

KENYA UPR STAKEHOLDERS' COALITION

This report has been prepared by national and grassroots NGOs working on the promotion and protection of human rights in Kenya under the umbrella of the Kenya Stakeholders' Coalition on the UPR (KSC-UPR)ⁱ which comprises of over 250 organisations out of which 101 organizationsⁱⁱ divided into 25 sub thematic clusters who developed and/or endorsed the report.

A. CIVIL AND POLITICAL RIGHTS

Lack of accountability of security agencies in investigation and prosecution of officers responsible for Human Rights violations

1. Despite the comprehensive legislative framework, the rate of investigation of extrajudicial killings has been minimal. Between 2015 and 2018, the Independent Policing Oversight Authority (IPOA) received a total of 6,632 complaints from the public. 3,173 were investigated out of which, 610 were completed while 75 were forwarded to the Office of the Director of Public Prosecution (ODPP) and so far, 3 convictions have been secured.^{iiiiv} During the period 2015 to 2019, the Independent Medico Legal Unit (IMLU) has documented a total of 26 cases of torture but the State has been slow to complete investigations and press charges against the perpetrators. There is also no comprehensive data.^{vi}

2. Recommendations: Ensure publication of outcomes of investigations to allow for public oversight and avoid impunity. A statutory database should be established.

Limited utilization of ADR Mechanisms

3. The State of the Judiciary and the Administration of Justice Annual Report (SOJAR), 2017-2018^{vii} recognized Alternative Dispute Resolution (ADR) Mechanisms as one of the key means of promoting speedy and affordable access to justice. Despite this, there are only 229 Judiciary Accredited Mediators and the programme has been rolled out only in 10 out of the 47 Counties. During the period 2017 – 2018, a total 402,243 cases were filed in the various courts in the country. Of these, only 705 (0.17 percent of the) cases were referred for Court Annexed Mediation. Kenya is yet to reach an optimal level of utilization of mediation as a viable form of ADR.^{viii}

KENYA UPR STAKEHOLDERS' COALITION

- 4. Recommendations: The Judiciary should increase the penetration of ADR by rolling it out to the remaining counties; accrediting more personnel and referring more cases for Court Annexed Mediation. The Judiciary should sensitize the general public on ADR mechanisms. The Government should increase the budgetary allocations to the Judiciary towards implementing its work on ADR**

Non-operationalization of the Public Benefits Organizations (PBO) Act

5. Since 2013, the Government has failed to operationalize or implement the PBO Act.^{ix} The Courts ruled in favor of the NGOs in the cases that were filed in Court^x seeking to compel the Government but the latter continues to disregard the Court Orders.

- 6. Recommendations: The Government should operationalize the PBO Act, 2013.**

Systemic Extrajudicial Executions of Youth in Informal Settlements

7. The recent past has seen an exponential increase in the number of State sanctioned executions targeting youth in informal settlements in Nairobi. The perpetrators of these killings are well known police officers^{xi} who seem to be protected by the State. This makes it difficult to report or investigate the cases. There has been a lot of interference in the few cases that have been investigated. The police officers have made it very difficult for Human Rights Defenders or families of the victims to follow up the cases.

- 8. Recommendations: The State should invite the U.N. Special Rapporteur on Extra Judicial Executions and the U.N. Special Rapporteur on Torture. All cases of Extra Judicial Executions should be fully investigated and perpetrators brought to justice. The Government should fully implement the National Coroners Service Act and The Prevention of Torture Act.**

The Abuse of Petty Offences

9. The police have abused petty offences to disproportionately target the youth in informal settlements^{xii} of Nairobi as is evidenced^{xiii} by the fact that total of 803 cases^{xiii} young men

KENYA UPR STAKEHOLDERS' COALITION

have been executed there between 2013 and 2015.

- 10. Recommendation: The Government should decriminalize and reclassify petty offences.**

Failure to Establish a Mechanism to Oversee Full Implementation of the TJRC Report

11. The National Assembly adopted the TJRC report in 2016 but to date, it has not enacted legislation to establish a mechanism to implement its recommendations.

- 12. Recommendation: The government should put in place mechanisms to oversee full implementation of the TJRC Report recommendations especially on reparations and to investigate as well as hold perpetrators of human rights violations to account.**

Overcrowding in Prison Facilities

13. Overcrowding of the prison facilities poses a challenge to the management, control and rehabilitation of prisoners. During the reporting period, the total prison population increased from 208,168 persons in 2017 to 223,718 prisoner in 2018. The recorded number of pretrial detainees increased from 127,764 in 2017 to 139,822 in 2018^{xiv} with 75 percent of the detainees being petty offenders.^{xxvi}

- 14. Recommendations: The State should utilize appropriate alternative to incarceration for petty offenders in line with international and regional instruments. The State should implement the ACHPR Principles on Decriminalization of Petty Offences in Africa. The State should fully implement the bail and bond policy guidelines and fast track the development of the Bail and Bond Act.**

