



# **CIVIL SOCIETY COALITION ON KENYA'S 2ND UNIVERSAL PERIODIC REVIEW (CSCK-UPR)**

Secretariat

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**UN Human Rights Council - Universal Periodic Review  
Kenya’s Human Rights Scorecard: From aspiration to action**

This Charter has been prepared by the Civil Society Coalition on Kenya’s 2<sup>nd</sup> Universal periodic Review (CSCK-UPR)<sup>1</sup> as a supplement to its stakeholders’ report submitted to the Office of the High Commissioner on Human Rights (OHCHR) on June 14, 2014. It seeks to highlight contemporary human rights concerns in Kenya with a view to catalysing a robust interactive dialogue during Kenya’s review. In addition to our stakeholders’ report this charter utilizes information from the State report as well as that of international treaty bodies and special procedures that have reported on Kenya for the period under review. This charter raises pertinent issues for inquiry by Kenya’s peers and proposes remedial action by way of recommendations for consideration. It is hoped that this charter will serve as an effective advocacy document that will lead to State commitment to the increased realization of human rights in the country.

Stakeholders’ Submissions	State Report	UN Treaty Bodies and Special Procedures Recommendations (2010-2014)	Suggested Questions	Suggested Recommendations
<b>1. Enhancing Access to Justice and Safeguarding the Doctrine of Separation of Powers</b>				
The Judiciary through its Transformation Framework for 2012-16, has sought to enhance access to justice through simplifying court procedures, establishing Court Users Committees and piloting a National Legal Aid (And Awareness) Programme. These initiatives are	The Government cites the promulgation of the 2010 Constitution as the most significant achievement. It highlights the establishment of national values, strong independent institutions and the doctrine of separation of powers. The Judiciary is cited as being adequately empowered to uphold the supremacy of the	<b>The Human Rights Committee</b> at its 105 <sup>th</sup> Session in July 2012 called on Kenya: - To implement devolution of courts to enhance access to justice in the rural areas. - To provide adequate funding to the legal aid scheme and enact a	- How does the State intend to support or safeguard the independence of the judiciary and enhance access to justice for the most vulnerable in society?	- The State should increase the judiciary’s funding for Court Users Committees, the legal aid scheme and fast-track the enactment and implementation of supportive legislation on access to justice. - The State should support effective integration of informal dispute

<sup>1</sup> CSCK-UPR members: The Kenya Human Rights Commission (KHRC) – Secretariat; Physicians for Human Rights- Kenya Office; The National Coalition on Human Rights Defenders (NCHRD); The Coalition on Violence Against Women (COVAW); The Refugee Consortium of Kenya (RCK); Ogiek Peoples’ Development Programme (OPDP); Endorois Welfare Council (EWC); National Victims and Survivors Network (NVSN); International Centre for Transitional Justice (ICTJ)- Kenya Office; The International Federation for Human Rights (FIDH)- Kenya Office; International Displacement and Monitoring Centre (IDMC) and; Ipas Africa Alliance

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<p>however underfunded and case backlog persists.</p> <p>Tensions exist between the Executive, legislature (Senate and National Assembly) and judiciary in the exercise of their respective powers. The National Assembly has in some instances disregarded court orders and in apparent retaliation, slashed the Judiciary’s annual budget by Kenya Shillings 500 million. The Senate and National Assembly continue to disagree on the process for enactment of legislation with the Senate being excluded from some critical pieces of legislation such as those relating to security.</p>	<p>Constitution and enforce the respect for human rights. The vetting of judges and magistrates is also ongoing.</p>	<p>comprehensive legal aid law.</p> <p><b>The Committee Against Torture</b> at its 15<sup>th</sup> Session in May 2013 called on Kenya:</p> <ul style="list-style-type: none"> <li>- To ensure that in law and practice, all detainees are accorded from the time of their arrest, the right to a lawyer, to notify a relative, to request and independent medical examiner and to be presented to a judicial authority within 24 hours.</li> <li>- To promptly table the Legal Aid Bill (2012) in Parliament, together with the National Legal Aid policy, and ensure that it is operational nationwide and provide it with adequate resources to function properly.</li> </ul>		<p>resolution mechanisms in the judicial system to enhance access to justice at the lower levels of the society.</p> <ul style="list-style-type: none"> <li>- The State should review the law relating to the enforcement of judgments, including those against the State, clearly defining the roles and responsibilities of enforcement agents.</li> <li>- The State should institute a dialogue mechanism aimed at mitigating and amicably resolving any disputes between the Executive, Legislature and Judiciary arising from the execution of their respective mandates.</li> <li>- The ongoing vetting of the Judiciary should extend to other levels of personnel such as court clerks, registry officers and other administrative officers to curb the systemic corruption and inefficiencies within the</li> </ul>

