual Offences and Gender Based Violence;
- Preparation of the Chief Justice Rules of Practice and Procedure known as the Sexual Offences Rules of Court 2011;
- Developed the Prosecution Guidelines on Sexual Offences and Gender Based Violence; and
- Embarked on the development of a Prosecution Victim Rights Charter.

### **Measures taken to eliminate FGM**

The government has enacted, the Prohibition of female Genital mutilation Act, 2011 which criminalizes this practice. This act provides new opportunities for eradication of FGM. The act empowers chiefs and children's officers to enter into places without warrant to ascertain whether such, a crime has been or is about to be committed. It further stipulates that culture and religion cannot be used as an excuse to perform the procedure.

The act distinguishes female circumcision from medical, surgical procedures connected to child birth and surgery that is essential for the physical or mental health of a woman as well as surgical procedures performed for therapeutic purposes.

The act criminalises:

- Aiding and abetting of women and girls and procuring of a person to perform the cut.
- Taking a Kenyan to another country for and bringing another person to Kenya for circumcision.
- Allowing premises for which you are responsible to be used for circumcision.
- Being found in possession of tools or equipments for the cut.
- Knowing that someone has the intention of performing the cut and falling to report to the authorities.
- Any Kenyan citizen who undergoes FGM outside the country is also liable for prosecution.

The act establishes an anti-FGM board with the core mandate of designing, supervising and coordinating public awareness programs against the practice of FGM.

### **Development of a National Policy on Sexual and Gender Based Violence (SGBV)**

The country's long term development goal is contained in the Vision 2030 document which has set out to reduce gender-based violence through the increased capacity of



the police to handle cases of violence against women and to eliminate harmful cultural practices such as Female Genital Mutilation/Cutting (FGM/C).

The Government has also adopted Results Based Management as a strategy aimed at enhancing service delivery to Kenyans. To facilitate the process Government Ministries and State Corporations are expected to include gender concerns targets in their Performance Contract. These agencies are expected to develop workplace sexual and gender base violence policies.

In this regard the government with the assistance of UNICEF is developing a national policy on gender based violence. The Policy is expected to provide national guidance on eliminating SGBV, with particular reference to violence against women and girls and should be anchored on existing laws and policies that are in place that address Sexual and Gender based Violence guided by the constitution of Kenya 2010. It will specify systems, procedures and guidelines for institutions and services (reporting, referral, legal, medical and counselling, security) which deal with SGBV.

### **Women's human rights violations and gender based violence (GBV) and The Truth Justice and Reconciliation Commission (TJRC)**

The establishment of the TJRC provides women with a political space through which legacies of abuse and violence against them are likely to be addressed. It is anticipated that the (TJRC), will amongst other things, identify and illuminate patterns of abuse, give voice to victims, and make strong recommendations for gender responsive legal and institutional reforms and improvements.

In particular, it is hoped that the mainstreaming of women rights and gender based violence as key themes in the TJRC work will facilitate the design of reparations that are gender responsive and with particular attention to post electoral violence survivors.

To support this, FIDA-Kenya commissioned a research to situate the aspect of truth telling in the dynamics of gender as an effort to demystify past received "truths" and make space for new ones that have been marginalized in the public sphere. Through this intervention, it was hoped that the truth emerging from particular contexts where some perspectives and experiences have been excluded from dominant understanding of historical records would be uncovered.

The findings of this research are used to call upon the TJRC to examine the structural gender biases through which some facts emerge as being critical to the historical account and others faced into the background of the private arena. This approach is intended to capture the structural and systematic character of background gender relations which are often the critical enabling conditions of the character and extent of gendered human rights abuse.

#### A19 response:

Partially implemented



NHRI response:

Not implemented. The Protection against Domestic Violence Bill is yet to be passed into law, 5 years after it was drafted. The Bill, if passed into law, could have provided a legal framework for dealing with domestic violence.

Recommendation n°15: *Strengthen protection for women and children against violence and exploitation* (Recommended by *Australia*)

IRI: *partially implemented*

State of Kenya response:

[See response to recommendation n°8]

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**Measures to address violence against women and girls trafficking, sexual exploitation and other forms of violence**

The Counter Trafficking in Persons Act passed in 2010 domesticates the Palermo Protocols (The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and Protocol against the Smuggling of Migrants by Land, Sea and Air ). The Act is the first comprehensive piece of legislation that deals exclusively with the issue of trafficking and all its elements. It provides a framework within which the victims of trafficking can be protected.

The government has held campaigns to create awareness among hotels and tour operators on the evils of child prostitution and child sex tourism. Hoteliers and other actors in the tourist sector have been encouraged to sign the Code of Conduct against Child prostitution.

Many hotels in the coastal towns have now signed the code of conduct that seeks to prevent abuse of children in their hotels. In addition, key stakeholders, notably police investigators, prosecutors, and community leaders have been sensitized and trained particularly under the Sexual Offences Act on how to investigate, and prosecute trafficking cases. This reinforces the Employment Act of 2007, which outlaws child trafficking for the purposes of sexual exploitation, promoting child sex tourism, child prostitution and child pornography. The minimum penalty for child trafficking is a fine and 10 years of imprisonment. The minimum penalty for sex trafficking is a fine, 15 years of imprisonment, or both.

The implementation of the Children's Act has also had positive effects in the protection of children against their trafficking and abduction. There is now statistical data on the number of children abducted and trafficked, therefore making it possible to have specific interventions.

A19 response:

partially implemented

CRADLE response:

Laws that have been passed in this regard are - Counter Trafficking in Persons Act, The Prohibition of Female Genital Mutilation Act, 2011. The Sexual Offence Act, 2006 was amended and one of the new provisions is the establishment of a register of sexual offender



FI+ERI+FMSI response:

Partially implemented. Reportedly, the Government through the ministry in charge of gender and children affairs is facilitating trainings for various groups, including law enforcement officials and the judiciary to improve handling of cases of child abuse. This is done in the police academy at Kiganjo to sensitize the police about issues affecting children and women's rights by having special magistrates in courts to deal with gender related offences, and by training children in schools about their rights. The ministry in collaboration with the police department is also training special police officers to deal with cases of defilement and other forms of violence. A challenge remaining though is the transfer of officers before the cases are concluded. The ministry has also carried out a study in different households with the Kenya National Bureau of Statistics (KNBS) and UNICEF, to find out information about the level of violence, the perpetrators and the age group most affected. Its report is due to be released within a month and will be open to the public and civil society for comments. There is however, shortage of specialized doctors dealing with child abuse cases which derail legal redress. Moreover, community sensitization about child labour by government is yet to alleviate child labour at dumpsites in the urban areas.