Increased targeting, intimidation and killing of HRDs

15. Threats and intimidation extra judicial killings and even enforced disappearance against Human Rights Defenders (HRDs)^{xvixviii} have been on the rise. These are mainly perpetrated by the police and the military. Between January, 2016 and April, 2019, Francis Ndegwa, National Coalition of Human Rights Defenders Kenya (NCHRD-K), francis@hrdcoalition.org

KENYA UPR STAKEHOLDERS' COALITION

NCHRD-K has received over 30 cases of threats and harassment of human rights defenders and over 36 cases of arbitrary arrests.^{xix}

16. Recommendations: The State should adopt a policy that protects whistle blowers and HRDs from reprisals, threats, intimidation, physical attacks, forced evictions and targeting by both state and non-state agents. The Government should acknowledge publicly the important and legitimate role of HRDs.

B. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Collapse of the health care system

17. According to the 2018 Economic Survey, the Doctor:Patient Ratio currently stands at 24:100,000 which is way below the one recommended of 1:1,000. The last few years has seen medical personnel go on lengthy strike some lasting over 100 days from December, 2016 to March, 2017^{xx} leading to loss of lives.^{xxixii} By 2015, Kenya had 5,660 doctors which translated to approximately 1.5 doctors to 10,000 population, against the WHO recommended minimum staffing level of 36 doctors per 10,000 population.^{xxiii}

18. The last few years has seen medical personnel in Kenya going on lengthy strikes at the detriment of the patient. The longest industrial action lasted over 100 days (from December, 2016 to March, 2017)^{xxiv} leading to loss of lives.^{xxvxxvi}

19. Recommendation: The Government should invest more in training and retaining medical practitioners by among other things, offering them competitive remuneration and conducive working environment. The Government should put in place proper systems; provide stronger supervision and coordination in the provision of health services both at the national and county levels.

High HIV/AIDS Infections rate among KPs and AGYW

20. The number of new HIV infections in Kenya has reduced from 77,200 in 2010 to 52,800 in 2017 according to HIV estimates report 2018^{xxvii}. The National Aids Control Council on its part established that in 2017, of the approximately 52,800 new infections across all Francis Ndegwa, National Coalition of Human Rights Defenders Kenya (NCHRD-K), francis@hrdcoalition.org

KENYA UPR STAKEHOLDERS' COALITION

ages, 44,800 were among people aged 15+ years while 8,000 among children aged below 14 years^{xxviii} While in 2008, 12,408 (14.1 percent) among Female Sex Workers (FSW); 13,376 (15.2 percent) among Men Who Have Sex with Men (MSM), including Male Sex Workers (MSW) and male prisoners; 3,344 (3.8 percent while (3.8%) was among people who use drugs.^{xxix}

21. Recommendations: The State should fully implement the National Adolescents Sexual and Reproductive Health Policy including developing a comprehensive age appropriate sex education, and SRH Services especially targeting adolescent girls and young women. The State should review all legal, policy and structural barriers that impede the provision of SRH Services among Key Populations. The State should promote evidence based and gender appropriate Harm Reduction Services and ensure availability and accessibility of quality Drug Dependence Treatment Services. The State should move drug control agency (Component that deal with Users) from the Ministry of Interior to the Ministry of Health.

The withdrawal of the Standard and Guidelines on Reducing Morbidity and Mortality from Unsafe Abortion

22. Kenya's Maternal Mortality Rate (MMR) remains high. According to the World Health Organization's (WHO) 2015 report Kenya's MMR had only decreased by 1.2 percent per year since 1990.^{xxx} 510 women and girls out of every 100,000 live births, die,^{xxxi} which is an increase from the MMR documented in the same WHO report covering previous years.^{xxxii} Unsafe abortion is one of the leading contributors to high maternal mortality rates in Kenya. The Constitution of Kenya permits abortion in the opinion of a trained health professional, when there is need for emergency treatment, or life or health of the mother is in danger.^{xxxiii} To operationalize this, the Ministry of Health developed and adopted the Standard and Guidelines on Reducing Morbidity and Mortality from Unsafe Abortion in Kenya in 2012. However, these were withdrawn arbitrarily in 2013 and thereafter followed by Memo banning training of health professionals on safe abortion services. These actions were challenged before the High Court of Kenya and in June, 2019, the High Court declared that the Ministry's actions violated fundamental rights

KENYA UPR STAKEHOLDERS' COALITION

including the right to health, life, non-discrimination, consumer rights, information and right to scientific progress of women and girls of reproductive age.^{xxxiv}

23. Recommendations: The Government should reinstate training of all medical practitioners on provision of safe and legal abortion services and avail essential medicines and equipment in all health facilities. The Government should review the Penal Code to align it with Article 26(4) of the Constitution of Kenya, 2010 and international law standards. The Government should resume dissemination of the Standards and Guidelines on Reducing Maternal Mortality and Morbidity from Unsafe Abortion and the National Guidelines on Management of Sexual Violence in Kenya. The Government should lift the reservation on Article 14(2)(c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol).