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				judiciary.
<b>2. Transitional Justice</b>				
<p>At the domestic level, there has been a systemic failure by the government to conduct credible and adequate investigations and prosecutions of the 2007-08 post-election violence. The government is also yet to establish an International Crimes Division of the High Court as previously committed.</p> <p>The government's cooperation with regard to Kenya's cases before the International Criminal Court (ICC) has consistently come into question. Pending requests for access to relevant information by the Chief Prosecutor have not been honored and this culminated in an application to have Kenya referred to the Assembly of State Parties (ASP) to the Rome Statute for non-cooperation. While the</p>	<p>A bilateral agreement between Kenya and the Court signed in 2010 has been implemented to the letter and has undoubtedly facilitated the Court in the discharge of its mandate in the Country.</p> <p>The TJRC report was published on June 7, 2013 and the government has appointed an Inter-Agency Taskforce to develop an implementation framework. An amendment to the law was undertaken to allow the National Assembly to consider the report's recommendations.</p>	<p><b>The Human Rights Committee</b> at its 105<sup>th</sup> Session in July 2012 called on Kenya:</p> <ul style="list-style-type: none"> <li>- To urgently pursue all cases of the post-election violence and implement the recommendations of the Commission of Inquiry into the Post-Election Violence (CIPEV).</li> </ul> <p><b>The Committee Against Torture</b> at its 15<sup>th</sup> Session in May 2013 called on Kenya:</p> <ul style="list-style-type: none"> <li>- Strengthen its efforts to ensure prompt, impartial and effective investigation of all allegations of excessive use of force, torture and extra-judicial killings by the police and the military during the post-election violence, that perpetrators are prosecuted and, on</li> </ul>	<ul style="list-style-type: none"> <li>- What progress has the State made in realizing justice for the victims of post-election violence and guaranteeing non-repetition?</li> <li>- More specifically, what progress has the State made with respect to: 1) its cooperation with the ICC 2) investigation and prosecution of Sexual and Gender Based Violence crimes and 3) the implementation of the TJRC report?</li> <li>- What steps has the State undertaken to ensure the success of the vetting process currently being undertaken within the Kenya Police Service?</li> </ul>	<ul style="list-style-type: none"> <li>- The State should positively cooperate with the ICC and honour all pending requests from the court.</li> <li>- The State should take concrete steps towards instituting credible investigations, prosecutions and reparations that would secure meaningful and speedy justice for the victims of PEV, including victims of sexual and gender based violence and establishes measures to guarantee non-repetition.</li> <li>- The State should maintain the fidelity of the TJRC report's findings and recommendations and establish a comprehensive framework for its implementation.</li> <li>- The State should facilitate safe platforms</li> </ul>

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<p>application was dismissed by the Court, the Chief Prosecutor has since indicated an intention to appeal the decision.</p> <p>The Truth Justice and Reconciliation Commission (TJRC) concluded its mandate in May 2013 but not much has been done by way of implementation. An Inter-Agency Taskforce on Implementation of the report was proposed in October 2014 but hasn't commenced its work. Furthermore, the report is yet to be considered by the National Assembly as required by law despite being submitted to the chamber in July 2013.</p> <p>Vetting of officers in the Kenya Police Service is underway but some officers who have failed or opted out of the vetting process continue to be retained in the service. In</p>		<p>conviction, appropriately punished. All victims should obtain adequate redress.</p> <ul style="list-style-type: none"> <li>- Continue its cooperation with the Prosecutor of the International Criminal Court.</li> <li>- Make public the report of the Multi-Agency Taskforce on domestic prosecution of post-election violence crimes.</li> <li>- Ensure that the report by the Truth, Justice and Reconciliation Commission is considered without delay, published, and its recommendations implemented</li> </ul>		<p>where both citizens and officers can submit information relevant to the police vetting process. All officers deemed to be unsuitable by the vetting panel or opting out of the vetting process must vacate their offices in line with the law.</p>