NHRI response:

Not implemented

Recommendation n°16: *Strictly ensure that the death penalty is not imposed for children, and declare an official moratorium on executions with a view to abolishing the death penalty* (Recommended by Australia)

IRI: *partially implemented*

State of Kenya response:

- In the fulfilment of the Constitutional right of a fair trial, the courts now grant bail even in capital offences.
- The Constitution establishes an Advisory Committee on the Prerogative of Mercy which has the function of advising the President where a person has been sentenced to death (otherwise than by a court-martial) for an offence on the exercise of powers. The Advisory Committee may take into account the views of the victims of the offence in respect of which it is considering making recommendations to the president.
- There have been no capital punishments carried out during the review period.
- The KNCHR has commenced a survey on the effects of capital punishment with a view to using the results for engagement with the public on the desirability of its abolition.

A19 response:

Not implemented

CRADLE response:

The Children Act, 2001 outlaws death penalty on children. Furthermore, the State has had a moratorium on the death penalty since the mid 1980s



NHRI response:

De facto moratorium in place but capital punishment not yet abolished

Recommendation n°28: *Take effective steps to address child labour* (Recommended by Azerbaijan)

IRI: *not implemented*

CRADLE response:

A child labour policy was proposed in June 2012 at a conference organized by the Ministry of Labour with support of other NGOs (including CISP) and other organizations with the theme “Human Rights and Social Justice, let’s end child labour”. However, this policy is yet to be drafted

NHRI response:

Not implemented. The magnitude of child labour not yet fully appreciated. A survey to assess the prevalence of child labour has not been carried out.

A19 response:

Not implemented

Recommendation n°30: *Take measures aimed at ensuring the economic rights of women, addressing the issue of their employment and increasing their participation in the political life of the country* (Recommended by Belarus)

IRI: *partially implemented*

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Recommendation n°112: *Establish a policy for gender promotion to ensure the improved representation of women in decision-making bodies* (Recommended by Niger)

IRI: *partially implemented*

State of Kenya response:

Kenya’s Vision 2030 identifies the disadvantages that women face in accessing productive resources and labour markets, and their under-representation in social and political leadership as some of its objectives (under the social pillar). The Vision states that it will provide specific policy measures to correct the glaring gender gaps in access to and control of resources, economic opportunities, and power and political voice.

Under the Social Pillar in the Vision 2030, specific policy measures have been identified that when implemented would help correct gender gaps in access to and control of resources, economic opportunities, power, and political voice. These include, gender mainstreaming in government policies, plans, budgets and programmes and affirmative action for 30% representation of women in all decision.

**Women’s Enterprise Development Fund (WEDF):**

The establishment of Women Enterprise Fund continues to be positive steps towards ensuring resources reach excluded women. It is also a testimony of the Kenya government’s commitment to the realization of the 3rd Millennium Development Goal (MDG) on women empowerment and gender equity.



The Fund is now availing funds to the target women entrepreneurs through the Ministry of Gender, Children and Social Development (the Ministry channel) and the Micro Finance Institutions (MFI) channel.

The Fund is expected to contribute to poverty reduction and employment creation among women. The medium term goal of the Fund is to improve the economic conditions of the excluded women and graduate them to the mainstream financial institutions. The long term goal is to provide a one-stop shop where women can access financial and other business development support services.

Reliance on government funding alone is a challenge that may affect the Fund's ability to achieve its objectives and have the desired long-term impact. The Fund needs to mobilize funds from other sources so as to carry out its planned activities in a sustainable manner.

### **Development of Strategies to enhance Women's participation in public affairs**

The Constitution of Kenya 2010 sets out the legal rights and obligations of the State in respect for the promotion and respect for women's rights. In particular, it has mainstreamed gender equality in its provisions and in so doing provided women with an unprecedented opportunity to enter into politics therefore enhancing their chances of more engagement in decision making processes.

The Government, through the 5 year Medium- Term Plan (MTP) 2008-2012 of the Kenya Vision 2030, identified as a priority the introduction of gender mainstreaming into all Government policies, plans and programs to ensure that the needs and interests of women and other marginalized groups are addressed.

The Government's directive that ensures not more than two thirds of all public positions are held by persons of the same gender is now protected by the Constitution and therefore justiciable as evidenced by recent court cases. This will go a long way in ensuring that women will be represented in all decision making positions by at least 30 percent.

This has led to the introduction of a national framework to monitor and document gender mainstreaming in Government planning, budgeting, legislation and policy formulation. Every government Ministry and agency must contract for targets towards gender mainstreaming. It is one of the compulsory performance contracting domains.

Several institutions have also been established to ensure the equality of opportunities for all individuals, to facilitate mainstreaming of equality and non-discrimination and to monitor the implementation of mechanisms aimed at ensuring non-discrimination. These include the Kenya National Commission on Human Rights, the National Commission on Gender and Development, the National Council of Persons with Disabilities.

### **Political parties Act, 2011**

Other than the provisions contained within the Constitution which provide for the two-thirds principle (of either gender) within the legislature and all other elective positions



at national and county levels, the Political Parties Act which was enacted in 2011, also contains gender equality safeguards to the extent that the formation and purposes of political parties shall be subordinate to the Constitution (section 3(1)). Secondly section 7(2) of the Act provides that “political parties shall be qualified to be fully registered if (among others): its membership and the composition of its governing body both reflect gender balance.” In this regard, The Constitution at Article 90 (2) (b) specifically provides that for elective positions, that party lists shall comprise the appropriate number of qualified candidates and alternates between male and female.