Lack of policy coordination in the Education Sector

24. There is lack of adequate policy coordination and proper planning in the roll out of education reforms at national level^{xxxv} leading to domestication of policies in a discordant manner. The Basic Education Act, 2013 provides for the establishment of a National Education Board (NEB) to advise the Cabinet Secretary on policy issues and to generate an annual report on the State of Education and Service Delivery in the Country. The Act also provides for the establishment of County Education Boards (CEB) to act as agents of NEB.^{xxxvi} The functionality of CEBs is nullified by the absence of NEB.

25. The State has engaged in efforts to ensure that the quality of public education improves.^{xxxvii} However, a National Quality Assurance framework to facilitate monitoring and evaluation and to support quality improvements in schools is lacking. Further, the quality assurance function remains grossly under resourced with little publicly available data on the state of quality assurance nationally.^{xxxviii}

26. Recommendations: The Government should re-establish and adequately resource the National Education Board. The Government should establish strategic coordinative mechanisms to enhance policy integration and participation especially

KENYA UPR STAKEHOLDERS' COALITION

in areas concerning early childhood education, refugee education and curriculum reforms. The government should develop, disseminate and implement a National Quality Assurance Framework.

Social Security

27. Available evidence shows that social protection programmes that exist in Kenya are not fully protected by a legal framework thus compromising the right to social protection.

28. Recommendation: The Government should adopt policies and enact laws that will ensure that retirees receive adequate pension and other forms of social security. The State should ratify and implement A.U. Protocol on Social Protection, PWD and Older People

Increase in Food Poverty and Undernutrition

29. Food and nutrition insecurity is a major problem in Kenya as a result of stagnation of agricultural production, low use of technology, high food prices, frequent disasters and the effects of climate change on the mainly rain-fed agriculture.^{xxxix} Presently, the country experiences 20 - 30 percent deficit in staple food thereby leading to increased importation dependency. The budgetary allocation to food and agriculture remains low at 2.9 percent of the total voted expenditure thereby posing a great risk to the well-being and prosperity of the nation's single most important economic sector which accounts for 34 percent of the GDP, employs about 70 percent of the labor force and generates 80 percent of Kenya's merchandise exports.^{xl}

30. Recommendations: Establish a Semi-Autonomous Government Agency to deal with Food and Nutrition Security issues. Develop and implement an integrated policy on climate change and food security. The Government should allocate 10 percent National Budget to Agriculture Sector in accordance with Malabo Declaration 2014. The Government should fully implement the National Food and Nutrition Security Policy Implementation Framework 2017-2022 and the Kenya National Strategy for

KENYA UPR STAKEHOLDERS' COALITION

the Prevention and Control of NCDs 2015.

Right to Housing, Water and Sanitation

31. As of 2015, 30 to 40 percent of residents in Nairobi live in informal settlements^{xli} where people live in houses that are in a deplorable condition; do not have access to clean and affordable piped water^{xlii}. Corruption, poor urban planning and lack of supervision has led to a deterioration of the drainage system in Nairobi.
32. **Recommendations: County governments should ensure that provision of water is not privatized but rather it be made easily accessible to every household especially in the informal settlements. The Government should ensure that adequate resources are allocated through the national budget to provide social housing for the poor in both rural and urban areas. The Government should finalise and enact the Sanitation Bill.**

Human Rights and Business

33. While the draft NAP on Business and Human Rights 'encourages' human rights due diligence, the same is not mandatory. There is no requirement for businesses to implement human rights due diligence nor are they bound to adopt human rights policies or even to report on compliance.'^{xliii}
34. **Recommendation: The Government should fully implement the UN Guiding Principles on Business and Human Rights.**

C. GROUP RIGHTS

Lack of consolidated and credible data and Information on Trafficking

35. There is a lack of consolidated data or repository for information; updated statistics or operational database on the state of human in Kenya or to document and follow up on cases of victims of trafficking thus making it difficult to develop policy and strategy on prevention, protection, prosecution and partnership in matters relating to counter human

KENYA UPR STAKEHOLDERS' COALITION

trafficking. The last Government funded research was done in 2015.^{xliv} Further, the Government has also failed to implement Section 20(2)(g) of the Counter Trafficking in Persons Act.^{xlvi}

36. Recommendations: The State should fully implement Section 20(2)(g) of the Counter Trafficking in Persons Act by developing a data collection and storage system. The State should undertake a National Study on the Human Trafficking in Kenya by December 2020.

High Prevalence of Child Marriage

37. The government undertook the review of the Marriage Act, 2014^{xlvi} that sets out the minimum age of marriage at 18 years. The Government went ahead develop a Draft National Action Plan for Ending Child Marriages in Kenya (2016 - 2025). However, the problem still persists with national prevalence of child marriage in Kenya standing at 23.9 percent and the median marriage age at 17 years. Kenya does not have an End Child Marriage Policy^{xlvii} which hinders the co-ordination of efforts and channeling of resources towards ending child marriage.