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<p>addition, there are difficulties in accessing information with respect to some officers and there has been a disproportionate focus on assessing financial probity and less on the officers’ human rights record.</p>				
<p><b>3. The Threat of Further Human Rights Violations in Attempts to Address Rampant Insecurity</b></p>				
<p>Kenya has in the recent past suffered an unprecedented spate of terror attacks that have been further compounded by increased inter-communal resource-based conflict fueled by the proliferation of illicit weapons.</p> <p>The State response has consisted of reactionary and in some instances excessive security operations that have had the effect of alienating and victimizing the public rather than protect them. Some tragic examples include:</p> <ul style="list-style-type: none"> <li>- In Kwale County, a</li> </ul>	<p>The State report identifies national security as a challenge on account of the increased terrorist attacks. It outlines the measures undertaken by the State to include seeking to pass the Prevention of Terrorism Act, the Prevention of Organized Crimes Act and participating in the African Mission in Somalia (AMISOM) to bring order to Somalia.</p> <p>Islamist radicalization of Kenyan youth by the <i>Al-Shabaab</i> terror group has also been identified as a challenge. The report states that the terror group has established a presence and a clandestine support system</p>	<p><b>The Committee Against Torture</b> at its 15<sup>th</sup> Session in May 2013 called on Kenya:</p> <ul style="list-style-type: none"> <li>- To ensure that all police and military operations, including counter-terrorism activities, are carried out in full compliance with the Convention and the State party’s obligations under international law.</li> <li>- To ensure that the Independent Police Oversight Authority (IPOA) has sufficient financial and human resources to effectively carry out its mandate, including the</li> </ul>	<ul style="list-style-type: none"> <li>- Has the State considered an all-inclusive, multi-stakeholder approach to tackling the threat of terrorism and insecurity generally? What concrete steps has the State undertaken to foster such a multi-stakeholder approach?</li> <li>- What safeguards has the State put in place to address the concerns of undue profiling, discrimination and unlawful detentions that have been frequently alleged in the context of security operations?</li> <li>- What progress has the State made in the investigation and prosecution of security officers accused of committing extra-legal executions? To what extent has the State ensured that its security operations are</li> </ul>	<ul style="list-style-type: none"> <li>- Beyond punitive measures, the State should adopt an evidence-led counter-terrorism programme that seeks the input of all stakeholders and incorporates strategies to address societal vulnerabilities such as youth unemployment and historical injustices which catalyze radicalization.</li> <li>- The State should explicitly prohibit unconstitutional practices such as arbitrary arrests, unlawful detentions, enforced disappearances and extra-legal executions from being</li> </ul>

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<p>fourteen year old girl named Kwekwe Mwandaza was summarily executed by National Police Service officers for allegedly posing a security threat against eight heavily armed police officers who had raided her home in search of a suspect they did not find.</p> <ul style="list-style-type: none"> <li>- Security Operation <i>Usalama Watch</i> which was instituted in the aftermath of the Westgate Mall Terrorist Attack sought to arrest persons deemed to be in the country illegally. Its execution was however characterized by undue profiling of persons on ethnic and religious lines along with arbitrary detentions and some reported cases of forcefully repatriating refugees; contrary to</li> </ul>	<p>among populations in North Eastern Kenya, Nairobi and the Coast.</p>	<p>collection of independent data on complaints, investigations, prosecutions, convictions and penalties against law enforcement officials for acts of torture and ill-treatment.</p> <ul style="list-style-type: none"> <li>- To ensure the National Police Service Commission is sufficiently funded and that it prioritizes the use of a vetting system, whereby alleged offenders are suspended from duty, pending investigation, and appropriately prosecute.</li> <li>- The Coroner’s Service Bill (2011) is enacted and the independent medical examiners service, proposed therein, promptly established.</li> </ul>	<p>conducted without violating domestic and international laws?</p>	<p>utilized in any security operation. The State should speedily investigate any such occurrences and prosecute those deemed responsible. Data on the outcome of such cases should be made publicly available.</p> <ul style="list-style-type: none"> <li>- In seeking to coordinate State responses to insecurity, the government should respect the independence and mandates of all constitutional bodies and State agencies involved and refrain from any policy or legislative measures that may undermine such independence.</li> <li>- The State in undertaking security operations must adhere to the absolute and unqualified constitutional protections with regard to freedom from torture and cruel, inhuman or degrading treatment or punishment;</li> </ul>