Parties may be de-registered for failure to comply with these provisions (under section 21(1) of Political Parties’ Act. It is hoped the numbers will significantly improve with the implementation of this Act and if there is enactment of a law, providing for how the two-thirds principle in elective positions shall be achieved.

A19 response:

partially implemented

NHRI response:

Provisions for implementation of this recommendation were put in place through constitutional provisions on equality of men and women. However, implementation of the constitutional provisions have posed a challenge.

Recommendation n°43: *Take measures to guarantee effective access for the women victims of gender-based violence to justice, redress and protection (Recommended by Brazil)*

IRI: *partially implemented*

State of Kenya response:

[See response to recommendation n°8]

A19 response:

Not implemented

FI+ERI+FMSI response:

Partially implemented. The Government of Kenya has taken some recent steps in addressing gender-based violence and guaranteeing the right to an effective remedy for victims. Some efforts have been made to date towards the establishment of a policy and legislative framework as the basis for guaranteeing victim’s rights and finding sustainable solutions to eliminate gender-based violence. After going through a long process, the Protection against Domestic Violence Bill (2012) has finally been submitted to the Attorney General by the Commission for the Implementation of the Constitution (CIC) for publication. If it goes through to become a law it will mark a step ahead for protecting women against domestic violence. In addition, the government has enacted the Prohibition of Female Genital Mutilation Act (2011) criminalizing such practices and adopted a National Policy for the Abandonment of FGM (2010). With the support of UNICEF, the government is currently developing a national policy on gender-based violence expected to address the right of victims to justice, redress, and protection. However, our coalition is concerned about delays in



the adoption of domestic legislation that eliminates violence and protects women's human rights. There are many relevant bills that have remained pending for too long before the Kenyan Parliament, including the Marriage Bill 2007, the Matrimonial Property Bill 2007, and the Equal Opportunities Bill 2007.

NHRI response:

Not implemented

Recommendation n°50: *Ensure strict criminalization of female genital mutilation and carrying out awareness-raising to eradicate its acceptability among the public* (Recommended by Czech Republic)

IRI: *partially implemented*

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Recommendation n°131: *Adopt and duly implement measures to eradicate female genital mutilation, including public awareness-raising campaigns against this phenomenon* (Recommended by Slovakia)

IRI: *partially implemented*

State of Kenya response:

**Measures taken to eliminate FGM**

The government has enacted, the Prohibition of female Genital mutilation Act, 2011 which criminalizes this practice. This act provides new opportunities for eradication of FGM. The act empowers chiefs and children's officers to enter into places without warrant to ascertain whether such, a crime has been or is about to be committed. It further stipulates that culture and religion cannot be used as an excuse to perform the procedure.

The act distinguishes female circumcision from medical, surgical procedures connected to child birth and surgery that is essential for the physical or mental health of a woman as well as surgical procedures performed for therapeutic purposes.

The act criminalises:

- Aiding and abetting of women and girls and procuring of a person to perform the cut.
- Taking a Kenyan to another country for and bringing another person to Kenya for circumcision.
- Allowing premises for which you are responsible to be used for circumcision.
- Being found in possession of tools or equipments for the cut.
- Knowing that someone has the intention of performing the cut and falling to report to the authorities.
- Any Kenyan citizen who undergoes FGM outside the country is also liable for prosecution.

The act establishes an anti-FGM board with the core mandate of designing, supervising and coordinating public awareness programs against the practice of FGM.



## **Development of a National Policy on Sexual and Gender Based Violence (SGBV)**

The country's long term development goal is contained in the Vision 2030 document which has set out to reduce gender-based violence through the increased capacity of the police to handle cases of violence against women and to eliminate harmful cultural practices such as Female Genital Mutilation/Cutting (FGM/C).

The Government has also adopted Results Based Management as a strategy aimed at enhancing service delivery to Kenyans. To facilitate the process Government Ministries and State Corporations are expected to include gender concerns targets in their Performance Contract. These agencies are expected to develop workplace sexual and gender base violence policies.

In this regard the government with the assistance of UNICEF is developing a national policy on gender based violence. The Policy is expected to provide national guidance on eliminating SGBV, with particular reference to violence against women and girls and should be anchored on existing laws and policies that are in place that address Sexual and Gender based Violence guided by the constitution of Kenya 2010. It will specify systems, procedures and guidelines for institutions and services (reporting, referral, legal, medical and counselling, security) which deal with SGBV.

### A19 response:

Partially implemented

### CRADLE response:

The Female Genital Mutilation Act was passed in.

### OHCHR response:

The Prohibition of FGM Act was passed in 2011. The Act comprehensively provides for stiff penalties for FGM however the challenge is in carrying out enough awareness raising to deal with the cultural attachment to this practise.

### NHRI response:

Partly Implemented. The Prohibition of Female Genital Mutilation Act passed in 2011 and a national policy and action plan on FGM developed. The awareness-raising part yet to be implemented.

**Recommendation n°53: *Raise the age of criminal responsibility in order to bring it into line with international standards* (Recommended by Czech Republic)**

**IRI: *partially implemented***

### State of Kenya response:

In 2010 the government embarked on a holistic review of the Children's Act, to bring its provisions in line with constitutional and generally accepted international standards. As a result, The Children's Act (Amendment bill) 2011, which proposes a number of modifications to the Children's Act was prepared. One of the changes sought is the raising of the age of criminal responsibility from eight to twelve years. Parliament is now in the process of passing a high number of pending constitutional



bills and the Children's Act (amendment bill) 2011 has been lined up for prompt attention.