38. Recommendations: The State should commit to the timely finalization, adoption, and implementation of the Draft National Action Plan to Ending Child Marriage in Kenya (2016 – 2025). The State should fast track the formulation of an End Child Marriage Policy. The State should create a central data depository to track child marriage cases.

High Prevalence of Teenage Pregnancy

39. Nearly 18 percent of adolescent girls in Kenya aged between 15 and 19 are mothers. Whereas, efforts to reduce teenage pregnancy rates in some regions have borne fruit, other regions like Homa Bay and Kilifi counties still record very high rates standing at 27 percent and 25.7 percent respectively.^{xlviii} The Courts recently pronounced itself on the issue of consensual teenage sexual activity stating that teenagers engaged in sexual activity be apportioned equal responsibility and that both being minors, they need protection against harmful sexual activities and none should be sent to prison.^{xlix}

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KENYA UPR STAKEHOLDERS' COALITION

40. Recommendations: The State should initiate and scale up Age-Appropriate Comprehensive Sexuality Education (AACSE) during primary schooling. The State should ensure strict implementation of the Sexual Offenses Act, 2006 in regards to punishment of adult pedophiles.

Violence against Women and Girls

41. There has been a 5 percent spike in homicide cases from 2,648 in the year 2015 to 2,774 in 2018 with most of the victims being women. According to a report by Akili Dada¹, a total of 40 women and girls were killed during the period between 1st January, 2019 and 13th April, 2019.

42. Recommendation: The President of Kenya should declare violence against women and girls and in particular femicide and other forms of Gender Based Violence a national disaster. The State needs to undertake a comprehensive research to establish the causes of the spike in violence against women and girls and in particular femicide cases in the country thereby coming up with evidence based interventions. The DCI should speed up investigations in all ongoing femicide cases and ensure that all perpetrators are brought to book within the shortest time possible. The Government should set aside additional resources for mental health awareness, training and capacity building, with the aim of sensitizing the public on GBV, with a particular focus on femicide. The Government should launch GBV Recovery Centers and Safe Shelters for Survivors of GBV in all 47 counties.

Decriminalization of Sexual Orientation, Gender Identity and Expression Minorities

43. The Government of Kenya has persistently noted recommendations seeking to decriminalize consensual same sex conduct by adults. The police often use sodomy laws to arrest and charge suspected gays and lesbians.

44. Recommendations: The State should amend the laws to conform with international

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KENYA UPR STAKEHOLDERS' COALITION

human rights obligations by repealing all provisions which criminalise consensual same-sex conduct for adults. The State should align the Penal Code with the Constitution of Kenya, 2010.

Minority community land rights

- 45.** Government enacted Community Land Act, 2016 and adopted its regulations^{li} for the protection of community land rights.^{lii} Despite this, the Act is still unoperational thereby exposing communities to loss of land and attendant conflict.^{liii}
- 46. Recommendations: Government should fully implement the Endorois^{liv} and Ogiek^{lv} judgements. Government should implement the Community Land Act, 2016.**

Statelessness and Denial of Citizenship

- 47.** Ethnic minorities^{lvi} remain undocumented to date,^{lvii} and often subjected to vetting contrary to Section 15 of Kenya Citizenship and Immigration Act, 2011^{lviii} and Section 9 of Registration of Persons Act, 2015.^{lix} Many members of these communities thus risk missing out on the National Identification Integration Management System (NIIMS) and National Education Management Identification System (NEMIS) registration process.
- 48. Recommendation: The Government of Kenya should implement a non-discriminatory process of registering persons in line with the recommendations of the case of the children of Nubian descent.**

Right of Refugees to Work in Kenya

- 49.** Section 16(4) of the Refugees Act, 2006 provides the right to wage-earning employment for refugees in Kenya upon attainment of a Class M work permit which is issued gratis.^{lx} However, the Government has placed a very high threshold for refugees to access Work Permits^{lxi} which limits their ability to access employment opportunities and therefore hinders their self-reliance and livelihood in Kenya. Efforts to amend the law have been

KENYA UPR STAKEHOLDERS' COALITION

futile.^{lxii}

50. Recommendations: The Government should remove the requirement for high skill and speciality threshold in the Kenya Citizenship and Immigration Act and Regulations so as to accommodate the unique humanitarian situation of refugees and enable them to obtain work permits. The Government should review the Refugees Act to give safeguard to refugees' right to employment. The Government should accelerate the implementation of the Kampala Declaration of March, 2019 on Jobs, Livelihoods and Self-Reliance for Refugees, Returnees and Host Communities in the IGAD Region.