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<p>the <i>non-refoulement</i> principle.                      On December 19, 2014 the Security Laws (Amendment) Act 2014 was enacted to amend various laws relating to security. This law is however a source of concern as 8 of its provisions have been considered to be unconstitutional and infringing on various fundamental rights and freedoms. The law is currently the subject of a court petition and the High Court has issued temporary conservatory orders suspending 8 provisions in the law pending the full determination of the case.</p>				<p>the right to a fair trial; and the right to an order of <i>habeas corpus</i>.</p>
<p><b>4. Threats to Human Rights Defenders (HRDs), Civil Society Organizations and Witnesses of Human Rights Violations</b></p>				
<p>Various extra-judicial killings of HRDs remain unresolved such as those of Oscar King’ara and Paul Oulu (2009) and Hassan Guyo (2013). HRDs monitoring the State’s counter-terrorism activities</p>	<p>The government cites its appreciation for the role played by HRDs and civil society and calls on anyone facing threats to contact the authorities. It also cites the establishment of the Independent Policing</p>	<p><b>The Human Rights Committee</b> at its 105<sup>th</sup> Session in July 2012 called on Kenya:                      - To investigate police officers suspected of extra-judicial killings and perpetrators</p>	<p>- What steps has the State taken to investigate and prosecute cases of extrajudicial killings, harassment and or intimidation of human rights defenders?                      - What measures has the State undertaken to ensure that the Witness Protection Agency</p>	<p>- The State should institute immediate and genuine investigations and prosecution of all persons, including security agents found culpable of extra-judicial killings of human rights</p>

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<p>have faced intimidation and threats in the face of increased killings by the Anti-Terrorism Police Unit (ATPU).</p> <p>There are increased attempts to discredit civil society and curtail its activities. The State sponsored amendments to the Public Benefits Organisations Act that sought to increase executive control over CSOs and cut down foreign funding to a maximum of 15% of their budgets. The amendments failed and a joint taskforce has been constituted to review them.</p>	<p>Oversight Authority (IPOA) and the Witness Protection Agency as significant milestones in this regard.</p>	<p>brought to justice.</p> <ul style="list-style-type: none"> <li>- To conclude the investigations on the murders of Oscar King'ara and Paul Oulu.</li> <li>- To train State security officers on alternatives to use of force, peaceful settlement of disputes and understanding crowd behavior.</li> </ul> <p><b>The Committee Against Torture</b> at its 15<sup>th</sup> Session in May 2013 called on Kenya:</p> <ul style="list-style-type: none"> <li>- To take immediate and effective measures to ensure that the provisions of the Witness Protection Act are upheld in practice in order to effectively protect witnesses and their families, all allegations of violations are promptly, effectively and impartially investigated, and alleged perpetrators</li> </ul>	<p>and Independent Policing Oversight Authority (IPOA) can discharge their respective mandates effectively?</p> <ul style="list-style-type: none"> <li>- In light of the attempts to amend the Public Benefits Organisations Act, how does the State intend to ensure the public space for civil society and HRDs is maintained and that their operations can be carried out without fear of reprisals and intimidation?</li> </ul>	<p>defenders.</p> <ul style="list-style-type: none"> <li>- The State should ensure a conducive legal environment for HRDs and civil society in Kenya and publicly recognise their legitimate role.</li> <li>- The State should also uphold the constitutional right to association and peaceful assembly.</li> <li>- In consultation with key stakeholders, the State should develop and implement a policy for the protection of HRDs, especially for the most vulnerable categories, such as HRDs fighting for the rights of sexual minorities.</li> <li>- The State must ensure that the Witness Protection Agency is fully independent and well-funded, draft the Witness Protection Rules and Regulations in consultation with stakeholders, popularise and decentralise the</li> </ul>

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		<p>are prosecuted and punished.</p> <ul style="list-style-type: none"> <li>- To allocate sufficient resources to the Witness Protection Agency to enable it to function effectively in practice.</li> <li>- To ensure that all persons reporting acts of torture and ill-treatment are protected from intimidation and reprisals in any form.</li> <li>- To ensure prompt, effective and impartial investigations of any allegations of abuse or intimidations against human rights defenders.</li> <li>- To seek closer cooperation with civil society in upholding human rights, including the prevention of intimidation, reprisals and ill-treatment of human rights defenders.</li> </ul>		<p>agency.</p> <ul style="list-style-type: none"> <li>- The State must ensure that the Independent Policing Oversight Authority is well-funded.</li> </ul>
<p><b>5. Prevention of Torture and the Compensation, Reparations and Memorialization for Victims of Torture</b></p>				