CRADLE response:

There is in existence a draft Child Justice Bill, 2012 which seeks to raise the age of criminal responsibility to 12 years. This is an NGO led initiative and the Bill is to be tabled in the 11th Parliament which will hopefully start sitting soon after the March 4th 2013 General Elections

NHRI response:

Not implemented

Recommendation n°69: *Draft a plan to combat violence against women, and establish reliable indicators in this field* (Recommended by France)

*IRI: not implemented*

State of Kenya response:

**Measures against gender Based Violence:** Operationalization of a special Unit in the Office of the Director of Public Prosecutions (DPP)

The Office of the DPP has operationalized a Sexual Offences, Gender Violence and Victim's Rights Section and appointed Special Prosecutors (advocates with expertise) to prosecute selected complicated Sexual and Gender Based Violence cases. It has embarked on the following key initiatives:

- Training and sensitization of investigators, police prosecutors and judicial officers on Sexual and Gender based violence cases throughout the country aiming at enhancing capacity of law enforcement officers on the area and expectations;
- specialized training on forensic investigations, crime scene management , collection, preservation and presentation of evidence in joint collaboration with Women Justice and Empowerment Initiative (WJEI) the training included mock/moot court demonstrations;
- development of regulations for Effective implementation of the Sexual Offences Act;
- Promotion and enhancement of Inter-agency Co-operation and Collaboration Mechanisms in the fight against Sexual and Gender Based Violence with partners including development partners, and Civil society organizations;
- Participated in several countrywide public forums in collaboration with the Task force on Implementation of the Sexual Offences Act to sensitize the general public on Sexual Offences and Gender Based Violence;
- Preparation of the Chief Justice Rules of Practice and Procedure known as the Sexual Offences Rules of Court 2011;
- Developed the Prosecution Guidelines on Sexual Offences and Gender Based Violence; and
- Embarked on the development of a Prosecution Victim Rights Charter.

**Development of a National Policy on Sexual and Gender Based Violence (SGBV)**

The country's long term development goal is contained in the Vision 2030 document which has set out to reduce gender-based violence through the increased capacity of



the police to handle cases of violence against women and to eliminate harmful cultural practices such as Female Genital Mutilation/Cutting (FGM/C).

The Government has also adopted Results Based Management as a strategy aimed at enhancing service delivery to Kenyans. To facilitate the process Government Ministries and State Corporations are expected to include gender concerns targets in their Performance Contract. These agencies are expected to develop workplace sexual and gender base violence policies.

In this regard the government with the assistance of UNICEF is developing a national policy on gender based violence. The Policy is expected to provide national guidance on eliminating SGBV, with particular reference to violence against women and girls and should be anchored on existing laws and policies that are in place that address Sexual and Gender based Violence guided by the constitution of Kenya 2010. It will specify systems, procedures and guidelines for institutions and services (reporting, referral, legal, medical and counselling, security) which deal with SGBV.

CS response:

The Government should review existing discriminatory laws and regulations affecting the property rights of indigenous women, particularly those of widows and divorced women.

NHRI response:

Not implemented

*Recommendation n°74: Adopt a national plan of action on children and children's rights (Recommended by Germany)*

*IRI: not implemented*

State of Kenya response:

The Children's Act was enacted in 2001 and seeks to enhance the welfare of children in Kenya. The Act gives effect to the provisions of the International Convention on the Right of the Child and the African Charter on the Rights and Welfare of the Child. The provisions of the Act have been implemented fully. In 2010 the government embarked on a holistic review of the Children's Act, to bring its provisions in line with constitutional and generally accepted international standards. As a result, The Children's Act (Amendment bill) 2011, which proposes a number of modifications to the Children's Act was prepared. One of the changes sought is the raising of the age of criminal responsibility from eight to twelve years. Parliament is now in the process of passing a high number of pending constitutional bills and the Children's Act (amendment bill) 2011 has been lined up for prompt attention.

CRADLE response:

There isn't any national plan of action in place. However, there is in existence a draft National Policy on Human Rights

NHRI response:

Not implemented

A19 response:

Not implemented

Recommendation n°75: *Adopt legislation and a coherent national policy criminalizing female genital mutilation* (Recommended by Germany)

IRI: *fully implemented*State of Kenya response:

[See response to recommendation n° 50]

A19 response:

Implemented

NHRI response:

Implemented. Prohibition of Female Genital Mutilation Act passed in 2011 and an anti-FGM policy developed.

Recommendation n°80: *Further promote the law on the minimum age of marriage at 18 years* (Recommended by Holy See)

IRI: *not implemented*State of Kenya response:

Under Article 45 (2) of the Kenyan Constitution, only an adult has the right to marry a person of the opposite sex, based on the free consent of the parties. Section 2 of the Age of Majority Act, further provides that a person shall be of full age and cease to be under any disability by reason of age on attaining the age of 18 years. This means that it is only upon attainment of the age of eighteen does a person, whether man or women shed all legal disabilities and may enter into any legal transaction including marriage.

A19 response:

Partially implemented

NHRI response:

Not implemented

Recommendation n°81: *Redouble its efforts to save mother and child* (Recommended by Holy See)

IRI: *not implemented*State of Kenya response:

The Government launched a Child Survival and development Strategy as an effort to accelerate child survival and provide a framework to improve indicators for children. The strategy is guided by the National Health Sector Strategic Plan II (NHSSP II) and the Vision 2030 Medium Term Plan that aim to reduce inequalities in the health care services and improve on the child health indicators.

In addition, the Ministry of Public and Sanitation has prioritized malaria control through the National Health Sector Strategic Plan (NHSSPII) and mandated the Division of Malaria Control (DOMC) to coordinate the implementation of the National Malaria Strategy. In collaboration with partners, the government has also developed





the 8-year Kenyan National Malaria Strategy (KNMS) 2009-2017 which was launched on 4th November 2009.

The National Malaria Strategy covering the period 2009–2017 has been developed in line with the Government's first Medium-Term Plan of the Kenya Vision 2030, Millennium Development Goals, as well as Roll Back Malaria partnership goals and targets for malaria control. The National Malaria Strategy is based on and carries forward an inclusive partnership between the Ministries of Public Health and Sanitation and Medical Services, other line Ministries of the Government of Kenya, development partners and all implementing agencies in malaria control.

