

Responses to Recommendations

KENYA

Review in the Working Group: 06 May 2010
 Adoption in the Plenary: 22 September 2010

Kenya's responses to recommendations (as of 13.01.2011):

In the Report of the Working Group:	In the Addendum:	During the plenary:	Summary:
128 REC accepted; 7 rejected; 15 pending	No addendum	Out of the 15 pending, 5 were accepted, 7 were commented without giving a clear position, 2 (OPCAT) needed further consideration (-> pending) and 10 were not commented (-> pending) ¹ . The delegation also reconsidered its position on the 7 REC already rejected and stated that only 103.4 was "rejected wholly".	Accepted: 138 Rejected: 1 No clear position: 7 Pending: 11

List of recommendations contained in Section II of the Report of the Working Group A/HRC/15/8:

101. The recommendations formulated during the interactive dialogue listed below have been examined by Kenya and enjoy its support:

- A - 101.1. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (Burkina Faso);
- A - 101.2. Consider ratifying ICRMW (Algeria);
- A - 101.3. Consider ratifying OP-CAT (Denmark);

¹ The total number of pending REC was 24 as four REC have been split in two or three parts.

- A - 101.4. Consider ratifying the Convention on the Prevention and Punishment of the Crime of Genocide (Brazil);
- A - 101.5. 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 (Finland);
- A - 101.6. Continue to carry out the identified constitutional, judicial and police reforms (Zimbabwe);
- 101.7. 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 (Niger);
- A - 101.8. Unite behind a new constitution through a fair referendum, and fully implement the result (United Kingdom);
- A - 101.9. 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 (Republic of Korea);
- A - 101.10. Enact as a matter of urgency the Freedom of Information Bill (Norway);
- A - 101.11. 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 (Libyan Arab Jamahiriya);
- A - 101.12. 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 (Angola);
- A - 101.13. 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 (Botswana);
- A - 101.14. 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 (Indonesia);
- A - 101.15. Establish an independent, credible and authoritative Police Oversight Authority, with sufficient powers and resources (United Kingdom);
- A - 101.16. Accelerate the process of finalizing its National Policy and Action Plan for human rights, and strengthen its national human rights infrastructure (Egypt);
- A - 101.17. 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 (Saudi Arabia);
- A - 101.18. Consider expediting the adoption process of the Kenyan National Policy and Action Plan for human rights (Malaysia);
- A - 101.19. Adopt a national plan of action on children and children's rights (Germany);
- A - 101.20. Fully implement the proposals made by the National Task Force on Police Reforms (United States of America);
- A - 101.21. Strengthen efforts to implement the key reforms, including the police reform (Netherlands);
- A - 101.22. Accelerate the judicial and police reform processes (France);
- A - 101.23. Resolve issues related to truth, justice and reconciliation within the national framework (Sudan);

A - 101.24. Devote attention to transitional justice and national reconciliation as an approach used to contain disputes and prevent their recurrence (Sudan);

A - 101.25. Take all measures necessary to contribute to the promotion of tolerance and national cohesion (Senegal);

A - 101.26. 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 (Australia);

A - 101.27. Remain unwavering 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 (Botswana);

A - 101.28. Further promote good governance (Azerbaijan);

A - 101.29. Strengthen measures to address corruption (Netherlands);

A - 101.30. 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 (Belarus);

A - 101.31. Strengthen and promote respect for civil and political rights through the judicial process regarding complaints initiated regarding the violation of such rights (Argentina);

A - 101.32. Provide human rights training to judges, police officers, prison guards and all law enforcement officers (Brazil);

A - 101.33. 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 (Finland);

A - 101.34. 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 (Czech Republic);

A - 101.35. Continue human rights education and training (Senegal);

A - 101.36. Extend an invitation to the Special Rapporteur for human rights defenders (Norway);

A - 101.37. 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 (Bolivia);

A - 101.38. 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 (Mexico);

A - 101.39. Establish a policy for gender promotion to ensure the improved representation of women in decision-making bodies (Niger);

A - 101.40. Review its national laws so that they fully uphold the principle of nondiscrimination, in particular on grounds of gender, personal status and citizenship (Czech Republic);