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<p>Despite the fact that numerous torture victims have successfully obtained a range of compensatory awards from the High Court against the State for the harm they suffered, the State is slow in effecting such payments.</p> <p>The State has been ambivalent towards efforts by victim groups to have areas such as the former Nyayo House Torture Chambers declared national monuments and preserved for memorialization purposes.</p>	<p>There are constitutional safeguards for the prevention of torture. In addition the following legislative initiatives have been undertaken: (1) The Prevention of Torture Bill, 2014 (2) The Persons Deprived of Liberty Bill, 2014 (3) The Children Act (Amendment Bill) and (4) The Victim Protection Act, 2014</p> <p>The training curriculum for police officers has been reviewed and now incorporates practical training on respect for human rights, including the prohibition of torture and ill treatment.</p>	<p><b>The Human Rights Committee</b> at its 105<sup>th</sup> Session in July 2012 called on Kenya:</p> <ul style="list-style-type: none"> <li>- To ensure that allegations of torture and ill-treatment are effectively investigated and that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that the victims are adequately compensated.</li> <li>- To ensure that law enforcement personnel continue to receive training on torture and ill-treatment by integrating the 1999 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) in all training programmes for law</li> </ul>	<ul style="list-style-type: none"> <li>- What measures has the State undertaken to ensure justice for victims of torture including reparations and guarantees of non-repetition?</li> </ul>	<ul style="list-style-type: none"> <li>- The State should honour all decisions of the High Court issuing damages in favor of torture victims and make the required payments without further delay.</li> </ul>

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		<p>enforcement officials.</p> <ul style="list-style-type: none"> <li>- To ensure that the Prevention of Torture bill includes a definition of torture that is in line with article 1 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment</li> </ul> <p><b>The Committee Against Torture</b> at its 15<sup>th</sup> Session in May 2013 called on Kenya to:</p> <ul style="list-style-type: none"> <li>- Table the Prevention of Torture Bill (2011) as a matter of urgency.</li> <li>- Prosecute public officials found to have committed acts of torture.</li> <li>- Enact the Children’s Act (Amendment) Bill (2011) and the Child Justice Bill (2011) for appropriate penalties for acts of torture and ill-treatment of children.</li> <li>- Rrepeal, as a matter of</li> </ul>		

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		<p>urgency, the one-year limitation for tort claims against government officials.</p> <ul style="list-style-type: none"> <li>- Strengthen its efforts to reduce delays in civil compensation cases</li> <li>- Enact the Victims of Offences Bill as a comprehensive legislative framework for the right to redress, including compensation and medical rehabilitation</li> <li>- Consult with relevant stakeholders to properly and effectively regulate the National Fund for Victims of Torture as soon as possible.</li> <li>- Ensure that the right to rehabilitation is included in the Prevention of Torture Bill (2011), that adequate resources are allocated for effective rehabilitation treatment and programmes,</li> </ul>		

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		including medical and psychological programmes as well as those provided by non-State services. Rehabilitation services should be duly covered under the National Hospital Insurance Fund		
<b>6. The Death Penalty</b>				
While the <i>de facto</i> moratorium on the death penalty subsists, the State has failed to initiate activities aimed at sensitizing the public on the need to abolish the death penalty from Kenya’s laws.	After the country’s first review in 2010, the Government in collaboration with the Kenya National Commission on Human Rights and other stakeholders begun discussions on how to raise public awareness regarding the abolition of the death penalty, among Kenyans. However the process has faced challenges due to the lack of financial resources to effectively carry out the awareness countrywide.	<p><b>The Human Rights Committee</b> at its 105<sup>th</sup> Session in July 2012 called on Kenya:</p> <ul style="list-style-type: none"> <li>- To consider abolishing the death penalty and acceding to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).</li> <li>- To intensify awareness campaigns with a view to changing the public’s mindset on the death penalty.</li> </ul> <p><b>The Committee Against Torture</b> at its 15<sup>th</sup> Session in May 2013 called on Kenya:</p>	What progress has the State made towards abolishing the death penalty from its statute books?	<ul style="list-style-type: none"> <li>- The State should undertake sensitization and awareness campaigns on abolishing the death penalty without further delay.</li> </ul>