Immunization during childhood has been proven to be the most effective strategy for the prevention of many infectious diseases. WHO estimates that as many as 2.5 million deaths among under-5 children worldwide are averted annually by immunization against diphtheria, tetanus, pertussis, and measles. In Kenya, the proportion of children aged 12-23 months that are reported to have received all recommended vaccinations is 77.4% however the proportion varies from region to region where some areas record lower levels of vaccination as compared to others. North Eastern Province records 48.3% Central province 85.8% and in Nairobi 73% children in this age group are reported to have received the immunizations. However the percentage is lower in the slum areas.

Parental age, marital status, level of education and poor knowledge about vaccinations are significantly associated with completion of the immunization schedule by under-5 children. To mitigate this situation the government has embarked on awareness creation campaigns to train health workers, midwives, and parents on the importance of immunization and breast feeding.

NHRI response:

Not implemented

Recommendation n°83: *Urgently adopt legislation criminalizing female genital mutilation, and train members of the police, prosecutors and judges on the strict application of laws and regulations to be adopted in this field (Recommended by Hungary)*

IRI: *partially implemented*

State of Kenya response:

[See response to recommendation n° 50]

NHRI response:

Partially implemented through adoption of legislation. The training of police, prosecutors and judges yet to happen

Recommendation n°89: *Eliminate the practice of female genital mutilation (Recommended by Japan)*

IRI: *partially implemented*

State of Kenya response:

[See response to recommendation n° 50]

A19 response:

Partially implemented

NHRI response:

Not fully implemented. Legislation passed but FGM not yet fully eliminated

Recommendation n°95: *Set up mechanisms to implement the national child act, which incorporates the Convention on the Rights of the Child and which is considered a positive step that grants applicable rights to Kenyan children (Recommended by Libya)*

IRI: *partially implemented*State of Kenya response:

The Children's Act was enacted in 2001 and seeks to enhance the welfare of children in Kenya. The Act gives effect to the provisions of the International Convention on the Right of the Child and the African Charter on the Rights and Welfare of the Child. The provisions of the Act have been implemented fully.

In 2010 the government embarked on a holistic review of the Children's' Act, to bring its provisions in line with constitutional and generally accepted international standards. As a result, The Children's Act (Amendment bill) 2011, which proposes a number of modifications to the Children's Act was prepared. One of the changes sought is the raising of the age of criminal responsibility from eight to twelve years. Parliament is now in the process of passing a high number of pending constitutional bills and the Children's Act (amendment bill) 2011 has been lined up for prompt attention.

A19 response:

Partially implemented

CRADLE response:

One of the mechanisms that has been set up to implement the Children Act, 2001 is the gazetting of all Magistrates to be Children Court Magistrates by the Chief Justice. Previously, only specific Magistrates were gazetted as Children Court Magistrate as they would lose their jurisdiction upon transfer.

NHRI response:

Not implemented

Recommendation n°99: *Undertake more effective measures to address the problems of impunity, violence and trafficking in women and girls, including through the strengthening of law enforcement and the judicial system and intensive media and education programmes aimed at increasing public awareness on the rights of women (Recommended by Malaysia)*

IRI: *partially implemented*State of Kenya response:

The Counter Trafficking in Persons Act passed in 2010 domesticates the Palermo Protocols (The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and Protocol against the Smuggling of Migrants by



Land, Sea and Air ). The Act is the first comprehensive piece of legislation that deals exclusively with the issue of trafficking and all its elements. It provides a framework within which the victims of trafficking can be protected.

The government has held campaigns to create awareness among hotels and tour operators on the evils of child prostitution and child sex tourism. Hoteliers and other actors in the tourist sector have been encouraged to sign the Code of Conduct against Child prostitution.

Many hotels in the coastal towns have now signed the code of conduct that seeks to prevent abuse of children in their hotels. In addition, key stakeholders, notably police investigators, prosecutors, and community leaders have been sensitized and trained particularly under the Sexual Offences Act on how to investigate, and prosecute trafficking cases. This reinforces the Employment Act of 2007, which outlaws child trafficking for the purposes of sexual exploitation, promoting child sex tourism, child prostitution and child pornography. The minimum penalty for child trafficking is a fine and 10 years of imprisonment. The minimum penalty for sex trafficking is a fine, 15 years of imprisonment, or both.

The implementation of the Children's Act has also had positive effects in the protection of children against their trafficking and abduction. There is now statistical data on the number of children abducted and trafficked, therefore making it possible to have specific interventions.

A19 response:

Partially implemented

NHRI response:

Not implemented

Recommendation n<sup>o</sup>113: *Formulate an educational policy aimed at combating illiteracy, with particular emphasis on the education of the girl child (Recommended by Niger)*

*IRI: not implemented*

State of Kenya response:

**Access to education:** The government has taken steps through the formulation of the education policy to ensure access to education by both the girl and boy child. However, statistics show that although the number of girls enrolling in primary school is on the increase, the trend decreases after completion of primary school and fewer girls enrol in secondary schools. This is due to various reasons such as poverty, early marriages, lack of sanitary pads and in some instances of Female Genital Mutilation (FGM). The enactment of the Prohibition of Female Genital Mutilation Act, 2011 which criminalizes this practice will go a long way in eradicating the practise.

**Early marriages:** The Constitution of Kenya forbids harmful cultural practices and prohibits early marriages by directing espouse that marriage will only be between consenting adults.



**Provision of sanitary pads to all primary school girls:** The Government introduced Free Day Secondary Education in 2008. Since then enrollment has increased from 800, 000 to 1.7 million students in 2012. As a result the transition rate from primary to secondary has risen from 47% in 2003 to 72.5% in 2012 .This is above the UNESCO benchmark of 70%. However despite the remarkable increases in access at primary and secondary school, statistics show that a big proportion of girls are left out. Studies have shown that one of the reasons why girls miss classes or drop out altogether is maturation or the onset of puberty.

It is due to this realization that the Government introduced the sanitary towels programme starting in the financial \year 2011/2012 and expected to be a continuing programme in the subsequent financial years. The Government allocated the Ministry of Education Ksh. 240 Million in the Financial Year 2011/2012 for provision of sanitary towels. This will benefit 443,858 girls in public primary drawn from 82 targeted districts.