Older Persons and Ageing

51. Discrimination against the elderly is widely prevalent and tolerated in Kenya. The elderly face negative perception and attitudes. In some parts of the country, older people are accused of witchcraft due to age and gender stereotypes. The number of older people being forced from their homes or even murdered by their relatives is on the rise.

52. Recommendations: The State should take measures to prohibit all forms of discrimination against older persons. The Government should review legislation so as to ensure that older persons receive equal treatment and protection. The Government should enact the Care and Protection of Older Members of the Society Bill.

Non-Compliance with the UNCRPD

53. Kenya enacted the Persons with Disabilities Act in 2003 which predates the UNCRPD. In 2018, the Cabinet approved the Persons with Disabilities Bill, 2018 which will espouse a more rights based approach and align it with the UNCRPD, but the same is yet to be enacted. Further, the Constitution of Kenya and other legislation still use derogatory language when referring to persons with intellectual or psychosocial disabilities.^{lxiii}^{lxiv} Despite there being very clear laws on assistive devices, their accessibility, affordability,

KENYA UPR STAKEHOLDERS' COALITION

quality and usability for persons with disabilities is still a major challenges.^{lxv} Finally, public transport and buildings are largely not disability compliant.

54. Recommendations: The Government should amend the Persons with Disabilities Act and adopt the accompanying regulations. The Government should amend all sections of laws that use derogatory language while referring to persons with disabilities. The State should enforce existing provisions in the Persons with Disabilities Act on accessibility to public transportation and buildings

KENYA UPR STAKEHOLDERS' COALITION

ⁱ The coalition was facilitated and coordinated by a Steering Committee with technical support from the Kenya National Commission on Human Rights (KNCHR); UPR Info Africa; and the UN Office of the High Commissioner for Human Rights (OHCHR)

ⁱⁱ ALBINISM SOCIETY OF KENYA; CEDGG; USP-K; 28 TOO MANY; Action Network for the Disabled (ANDY); ACTION ON SUSTAINABLE DEVELOPMENT GOALS KENYA COALITION (ASDGC) /Kenya NGOs Council; African Gender and Media Initiative Trust; AFYAFRIKA; Akili Dada; Amref Health Africa in Kenya for The End Child Marriage Network Kenya; ANPPCAN REGIONAL; ARTICLE 19 Eastern Africa; Association of Media Women in Kenya-AMWIK; BHESP; Candle Of Hope Foundation; Center for Reproductive Rights; Centre For Community Development and Human Rights; Centre for Enhancing Democracy and Good Governance; Centre for Minority Rights Development – CEMIRIDE; Centre for the Study of Adolescence (CSA); Child Rights & Special Needs Education Trust (CRESNET); ChildFund Kenya; Civic Engagement Alliance Kenya Programme; CIVICUS; Civil Society Reference Group (CSRG); Coalition on Violence Against Women (COVAW); Daniel Mwangi-Abbot Foundation; East African Centre for Human rights (EACHRights); Economic and Social Rights Centre – Hakijamii; Elimu Yetu Coalition; ERIKS Development Partner; FAMILY HEALTH OPTIONS KENYA; FIDA Kenya; FOCUS OF DISABLED PERSONS; Forum for African Women Educationalist Kenya(FAWEK); Gay and Lesbian Coalition of Kenya (GALCK); GRACEWELL CBO; Health Options for Young Men on HIV/AIDS/STIs (HOYMAS); Health Rights Advocacy Forum (HERAF); HelpAge International – Africa Regional Office; HelpAge International – Kenya Office; Hope Beyond Foundation; Hope Givers Programme; Humanity & Inclusion; ICCO Cooperation; IMLU; International Center for Transitional Justice; International Centre for Information and Awareness; ISHTAR MSM; ISIOLO GENDER WATCH; JINSIANGU; KANCO; KAPLET; KELIN; Kenya Association of the Intellectually Handicapped; Kenya Human Rights Commission; KENYA NATIONAL ASSOCIATION OF THE DEAF (KNAD); Kenya Network of People who use drugs(KeNPUD); Kenya Sex Workers Alliance; KEWASNET; Key Population Consortium [KP Consortium]; Kibera Older Persons' Daycare Centre; KITUO CHA SHERIA; KUDHEIHA WORKERS; LA VIE FOUNDATION; Lutheran World Federation World Service- Kenya Djibouti Somali Programme; MAMA AFRICA CENTRES; MANGU HEALTH AND COMMUNITY DEVELOPMENT PROGRAMME – CBO; Mangu Integrated Community Project (MICOP); Mtoto News; Mwatikho Torture; National Coalition of Human Rights Defenders Kenya (NCHRD-K); Natural Resources Alliance of Kenya (KeNRA); Network for Adolescent and Youth of Africa; Nubian Rights Forum; Nyanza Initiative for Girls Education and Empowerment Centre; NYARWEK NETWORK; Pastoralist Development Network of Kenya; PENDEKEZO LETU; PITCH Kenya; PLAN-INTERNATIONAL; Positive Exposure-Kenya; Quaker Peace Initiatives Kenya (QPIK); Refugee Consortium of Kenya; RIGHT HERE RIGHT NOW; Safe Engage Foundation (SEF); Samburu Girls Foundation; SAMBURU WOMEN TRUST; Scaling Up Nutrition- CSO Alliance (SUN-CSA Kenya); SHINING HOPE FOR COMMUNITIES[SHOFKO]; Siasa Place; Social Justice Centres Working Group; Stop the Traffik- Kenya; Survivors Organization(MATESO); Terre des Hommes Netherlands; The Kenya Section of International Commission of Jurists; The Malkia Initiative; THE NEW DAWN PACESETTER; Trans*Alliance; United Disabled Persons Of Kenya (UDPK); Users and Survivors of Psychiatry in Kenya; Voluntary Service Overseas; We World Kenya Foundation; Women's Empowerment Link; Youth Anti FGM Network Kenya; Youth for Peace Foundation in Kenya