A - 101.41. 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 (Belarus);

A - 101.42. Continue to review its legislation concerning the death penalty (Holy See);

A - 101.43. 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 (France);

A - 101.44. Set out how it will act against the culture of impunity, including for perpetrators of extrajudicial killings (United Kingdom);

A - 101.45. Strengthen the law on the use of firearms by police officers, by introducing a policy of “zero tolerance” for their abusive use (Belgium);

A - 101.46. Take all steps available to eradicate the use of torture and ill treatment by public officials, and prosecute and punish those responsible (Denmark);

A - 101.47. 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 (Malaysia);

A - 101.48. Take measures to guarantee effective access for the women victims of gender-based violence to justice, redress and protection (Brazil);

A - 101.49. Draft a plan to combat violence against women, and establish reliable indicators in this field (France);

A - 101.50. Strengthen protection for women and children against violence and exploitation (Australia);

A - 101.51. 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 (Argentina);

A - 101.52. Adopt and duly implement measures to eradicate female genital mutilation, including public awareness-raising campaigns against this phenomenon (Slovakia);

A - 101.53. Ensure strict criminalization of female genital mutilation and carrying out awareness-raising to eradicate its acceptability among the public (Czech Republic);

101.54. Adopt legislation and a coherent national policy criminalizing female genital mutilation (Germany);

A - 101.55. Take appropriate and efficient measures with the view to ending the practice of female genital mutilation (Slovenia);

101.56. 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 (Hungary);

A - 101.57. Eliminate the practice of female genital mutilation (Japan);

A - 101.58. Intensify its efforts to humanize its penitentiary system (Slovakia);

A - 101.59. Adopt a comprehensive national policy aimed at the fight against child prostitution and the trafficking of children (Uruguay);

A - 101.60. Take all appropriate measures to ensure for street children, who are vulnerable to various forms of violence, appropriate care and protection (Slovenia);

A - 101.61. Take legislative and practical measures to ensure the independence and effectiveness of the judiciary (Austria);

A - 101.62. 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 (Germany);

A - 101.63. Give priority to combating corruption and incompetence in the judiciary, and provide sufficient human and material resources for the administration of justice (Hungary);

A - 101.64. 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 (Japan);

A - 101.65. Establish an independent witness protection agency that is free of political influence (United States of America);

A - 101.66. Provide adequate protection for witnesses of human rights violations (Netherlands);

A - 101.67. Establish, through these efforts to address the issue of witness protection legislatively and administratively, a witness protection system (Japan);

A - 101.68. Better protect witnesses giving evidence and human rights defenders (United Kingdom);

A - 101.69. Effectively implement the recent legislation on police reform and witness protection (Austria);

A - 101.70. Raise the age of criminal responsibility in order to bring it into line with international standards (Czech Republic);

A - 101.71. 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 (Slovakia);

A - 101.72. Intensify its efforts to investigate and punish those responsible for punishable violence, especially that perpetrated by security forces and armed forces (Spain);

A - 101.73. Take effective measures against police violence, in particular by ensuring comprehensive investigations and the prosecution of alleged offenders within the police and security forces (Austria);

101.74. Take effective steps to improve accountability with a view to eradicating impunity (Sweden);

A - 101.75. Take further measures to prevent impunity of the perpetrators of the post-election violence (Netherlands);

A - 101.76. Reinforce the inquiries regarding the electoral unrest as well as the national reconciliation mechanisms, in particular through an independent review of their effectiveness (France);

A - 101.77. Cooperate fully with the International Criminal Court investigation, and ensure the protection of witnesses from intimidation and violence (Austria);

A - 101.78. Fully cooperate with the International Criminal Court and its investigations, as well as ensure an independent and reliable witness protection programme (Finland);

A - 101.79. 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 (Republic of Korea);

A - 101.80. 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 (Ireland);

A - 101.81. Cooperate with the International Criminal Court's investigation and take measures to ensure that those responsible for post-election violence are held accountable (Australia);

A - 101.82. Cooperate fully with the International Criminal Court throughout the process (Norway);

A - 101.83. 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 (Portugal);