A19 response:

Not implemented

CRADLE response:

There is existence of free and compulsory primary education with financial support from the State, there has been poor planning in disbursement of funds. When schools opened in May 2011, the Minister of Finance did not release funds until the teachers threatened to go on strike. He was of the opinion that he would release the funds a few weeks later into the school term. There was poor planning and lack of coordination between the Ministry of Finance and that of Education as it is the Ministry of Education that sets school terms dates.

NHRI response:

Not implemented

*Recommendation n°126: Include in the national action plan for the promotion and protection of human rights continued attention to and focus on children and an emphasis on ensuring their right to health and education (Recommended by Saudi Arabia)*

*IRI: partially implemented*

State of Kenya response:

[See response to recommendation n° 34]

A19 response:

Not implemented

CRADLE response:

There isn't any national plan of action in place. However, there is in existence a draft National Policy on Human Rights. Even though there is existence of free and compulsory primary education with financial support from the State, there has been poor planning in disbursement of funds. When schools opened in May 2011, the Minister of Finance did not release funds until the teachers threatened to go on



strike. He was of the opinion that he would release the funds a few weeks later into the school term. There was poor planning and lack of coordination between the Ministry of Finance and that of Education as it is the Ministry of Education that sets school terms dates.

NHRI response:

Implemented

*Recommendation n°132: Adopt and implement measures necessary to address the needs and challenges of juveniles in prison custody, including raising the minimum age of crime responsibility, in line with international standards (Recommended by Slovakia)*

*IRI: not implemented*

State of Kenya response:

The ongoing prisons reforms resulted in the separation of juvenile offenders from adults in the detention centres. The juvenile justice system has been improved further by the establishment of juvenile courts in most areas of the country. The magistrates are specifically trained to handle children's matters and are posted to the courts whose environment is child friendly. In partnership with the civil society the police stations have children's desks which are friendly to the children. A Child Justice Bill (2011) has been developed to enhance juvenile justice system in the country.

In 2010 the government embarked on a holistic review of the Children's' Act, to bring its provisions in line with constitutional and generally accepted international standards. As a result, The Children's Act (Amendment bill) 2011, which proposes a number of modifications to the Children's Act was prepared. One of the changes sought is the raising of the age of criminal responsibility from eight to twelve years. Parliament is now in the process of passing a high number of pending constitutional bills and the Children's Act (amendment bill) 2011 has been lined up for prompt attention.

A19 response:

Not implemented

CRADLE response:

There is in existence a draft Child Justice Bill, 2012 which seeks to raise the age of criminal responsibility to 12 years. This is an NGO led initiative and the Bill is to be tabled in the 11th Parliament which will hopefully start sitting soon after the March 4th 2013 General Elections. Addressing the needs of children in conflict with the law still represents a challenge especially since there are inadequate separate holding facilities in various places across the country and those in existence are overstretched.

NHRI response:

Not implemented



Recommendation n°136: *Take appropriate and efficient measures with the view to ending the practice of female genital mutilation* (Recommended by *Slovenia*)

IRI: *partially implemented*

State of Kenya response:

[See response to recommendation n° 50]

Not implemented

CRADLE response:

The Prohibition of Female Genital Mutilation Act, 2011 is now in place

NHRI response:

Partly Implemented through enactment of Prohibition of FGM Law and adoption of the policy

Recommendation n°145: *Place emphasis on linking the objective of poverty eradication to those of eliminating child labour and increasing school enrolment* (Recommended by *Sudan*)

IRI: *not implemented*

CRADLE response:

There is existence of free and compulsory primary education with financial support from the State, there has been poor planning in disbursement of funds. When schools opened in May 2011, the Minister of Finance did not release funds until the teachers threatened to go on strike. He was of the opinion that he would release the funds a few weeks later into the school term. There was poor planning and lack of coordination between the Ministry of Finance and that of Education as it is the Ministry of Education that sets school terms dates.

NHRI response:

Not Implemented

Recommendation n°149: *Improve access to reproductive health services for pregnant women* (Recommended by *Turkey*)

IRI: *partially implemented*

State of Kenya response:

The National Reproductive Health policy was adopted in 2007. The main theme of the policy is to enhance the reproductive health status of all Kenyans by increasing equitable access to reproductive health services; improve quality, efficiency and effectiveness of service delivery at all levels; and improving responsiveness to the client needs. The overall goal of the Strategy covers the period 2009-2015 is to facilitate the operationalization of the National Reproductive Health Policy through a national multi sectoral approach. The objectives of the Strategy are to:

- Formulate strategies that will enable the achievement of the goal and objectives of the national reproductive health policy
- Identify priority areas and major implementers of the reproductive health programme
- Identify resource mobilization strategies and facilitate and enhance effective management of a sustainable national reproductive health programme.

FI+ERI+FMSI response:

Partially implemented. Despite limited resources the Government of Kenya is currently making significant efforts to improve health services, particularly for pregnant women and infants. In this regard, the Government, through the Ministry of Public Health and Sanitation, has developed a policy which outlines a Child Survival and Development Strategy 2008-2015. The strategy aims at reducing health inequalities with a specific focus on child survival and development. In terms of implementation, some progress is noted with regard to improving infant nutrition through breastfeeding (intensified campaigns on breastfeeding); ensuring safe breastfeeding for HIV infection mothers using Highly Active Antiretroviral Therapy (HAART); promoting countrywide immunization (i.e. recently completed measles and vitamin B immunization); treatment and prevention of malaria by providing free mosquito nets to pregnant women. The Government however, is challenged in terms of ensuring there are enough health facilities to reach all citizens. Amid the achievements of the government, there are several challenges that are hindering effective implementation of the reproductive health services for pregnant women in Kenya such as: inadequate health facilities especially in slum and rural areas (i.e. Reuben clinic is serving about 650,000 people from the Mukuru slums); inadequate infrastructure including stocking of the facilities with medical necessities (i.e. Reuben clinic is largely reliant on private donations and funding spearheaded by Christian Brothers, with little Government resources provided); lack of sufficient referral services and access to more expensive services. In most cases slum residents cannot afford private medical services and those with more complex medical conditions need referrals to other Government agencies, a process that is hampered by the slow pace of response and bureaucracy. There is little or no evidence of investment in the training and proper remuneration of obstetricians and gynecologists. Hospitals where caesarean section can be offered are not well distributed within the country and lack of infrastructure in rural areas is still a major cause of maternal mortality for pregnant women.