ⁱⁱⁱ See The Independent Policing Oversight Authority. (2019, July 15). *The Independent Policing Oversight Authority*. Retrieved from The Independent Policing Oversight Authority: <http://www.ipoa.go.ke/wp-content/uploads/2018/05/IPOA-BOARD-END-TERM-REPORT-2012-2018-for-website.pdf>.

^{iv} See Republic v Titus Ngamau Musila Katitu [2018] eKLR, High Court Criminal Case No.78 of 2014 (High Court in Nairobi July 15, 2019). Retrieved from

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KENYA UPR STAKEHOLDERS' COALITION

<http://kenyalaw.org/caselaw/cases/view/149253/> and

<http://kenyalaw.org/caselaw/cases/view/151739/>

^v See *Republic v Nahashon Mutua* [2019] eKLR, Nairobi Criminal Case No. 84 OF 2015 (High Court of Kenya in Nairobi July 15, 2019). Retrieved from <http://kenyalaw.org/caselaw/cases/view/169489/>

^{vi} A database should to synthesize and administer investigation, prosecution and conviction data of persons including public officials charged with serious crimes such as torture or ill-treatment should be and managed on behalf of relevant agencies, including the National Police Service (NPS), the Independent Police Oversight Authority (IPOA), the Office of the Director of Public Prosecutions (ODPP), Kenya National Commission on Human Rights (KNCHR), the National Crime Research Centre, and the Judiciary

^{vii} Judiciary. (2019, January 1). *State of the Judiciary and the Administration of Justice Report 2017-18, Seventh Edition*. Retrieved July 15, 2019, from Judiciary: <https://www.judiciary.go.ke/download/state-of-the-judiciary-the-administration-of-justice-annual-report-2017-2018-2/> Pg. 63

^{viii} *Ibid*. Some of the challenges as inadequate institutionalized ADR mechanisms; lack of awareness on validity of ADR Mechanism; and shortage of personnel trained on ADR

^{ix} The PBO Act was developed to address the challenges faced by NGOs under the previous legal regime. It was meant to promote transparent and efficient regulation of Civil Society Organizations in Kenya; set out clear rules on their registration; and create a system of incentives in support of organizations conducting public benefit activities. See

<http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PublicBenefitsOrganisationNo18of2013.PDF>

^x See *Trusted Society of Human Rights Alliance v Cabinet Secretary Devolution and Planning & 3 others* [2016] eKLR, Petition No. 351 of 2015 (CONSTITUTIONAL & HUMAN RIGHTS DIVISION October 31, 2016). Retrieved from <http://kenyalaw.org/caselaw/cases/view/128172>

^{xi} See BBC News Africa. (2018, September 9). *'Hunting down gangsters with Ahmed Rashid'*. Nairobi, Nairobi, Kenya: BBC. Retrieved from YouTube: <https://youtu.be/pOjYnSAAcnQ>. In this documentary, a notorious police officer called Ahmed Rashid was filmed while executing 2 male teenagers in front of a crowd in broad daylight in Eastleigh, Nairobi, on 31st March, 2017. Two hours later he shot dead another 2 young men near Mathare, Nairobi. On the weekend of 11th August, 2017, the same police officer was recorded executing 7 people in Mathare, Nairobi during the post-election chaos. The Extra Judicial Executions have since taken a new dimension where Facebook accounts are used to post warnings to and/or announcements of killings of suspected criminal gang members.

^{xii} The Extra Judicial Executions are being perpetrated in the informal settlements such as Mathare, Dandora, Kibra, Kiambiu, Githurai, Mukuru, Kayole and Kamukunji

^{xiii} According to a report by the Mathare Social Justice Centre

^{xiv} <https://www.knbs.or.ke>

^{xv} <https://www.nation.co.ke>

^{xvi} The current state of Kenya's prisons can be attributed to the continued imprisonment of petty offenders permitted by laws which underpin their arrest and imprisonment, gross underutilization of alternative sanctions and the lack of effective measures to address the root causes of the socio economic problems that perpetuate crime.