A - 101.84. 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 (Norway);

A - 101.85. Establish a comprehensive national policy and guidelines governing adoption in compliance with CRC (Germany);

A - 101.86. Further promote the law on the minimum age of marriage at 18 years (Holy See);

A - 101.87. 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 (Czech Republic);

A - 101.88. 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 (Sweden);

A - 101.89. Investigate harassment and attacks against journalists and human rights defenders in order to bring those liable to justice (Norway);

A - 101.90. 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 (Uruguay);

A - 101.91. Take effective steps to address child labour (Azerbaijan);

A - 101.92. Improve access to reproductive health services for pregnant women (Turkey);

A - 101.93. Ensure the equitable distribution of water and food to the entire population, especially during times of drought (Spain);

A - 101.94. Redouble its efforts to save mother and child (Holy See);

A - 101.95. Follow through with the implementation of its national development agenda under Vision 2030 (Egypt);

A - 101.96. Continue to devote great attention to the situation of the most vulnerable groups (Senegal);

A - 101.97. Continue its efforts to promote economic, social and cultural rights and intensify national and anti-poverty programmes (Algeria);

A - 101.98. 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 (Libyan Arab Jamahiriya);

A - 101.99. 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 (Bolivia);

A - 101.100. Continue to put in place effective national policies to alleviate poverty and unemployment (Azerbaijan);

101.101. Pursue its efforts to achieve the highest possible level of social justice and find adequate solutions to the problems of poverty and unemployment (Kuwait);

A - 101.102. Strengthen the fight against poverty (Senegal);

- A - 101.103. Place emphasis on linking the objective of poverty eradication to those of eliminating child labour and increasing school enrolment (Sudan);
- A - 101.104. Continue its implementation of the poverty alleviation policies, in particular through the Kazi Kwa Vijana programme, and share its experiences in this regard (Botswana);
- A - 101.105. 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 (Morocco);
- A - 101.106. Continue its strategies for social and economic recovery, and promote social peace and sustainable development (China);
- A - 101.107. Continue to pursue development and anti-poverty policies, step up international cooperation, and intensify its efforts to alleviate poverty (China);
- A - 101.108. 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 (Bolivarian Republic of Venezuela);
- A - 101.109. 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 (Slovakia);
- A - 101.110. 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 (Bolivia);
- A - 101.111. Formulate an educational policy aimed at combating illiteracy, with particular emphasis on the education of the girl child (Niger);
- A - 101.112. Develop and implement a specific education policy which would cover all children with special needs (Ireland);
- A - 101.113. Continue to develop programmes and measures aimed at ensuring quality and free education and health services for its population (Cuba);
- A - 101.114. 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 (Bolivia);
- A - 101.115. Continue the current policy vis-à-vis Somali refugees, based on solidarity and the protection of fundamental human rights (Somalia);
- A - 101.116. Sustain its efforts with regard to the resettlement of internally displaced persons, and ensure their access to basic human rights and social services (Algeria);
- A - 101.117. 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 (Mexico);
- A - 101.118. Ensure that the policies aimed at assisting displaced persons take into account the Guiding Principles on Internal Displacement (Argentina);
- A - 101.119. Engage in a participatory and inclusive process with civil society in the implementation of universal periodic review recommendations (Norway);

A - 101.120. 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 (Egypt);

A - 101.121. 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 (Algeria);

A - 101.122. Continue to seek assistance to build enough capacity to develop appropriate human rights indices (Zimbabwe);

A - 101.123. The international community to support Kenya through a programme to build capacities and strengthen institutions for the promotion and protection of human rights (Niger);

A - 101.124. Seek assistance from the international community in tackling the challenges it faces (Chad);

A - 101.125. 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 (Kuwait);

A - 101.126. 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 (Indonesia);

A - 101.127. 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 (Malaysia);

A - 101.128. Continue to seek support from the international community in the form of financial or technical assistance in accordance with its national priorities (Nigeria).