NHRI response:

Not implemented

Recommendation n<sup>o</sup>158: *Adopt a comprehensive national policy aimed at the fight against child prostitution and the trafficking of children* (Recommended by Uruguay)

IRI: *partially implemented*

State of Kenya response:

The Counter Trafficking in Persons Act passed in 2010 domesticates the Palermo Protocols (The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and Protocol against the Smuggling of Migrants by Land, Sea and Air). The Act is the first comprehensive piece of legislation that deals exclusively with the issue of trafficking and all its elements. It provides a framework within which the victims of trafficking can be protected.

The government has held campaigns to create awareness among hotels and tour operators on the evils of child prostitution and child sex tourism. Hoteliers and other actors in the tourist sector have been encouraged to sign the Code of Conduct against Child prostitution.



Many hotels in the coastal towns have now signed the code of conduct that seeks to prevent abuse of children in their hotels. In addition, key stakeholders, notably police investigators, prosecutors, and community leaders have been sensitized and trained particularly under the Sexual Offences Act on how to investigate, and prosecute trafficking cases. This reinforces the Employment Act of 2007, which outlaws child trafficking for the purposes of sexual exploitation, promoting child sex tourism, child prostitution and child pornography. The minimum penalty for child trafficking is a fine and 10 years of imprisonment. The minimum penalty for sex trafficking is a fine, 15 years of imprisonment, or both.

The implementation of the Children's Act has also had positive effects in the protection of children against their trafficking and abduction. There is now statistical data on the number of children abducted and trafficked, therefore making it possible to have specific interventions.

CRADLE response:

The Counter-Trafficking in Persons Act was passed into law in 2010. However, no commencement date was given by the State. In September 2012, The CRADLE sued the State over the issue, and the Act was finally gazetted and given a commencement date of 4th October 2012

NHRI response:

Not Implemented

Recommendation n°163: *Undertake a study on child labour at the national level with the support of the International Labour Organization and other partners to look at the issue of child labour, and enact as quickly as possible legislation focused on the prevention of child labour and the removal of its victims from the workplace, as well as their rehabilitation, social reintegration and education (Recommended by Uruguay)*

*IRI: not implemented*

A19 response:

Not implemented

CRADLE response:

A child labour policy was proposed in June 2012 at a conference organized by the Ministry of Labour with support of other NGOs (including CISP) and other organizations with the theme "Human Rights and Social Justice, let's end child labour". However, this policy is yet to be drafted

NHRI response:

Not Implemented





## Other

Recommendation n°3: *Identify its needs in terms of technical and financial assistance as well as capacity-building, and seek accordingly the requisite assistance from the relevant organizations (Recommended by Algeria)*

IRI: not implemented

A19 response:

Not implemented

NHRI response:

Not implemented.

Recommendation n°39: *Undertake all measures, including by seeking technical assistance and capacity-building to address the concerns relating to the need to strengthen institutions responsible for the enforcement of human rights (Recommended by Botswana)*

IRI: partially implemented

State of Kenya response:

The Kenya National Commission on Human Rights (KNCHR) has been restructured, transformed and established into a constitutional body pursuant to Articles 59 (4) of the Constitution of Kenya (2010) and the Kenya National Commission on Human Rights Act, 2011. The Commission operates independently and its functions include promotion of respect for human rights and it acts as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights. Article 249(3) of the Constitution directs Parliament to allocate adequate funds to enable the Commission perform its work effectively. The budget of the Commission is a separate vote of the consolidated fund. However the challenges are seen in the actual implementation of this section of the constitution because of the competing interests between the KNCHR and other constitutional commissions and independent offices established therein. However the government is committed to ensure that the KNCHR will be allocated adequate funds to facilitate its mandate.

The National Policy and Action Plan provides a comprehensive and coherent framework that elaborates broad human rights principles to guide government and other actors in carrying out programmes, strategies and plans that will ensure the meaningful enjoyment of human rights. The Policy and action plan have been submitted to Cabinet for its approval.

A19 response:

Not implemented

NHRI response:

Not implemented



Recommendation n°45: *Seek assistance from the international community in tackling the challenges it faces* (Recommended by Chad)

IRI: *not implemented*

A19 response:

Not implemented

NHRI response:

Not implemented

Recommendation n°61: *Accelerate the process of finalizing its National Policy and Action Plan for human rights, and strengthen its national human rights infrastructure* (Recommended by Egypt)

IRI: *fully implemented*

State of Kenya response:

[See response to recommendation n° 39]

Recommendation n°63: *Seek international assistance to sustain its efforts aimed at the promotion and protection of human rights, in particular economic, social and cultural rights, in line with its national priorities* (Recommended by Egypt)

IRI: *not implemented*

A19 response:

Not implemented

NHRI response:

Not implemented

Recommendation n°85: *Strengthen the capacity of Kenya's National Commission on Human Rights to enable it to play a greater role in promoting human rights awareness in the country* (Recommended by Indonesia)

IRI: *partially implemented*

State of Kenya response:

The Kenya National Commission on Human Rights (KNCHR) has been restructured, transformed and established into a constitutional body pursuant to Articles 59 (4) of the Constitution of Kenya (2010) and the Kenya National Commission on Human Rights Act, 2011. The Commission operates independently and its functions include promotion of respect for human rights and it acts as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights. Article 249(3) of the Constitution directs Parliament to allocate adequate funds to enable the Commission perform its work effectively. The budget of the Commission is a separate vote of the consolidated fund. However the challenges are seen in the actual implementation of this section of the constitution because of the competing interests between the KNCHR and other constitutional commissions and independent offices established therein. However the government is committed to ensure that the KNCHR will be allocated adequate funds to facilitate its mandate.

A19 response:

Not implemented

NHRI response:

Partly implemented through re-establishing the commission as a constitutional body. However, the Commission is yet to receive from the state the resources it needs to carry out its constitutional mandate .