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		<ul style="list-style-type: none"> <li>- To reconsider the possibility of reviewing its policy with a view to abolishing the death penalty.</li> <li>- To treat all persons on death row humanely.</li> <li>- To support the Kenya National Commission on Human Rights in conducting a survey and awareness-raising measures regarding public opinion on the death penalty.</li> </ul>		
<b>7. Discrimination on the basis of Sexual Orientation and Gender Identity</b>				
<p>Sections of Kenya’s political leadership have continuously used rhetoric that has exposed Lesbians, Gays, Bisexual Transgender and Intersex persons (LGBTIs) to violence and other prejudices from the wider society.</p> <p>Social stigmatization and a legal system which criminalizes same-sex relationships make health</p>	<p>The State report is silent on issue.</p>	<p><b>The Human Rights Committee</b> at its 105<sup>th</sup> Session in July 2012 called on Kenya:</p> <ul style="list-style-type: none"> <li>- To decriminalize sexual relations between consenting adults of the same sex in order to bring its legislation in line with the International Covenant on Civil and Political Rights (ICCPR).</li> <li>- To take necessary</li> </ul>	<ul style="list-style-type: none"> <li>- What measures has the State undertaken to ensure that there is no discrimination of persons on account of their sexual orientation and gender identity?</li> <li>- What measures has the State undertaken to address and prevent the instances of violence targeting LGBTI persons in Kenya?</li> <li>- How has the State addressed the issue of discrimination and stigmatization of LGBTI persons in the context of its</li> </ul>	<ul style="list-style-type: none"> <li>- The State should publicly condemn and take action against those propagating attacks, hateful and inciteful sentiments against LGBTI persons and decriminalize consensual same sex conduct between adults.</li> <li>- The State should ensure that barriers to accessing health services are removed and policies put in place to promote and protect the rights of</li> </ul>

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<p>service providers reluctant to treat LGBTI patients. This is especially apparent in the fight against HIV/AIDS where the National AIDS and STI Control Program categorized Men who have Sex with Men (MSMs) as a Most at Risk Population.</p>		<p>steps to put an end to the social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity.</p> <ul style="list-style-type: none"> <li>- To take concrete measures to raise awareness on HIV/AIDS with a view to combating prejudices and negative stereotypes against people living with HIV/AIDS, including homosexuals.</li> <li>- To ensure that persons living with HIV/AIDS, including homosexuals, have equal access to medical care and treatment.</li> </ul>	<p>National AIDS and STI Control Program?</p>	<p>LGBTI persons to access the highest attainable standard of health care including reproductive health.</p>

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<b>8. Rights of Forced Migrants: Refugees and Internally Displaced Persons (IDPs)</b>				
<p>Despite significant efforts by government to assist IDPs, their programmes have excluded a significant number of integrated IDPs from the 2007-08 Post Election Violence and prior cycles of electoral violence that were left out of a profiling exercise done in 2008.<sup>2</sup> Concerns over genuine beneficiaries missing out on compensation,<sup>3</sup> and a lack of adequate consultation with IDPs in the selection of alternative lands for resettlement have been raised.</p> <p>Independent reports indicate that about <a href="#">55,000</a></p>	<p>The government undertook reconstruction of houses and made ex-gratia payment to 350,000 IDPs from the 2007-08 Post Election Violence. In addition it procured land for 8,754 IDP households and provided Kenya Shillings 400,000 each to another 817 IDP households.</p> <p>The government cites the enactment of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 (IDP Act) as the establishment of a rights-based response to displacement.</p> <p>The government states that it</p>	<p><b>The Human Rights Committee</b> at its 105<sup>th</sup> Session in July 2012 called on Kenya:</p> <ul style="list-style-type: none"> <li>- To expedite durable solutions for all IDPs who were displaced by the 2007 post-election violence by resolving existing problems that delay resettlement and those constraining the recognition of self-help groups.</li> <li>- To adopt an IDP policy and enact legislation on IDPs.</li> <li>- To provide adequate security at refugee camps, particularly at <i>Dadaab</i> camp.</li> <li>- To conduct thorough</li> </ul>	<ul style="list-style-type: none"> <li>- What measures has the State undertaken to address the needs of the integrated IDPs from the 2007- 08 Post Election Violence after being left out of the 2008 profiling process?</li> <li>- What lessons has the government learnt from the IDP profiling process of 2008 and what measures have been undertaken since then to improve the process?</li> <li>- What measures has the State undertaken to ensure its responses to internal displacement are consultative and inclusive of IDPs in determining durable solutions?</li> <li>- What safeguards has the State put in place to ensure its obligations on refugee</li> </ul>	<ul style="list-style-type: none"> <li>- In consultation with stakeholders, the State should initiate a profiling and data collection process on all IDPs in Kenya and provide them with durable solutions in a manner that ensures their meaningful participation in the process.</li> <li>- The government should fully facilitate the operations of the NCCC on IDPs as required by law and implement a public awareness programme targeting state officials and the public on the provisions of the IDP Act.</li> <li>- The State should ensure</li> </ul>

<sup>2</sup> This is currently the subject of ongoing litigation in *High Court of Kenya, Nairobi Petition No. 273 of 2011: Federation of Women Lawyers in Kenya and Others v. The Attorney General and Others*.