102. The following recommendations will be examined by Kenya, which will provide responses in due course, but no later than the fifteenth session of the Human Rights Council, in September 2010:

P - 102.1. Accede to the human rights conventions and protocols to which Kenya is not yet a party (Niger);

P - 102.2. Sign and ratify OP-CAT in the near future (Germany);

P - 102.3. Ratify the optional protocols to ICCPR (Austria); [A - I OP ICCPR ; NC - II OP ICCPR]

P - 102.4. Ratify, as soon as possible, the International Convention for the Protection of All Persons from Enforced Disappearance (France);

P - 102.5. 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 (Denmark);

P - 102.6. 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 (Norway);

P - 102.7. Extend an open and standing invitation to all special procedures, and - sign and ratify the Optional Protocols to the International Covenant on Civil and Political Rights (ICCPR) [A - I OP ICCPR ; NC - II OP ICCPR],

A - the International Covenant on Social, Economic and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),

P - 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) (Spain);

A - 102.8. Ratify the Optional Protocol to ICESCR, OP-CEDAW

NC - the Second Optional Protocol to ICCPR,

P - 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 (Argentina);

102.9. Ratify

NC - ICCPR-OP2,

A - OP-CEDAW and

P - CED (Uruguay);

P - 102.10. Extend an open and standing invitation to all United Nations special procedures (Argentina);

P - 102.11. Consider issuing a standing invitation to special procedures (Brazil);

P - 102.12. 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) (Czech Republic);

NC - 102.13. 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 (Denmark);

NC - 102.14. 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 (Austria);

NC - 102.15. Cooperate fully with the ICC investigation, in accordance with Kenya's obligations under the Rome Statute, and establish a credible local tribunal in parallel (United Kingdom).

103. The recommendations below did not enjoy the support of Kenya:

A - 103.1. 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 (Spain); establish a de jure moratorium on capital punishment, with a view to abolishing the death penalty (Belgium); take all measures to abolish the use of the death penalty (Uruguay); abolish the death penalty (Ireland, Austria, Germany); suspend the application of the death penalty and definitely abolish it (Argentina);

A - 103.2. 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 (Australia);

A - 103.3. 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 (Netherlands);

A - 103.4. Immediately implement all the recommendations put forward by the Waki Commission and the Special Rapporteur on extrajudicial killings (Denmark);

R - 103.5. Take concrete steps to provide for the protection and equal treatment of lesbian, gay, bisexual and transgender persons (Netherlands); decriminalize same-sex activity between consenting adults (Czech Republic); repeal all legislative provisions which criminalize sexual activity between consenting adults (United States of America); 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 (France);

A - 103.6. 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 (Mexico);

A - 103.7. Further strengthen relations with the indigenous communities with a view to promoting and protecting their rights and assisting them in their development initiatives (Malaysia).

104. With regard to recommendations in paragraph 103.1 above, Kenya indicated that the Kenyan public had overwhelmingly rejected the abolition of the death penalty for the most serious crimes. The Government, in collaboration with the Kenya National Commission on Human Rights and other stakeholders, continued to raise public awareness regarding the abolition of the death penalty.

105. With regard to recommendations in paragraph 103.2 above, Kenya wished to clarify that it did not impose the death penalty on children, and therefore there was no need for such a recommendation. Regarding the issue of an official moratorium, the position remained that elaborated under recommendation 103.1.

106. With regard to recommendations in paragraph 103.3 above, Kenya indicated that, while it was committed to preventing extrajudicial killings and ensuring compensation and justice for the families of victims through due process, it did not agree with linking that issue to the Special Rapporteur's report, whose shortcomings had already been pointed out by the Government.

107. With regard to the recommendation in paragraph 103.4 above, Kenya indicated that the use of the term "all" was not acceptable, as it was not feasible; however, most of the recommendations of the Waki Commission Report were being implemented and aspects of the Special Rapporteur's report had given rise to issues of concern.

108. With regard to recommendations in paragraph 103.5 above, Kenya indicated that same-sex unions were culturally unacceptable in Kenya.

109. With regard to recommendations in paragraphs 103.6 and 103.7 above, Kenya indicated that the term "indigenous peoples" was not applicable, as all Kenyans of African descent were indigenous to Kenya. However, the Government recognized the vulnerabilities of minorities/marginalized communities.

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