Recommendation n°96: *Consider expediting the adoption process of the Kenyan National Policy and Action Plan for human rights* (Recommended by Malaysia)

IRI: *fully implemented*

State of Kenya response:

[See response to recommendation n° 39]

NHRI response:

Implemented. The National Policy and Action Plan developed and at an advanced stage. Awaiting adoption.

Recommendation n°97: *Engage members of the international community and international organizations for capacity-building support and technical assistance, particularly in the areas of economy, employment opportunity, human resources development and poverty alleviation* (Recommended by Malaysia)

IRI: *not implemented*

A19 response:

Not implemented

NHRI response:

Not implemented

Recommendation n°101: *Intensify cooperation with the Office of the United Nations High Commissioner for Human Rights with a view to implementing the recommendations of the mission deployed by the Office in February 2008 to investigate the postelectoral violence that occurred at the end of 2007* (Recommended by Mexico)

IRI: *not implemented*

A19 response:

Partially implemented

NHRI response:

Not implemented

Recommendation n°111: *Ensure that the new constitution of the country takes greater account of the dimension of human rights protection and promotion, as well as of democracy* (Recommended by Niger)

IRI: *fully implemented*

State of Kenya response:

Keeping in mind the protection that the Constitution of Kenya, 2010 gives for the protection of the individual, and recognizing that the Country now has robust institutions like those mentioned in this report including the Judiciary and the Independent Police Oversight Authority, it is hoped that no individual will allow



violations of any of their rights. There are many protective mechanisms that any human rights defender or any whistle blower can take legal advantage of.

A19 response:  
Implemented

NHRI response:  
Implemented.

Recommendation n°114: *The international community to support Kenya through a programme to build capacities and strengthen institutions for the promotion and protection of human rights (Recommended by Niger)*

IRI: *not implemented*

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Recommendation n°115: *Continue to seek support from the international community in the form of financial or technical assistance in accordance with its national priorities (Recommended by Nigeria)*

IRI: *not implemented*

A19 response:  
Not implemented

NHRI response:  
Not implemented

Recommendation n°124: *Exert its utmost efforts in ensuring a free and fair referendum to enable a new constitution to be adopted, in order to establish a firm foundation for the promotion and protection of human rights (Recommended by Republic of Korea)*

IRI: *fully implemented*

A19 response:  
Implemented

NHRI response:  
Implemented through adoption of a new constitution in August 2010

Recommendation n°130: *Take all measures necessary to contribute to the promotion of tolerance and national cohesion (Recommended by Senegal)*

IRI: *not implemented*

A19 response:  
Partially implemented

NHRI response:  
Implemented



Recommendation n°166: *Continue to seek assistance to build enough capacity to develop appropriate human rights indices (Recommended by Zimbabwe)*

IRI: *not implemented*

A19 response:

Partially implemented

NHRI response:

Not Implemented



## Methodology

### A. First contact

Although the methodology has to consider the specificities of each country, we applied the same procedure for data collection about all States:

1. We contacted the Permanent Mission to the UN either in Geneva (when it does exist) or New York;
2. We contacted all NGOs which took part in the process. Whenever NGOs were part of coalitions, each NGO was individually contacted;
3. The National Institution for Human Rights was contacted whenever one existed.
4. UN Agencies which sent information for the UPR were contacted.

We posted our requests to the States and NHRI, and sent emails to NGOs and UN Agencies.

The purpose of the UPR is to discuss issues and share concrete suggestions to improve human rights on the ground. Therefore, stakeholders whose objective is not to improve the human rights situation were not contacted, and those stakeholders' submissions were not taken into account.

However, since the UPR is meant to be a process which aims at sharing best practices among States and stakeholders, we take into account positive feedbacks from the latter.

### B. Processing recommendations and voluntary pledges

Stakeholders we contact are encouraged to use an Excel sheet we provide which includes all recommendations received and voluntary pledges taken by the State reviewed.

Each submission is processed, whether the stakeholder has or has not used the Excel sheet. In the latter case, the submission is split up among recommendations we think it belongs to. Since such a task is more prone to misinterpretation, we strongly encourage stakeholders to use the Excel sheet.

If the stakeholder does not clearly mention neither that the recommendation was “fully implemented” nor that it was “not implemented”, UPR Info usually considers the recommendation as “partially implemented”, unless the implementation level is obvious.



UPR Info retains the right to edit comments that are considered not to directly address the recommendation in question, when comments are too lengthy or when comments are defamatory or inappropriate. While we do not mention the recommendations which were not addressed, they can be accessed unedited on the follow-up webpage.

### C. Implementation Recommendation Index (IRI)

UPR Info developed an index showing the implementation level achieved by the State for both recommendations received and voluntary pledges taken at the UPR.

The **Implementation Recommendation Index (IRI)** is an individual recommendation index. Its purpose is to show an average of stakeholders' responses.

The *IRI* is meant to take into account stakeholders disputing the implementation of a recommendation. Whenever a stakeholder claims nothing has been implemented at all, the index score is 0. At the opposite, whenever a stakeholder claims a recommendation has been fully implemented, the *IRI* score is 1.

An average is calculated to fully reflect the many sources of information. If the State under Review claims that the recommendation has been fully implemented, and a stakeholder says it has been partially implemented, the score is 0.75.

Then the score is transformed into an implementation level, according to the table below:

Percentage:	Implementation level:
0 – 0.32	Not implemented
0.33 – 0.65	Partially implemented
0.66 – 1	Fully implemented

Example: On one side, a stakeholder comments on a recommendation requesting the establishment of a National Human Rights Institute (NHRI). On the other side, the State under review claims having partially set up the NHRI. As a result of this, the recommendation will be given an *IRI* score of 0.25, and thus the recommendation is considered as “not implemented”.

### **Disclaimer**

*The comments made by the authors (stakeholders) are theirs alone, and do not necessarily reflect the views, and opinions at UPR Info. Every attempt has been made to ensure that information provided on this page is accurate and not abusive. UPR Info cannot be held responsible for information provided in this document.*

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