<sup>3</sup> Also the subject of ongoing litigation in *High Court of Kenya, Eldoret Petition No. 6 of 2013: David Kiptum Yator and Others v. the Attorney General and Others*.

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<p><a href="#">people were newly displaced in 2013</a> as a result of political, inter-communal and resource-based violence</p> <p>The government is yet to fully operationalize critical aspects of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 (IDP Act) such as regular meetings of the entire National Consultative Coordination Committee (NCCC) on IDPs and the institution of a public awareness campaign.</p> <p>The Government has advanced a strict, discriminatory refugee encampment directive in contravention of a 2013 High Court ruling.<sup>4</sup> In April 2014, the government launched <i>Usalama Watch</i>, an anti-</p>	<p>continues to uphold its international obligations by hosting a large refugee population in the <i>Dadaab</i> and <i>Kakuma</i> refugee camps. A review of the refugee legislation is underway.</p> <p>Kenya has also entered into a tripartite agreement with Somalia and the United Nations High Commissioner for Refugees (UNHCR) to facilitate the voluntary repatriation of refugees to Somalia</p>	<p>investigations into all incidents of violence at the camp including allegations of violence by law enforcement personnel and bring those responsible to justice together with compensation for victims.</p> <p><b>The Committee Against Torture</b> at its 15<sup>th</sup> Session in May 2013 called on Kenya:</p> <ul style="list-style-type: none"> <li>- In the context of counter-terrorism measures, to promptly, effectively and impartially investigate any allegation of torture and ill-treatment of ethnic Somalis perpetrated by the police and ensure that those responsible are prosecuted and punished according to the gravity of their acts. To also compile</li> </ul>	<p>protection are not contravened in the context of security operations such as <i>Usalama Watch</i>?</p> <ul style="list-style-type: none"> <li>- What safeguards has the State put in place to ensure that all repatriations to Somalia under the tripartite agreement are voluntary and not in contravention of the <i>non-refoulement</i> principle?</li> </ul>	<p>that security operations are conducted with due regard to human rights obligations and guard against undue profiling of refugees and asylum seekers.</p> <ul style="list-style-type: none"> <li>- The state must investigate and ensure accountability for human rights violations perpetrated by the security forces against refugees and asylum seekers.</li> <li>- The state must allow humanitarian access and assistance to refugees and asylum seekers in detention.</li> <li>- The state must refrain from relocating refugees from urban centres to camps in accordance with High Court orders, and ensure refugees and asylum seekers have fair and equitable access to healthcare, education and</li> </ul>

<sup>4</sup> *Kituo Cha Sheria v Attorney General [2013] High Court Petition 19 of 2013.*

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<p>terror security operation which has in resulted serious human rights violations against refugees and asylum seekers such as arbitrary arrests and detentions, ill treatment of detainees, extortion, deportations and family separations.</p> <p>More recently the government through statutory amendment attempted to cap the number of refugees that could be accommodated in the country to 150,000 but this provision has since been suspended by the High Court.</p>		<p>and publish data on the investigations carry out, including by any committees of inquiry established in this context, and their outcomes.</p> <ul style="list-style-type: none"> <li>- To uphold its <i>non-refoulement</i> obligations and therefore amend the following laws and bills: the Refugee Bill (2006), the Extradition (Contagious and Foreign Countries) Act (2010), the Extradition (Commonwealth Countries) Act (2010), the Kenya Citizenship and Immigrations Act (2011) and the Refugee Bill (2012)</li> </ul>		<p>social services</p> <ul style="list-style-type: none"> <li>- The state should desist from policies and practices contrary to the Tripartite Agreement in order to guarantee the repatriation of Somali refugees in a voluntary manner and in safety and dignity.</li> </ul>
<p><b>9. Rights of Minorities and Indigenous Peoples</b></p>				
<p>The 2010 decision by the African Commission on Human and Peoples' Rights in the <a href="#">Endorois case</a> is yet to be implemented. A Government Taskforce on the implementation of the decision in was finally</p>	<p>The Government cites the following as achievements:</p> <ul style="list-style-type: none"> <li>- Constitutional safeguards against discrimination and the recognition of marginalized groups.</li> <li>- Reforms to Kenya's land</li> </ul>	<p><b>The Human Rights Committee</b> at its 105<sup>th</sup> Session in July 2012 called on Kenya:</p> <ul style="list-style-type: none"> <li>- To ensure that the rights and entitlements of all children of Nubian descent, and</li> </ul>	<ul style="list-style-type: none"> <li>- What concrete measures has the State undertaken to enforce the rights of minorities and indigenous peoples and more so in line with various judicial decisions at the regional and national levels?</li> <li>- What progress has the State</li> </ul>	<ul style="list-style-type: none"> <li>- The State should adhere to all orders issued by judicial bodies either at the local or regional level regarding the rights of indigenous peoples.</li> <li>- The State should enact community land</li> </ul>