^{xvii} See <https://www.hrw.org/news/2018/06/04/kenya-police-threaten-activists-reporting-abuse>

^{xviii} See <https://missingvoices.or.ke/mvoicesarticle/police-threaten-activists-reporting-abuse/>

^{xix} *Ibid*

^{xx} See <https://www.aljazeera.com/news/2017/03/kenya-doctors-strike-deal-government-170314084246054.html>

^{xxi} See <https://allafrica.com/view/group/main/main/id/00049352.html>

^{xxii} The Comptroller of Budgets has observed that a large percentage of the expenditure of County Governments goes to recurrent expenditure and travel. Further, the County Governments also receive their funds quite late. This has a direct impact in the budgeting for and consequently, the provision of health service at the county level.

KENYA UPR STAKEHOLDERS' COALITION

^{xxiii} Ministry of Health (KENYA), Kenya Health Workforce Report: The Status of Healthcare Professionals in Kenya, 2015) at 10, available at <https://www.taskforce.org/wp-content/uploads/2018/07/KHWF_2017Report_Fullreport_042317-MR-comments.pdf>

^{xxiv} See <https://www.aljazeera.com/news/2017/03/kenya-doctors-strike-deal-government-170314084246054.html>

^{xxv} See <https://allafrica.com/view/group/main/main/id/00049352.html>

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^{xxvii} NACC. (2018). Kenya HIV Estimates Report.

^{xxviii}

See

https://www.unaids.org/sites/default/files/country/documents/KEN_narrative_report_2014.pdf

^{xxix} Kenya Modes of Transmission, 2008

^{xxx} WORLD HEALTH ORGANIZATION (WHO) ET AL., TRENDS IN MATERNAL MORTALITY: 1990 TO 2015 ANNEX 19, 73 (2015) available at http://apps.who.int/iris/bitstream/10665/194254/1/9789241565141_eng.pdf [hereinafter WHO, TRENDS IN MATERNAL MORTALITY 1990-2013].

^{xxxi} *Id.*; The 2014 Kenya Demographic Health Survey (KDHS) reported a maternal mortality ratio (MMR) at 362 deaths per 100,000 live births. KENYA NATIONAL BUREAU OF STATISTICS, KENYA DEMOGRAPHIC AND HEALTH SURVEY 2014 (2010), available at <https://dhsprogram.com/pubs/pdf/fr308/fr308.pdf> [hereinafter KDHS 2014].

^{xxxii} See WHO, TRENDS IN MATERNAL MORTALITY: 1990 TO 2010.

^{xxxiii} Article 26 (4), Constitution of Kenya, 2010

^{xxxiv} Federation of Women Lawyers & 3 Others Vs the Attorney General & 2 Others, Constitutional Petition No 266 of 2015.

^{xxxv} For example, while Kenya launched the National Pre-Primary Education Policy in September 2018, only 17 out of 47 counties have a Bill, Act or Early Childhood Development (ECD) policy.

^{xxxvi} Basic Education Act No. 14 of 2013. Available at <http://www.education.go.ke/index.php/downloads/file/96-basic-education-act-no-14-of-2013>

^{xxxvii} For instance through the Kenya Primary Education Development (PRIEDE) Project (2015-2018) targeting school improvement initiatives in 4,000 poor performing schools across the country. (Education, Programmes, Kenya Primary Education Development Project)

Available at <http://www.education.go.ke/index.php/programmes/kenya-primary-education-development-project>

^{xxxviii} The Role of Quality Assurance and Standard Officers in Promoting Education in Private Secondary Schools in Limuru District, Kiambu County. (Wanjiru, 2014) Available at <https://bit.ly/2WbTZXB>: Education, Quality, Assurance and Standards in Kenya: Overseeing Curriculum Implementation and Delivery in Secondary Schools – A Case Of Taita Taveta, African Journal of Education and Practice Vol. 3, Issue 2, pp 30-41, (Odhiambo John Okoth, 2018) Available at <https://www.iprjb.org/journals/index.php/AJEP/article/view/713/855> and is evidenced in various ways including that 70.0% of teachers were reported to not have been assessed on curriculum implementation over a four year period

^{xxxix} Food Nutrition security policy implementation framework. (fisheris, 2017) <file:///C:/Users/Shiko/Downloads/Food%20Nutrition%20Security%20Policy%20Implementation%20Framework%20-%20Version%2010th%20November%202017.pdf>

^{xl} Route to food Initiative 2018 (initiative, 2018) Kenya –Post-Budget-Analysis-Food-and-Nutrition-security-by-Route-to-food-3-july-2018

^{xli} The informal settlements are overcrowded, with poor quality housing and lack of basic socio-economic services, such as access roads, education facilities, and sanitation facilities

^{xlii} The last ten years has seen an increase in population in Nairobi but a drastic reduction in water supply from 1,000,000 litres to 700,000 litres per day.

^{xliii} Republic of Kenya: National Action Plan on Business and Human Rights - For the Implementation of the United Nations Guiding Principles on Business and Human Rights

^{xliiv} National Crime Research Center. (2015). *Human Trafficking in Kenya*. Nairobi: National Crime Francis Ndegwa, National Coalition of Human Rights Defenders Kenya (NCHRD-K), francis@hrdcoalition.org

KENYA UPR STAKEHOLDERS' COALITION

Research Centre.

^{xlv} Published by the National Council for Law Reporting. (Revised Edition 2012 [2010]). Retrieved from http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Counter-TraffickinginPersonsAct_No8of2010.pdf

^{xlvi} During the first cycle to promote the law on the minimum age of marriage at 18 years (Recommendation 101.86). During the second cycle, it was recommended that Kenya needs to eliminate stereotypes and harmful practices against women (Recommendation 142.44) and ensure the strict enforcement of the laws prohibiting child marriage (Recommendation 142.48) to be found at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/064/59/PDF/G1506459.pdf?OpenElement>

^{xlvii} Such a policy would be instrumental in the design, formulation, planning, financing, and coordination of all activities related to ending child marriage in the country

^{xlviii} Teenage pregnancies have become a malaise in Kenya with some areas in the West and Coast having 1 in every 4 girls affected as per recent Kenya Demographic and Health Survey (2014).

^{xlix} POO V ODP and another, Const. Petition No.1 of 2017 to be found at <http://kenyalaw.org/caselaw/cases/view/140634/>

^l Akili Dada. (2019, 5 30). Femicide Cases on The Rise in Kenya. Retrieved 6 3, 2019, from Akili Dada: <http://www.akilidada.org/femicide-cases-on-the-rise-in-kenya/>

^{li} Legal Notice 279 , Kenya Gazette Supplement No. 78

^{lii} Madiha Majid, N. O. (2019). *Baseline Study on Indigenous People's Land Rights in Nakuru County*.

^{liii} George, S. (2019, April 16). *Leaders Reject dry port land deal Uganda*. Retrieved from <https://www.pressreader.com/>. The deal between Kenya and Uganda to build an inland port on Kedong Ranch, a 78,000 acre piece of land owned by Maasai community is one such example of appropriation of community land under conflict.

^{liv} Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003 (African Court February 4, 2010)

^{lv} African Commission on Human and Peoples Rights V Republic of Kenya, 006/2012 (African Court May 26, 2017).

^{lvi} such as the Nubians, Shona, Pemba, Kenyan Somalis, Boni, Maasai and Awer

^{lvii} Ndubi, M. (2017). *The Shona: A Stateless Community in Kenya Yearning to gain Citizenship*. Nairobi: UNHCR Kenya.

^{lviii} See <http://www.kenyalaw.org/lex/actview.xql?actid=No.%2012%20of%202011>

^{lix} See <http://www.kenyalaw.org/lex/actview.xql?actid=CAP.%20107>

^{lx} Department of Immigration. (2019, July 12). Department of Immigration- Immigration Services. Retrieved from www.immigration.go.ke: <https://fns.immigration.go.ke/infopack/permits/classM/>

^{lxi} The Kenya Citizenship and Immigration Act, 2012 requires a refugee to meet the requirements of expatriates in order to secure a work permit. See the Kenya Citizenship and Immigration Act. (2012). Kenya Law. Retrieved from [kenyalaw.org: http://www.kenyalaw.org/lex//sublegview.xql?subleg=No.%2012%20of%202011](http://www.kenyalaw.org/lex//sublegview.xql?subleg=No.%2012%20of%202011)

^{lxii} Owino, S. (2017, November 8). *Business Daily*. Retrieved from www.businessdailyafrica.com: <https://www.businessdailyafrica.com/economy/Uhuru-rejects-bill-giving-refugees-right-to-jobs-and-land/3946234-4178936-xf36adz/index.html>

^{lxiii} Example of derogatory language used to refer to persons with disabilities includes ‘imbeciles’, ‘idiots’, ‘insanity’, ‘handicapped’ or ‘lunatics’. See Table of Laws which outlines impugned sections of the constitution and different legislation containing derogatory language against persons with disabilities.

^{lxiv} This violates Article 3(a) of the UNCRPD and Article 28 of the Constitution of Kenya which provides that every person has inherent dignity and the right to have that dignity respected and protected

^{lxv} See the Ministry of Labour and Social Protection ‘National Action Plan on Implementation of Recommendation made by the Committee on the Rights of Persons with Disabilities in relation to the Initial Report of the Republic of Kenya September 2015 to June 2022 (May 2016)’ Available at

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KENYA UPR STAKEHOLDERS' COALITION

<http://laboursp.go.ke/wp-content/uploads/2018/05/National-Action-Plan-FINAL-draft-from-printer.pdf>.

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