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<p>established in September 2014 but its terms of reference do not meet the threshold of engaging in dialogue with the Endorois as required.</p> <p>The Ogiek community have obtained <a href="#">provisional measures</a> from the African Court on Human and Peoples' Rights (AfCHPR), and a <a href="#">judgement from the Kenyan Environment and Land Court</a> supporting the reversal of their eviction from the Mau Forest complex which is their ancestral land. The Sengwer community has also been forcefully evicted from the <a href="#">Embobut forest</a> despite the existence of a Court order prohibiting the exercise.</p> <p>The Lamu Port-South Sudan- Ethiopia Transport Corridor (LAPSSET) project has progressed in the absence of a</p>	<p>tenure system including a proposed legislation on community land.</p> <ul style="list-style-type: none"> <li>- The appointment of an Inter-Agency Taskforce to guide the implementation of the Endorois decision.</li> <li>- Legal provisions allowing for the registration of all stateless persons.</li> </ul>	<p>other children in a similar situation, to citizenship and national identity cards are fully respected.</p> <ul style="list-style-type: none"> <li>- To respect the rights of minority and indigenous groups to their ancestral land even as it exploits natural resources and undertakes conservation projects.</li> <li>- To ensure that the assessment of the status and land rights of the Ogiek community is done in a participatory manner and based on free and informed consent by the community.</li> </ul> <p><b>The African Commission on Human and Peoples' Rights (ACHPR)</b> during its 54<sup>th</sup> Ordinary Session in October 2013 issued resolution ACHPR/Res.257 (LIV) 2013 calling on Kenya to implement the Endorois</p>	<p>made in implementing judicial decisions concerning the rights of the Endorois, Ogiek, Sengwer and Nubian communities?</p> <ul style="list-style-type: none"> <li>- What safeguards has the State introduced to prohibit the arbitrary eviction of minority and indigenous communities from their ancestral lands?</li> <li>- What progress has been made towards formulating legislation on community land?</li> <li>- Has the State considered the environmental impact of the LAPSSET project and its effect on the livelihoods of the fisher-folk communities in Lamu? What measures has the State put in place to mitigate any adverse effects that may arise?</li> </ul>	<p>legislation to provide the legal framework for the use, transfer and management of community land without any further delay.</p> <ul style="list-style-type: none"> <li>- The State should conclude enactment of the Evictions and Resettlement Procedures Bill to provide for protection against inhumane and unlawful evictions.</li> <li>- The National Land Commission should investigate historical land injustices as constitutionally mandated without further delay.</li> <li>- The government should commission a comprehensive environmental and social impact assessment that takes cognizance of the human rights and developmental consequences of all aspects of the LAPSSET project on the local</li> </ul>

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<p>comprehensive Environmental Impact Assessment (EIA). This threatens the livelihoods of the fisher-folk communities residing in Lamu.</p>		<p>decision.</p>		<p>community and the environment.</p>
<p><b>10. Industrial unrest and the lack of a living wage</b></p>				

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<p>The public sector has experienced industrial unrest due to poor pay at various job group levels. The government has reneged on collective bargaining agreements with teachers, lecturers, doctors and nurses.</p> <p>Furthermore, various union officials and members have alleged intimidation by government and victimization for undertaking industrial action.</p> <p>The minimum wage policy in Kenya is inadequate and does not result in a living wage for Kenya's workers. The minimum wage setting approach is hampered by the dormant status of wage councils that are unable to implement or enforce their directives.</p>	<p>The State report is silent on this matter.</p>	<p>No reporting on this for the period under review.</p>	<ul style="list-style-type: none"> <li>- What measures is the State putting in place to address poor pay in the public sector and the delayed implementation of collective bargaining agreements entered into with various unions?</li> <li>- What approach does the State utilize in setting the minimum wage and what progress has it made towards ensuring that it is a living wage?</li> </ul>	<ul style="list-style-type: none"> <li>- The State should honour existing collective bargaining agreements reached with teachers, lecturers, doctors and nurses.</li> <li>- The State should also protect workers' constitutional right to industrial action without fear of reprisals.</li> <li>- The State should review the current minimum wage policies and adopt a living wage benchmark which can support a decent standard of living for workers in all sectors.</li> <li>- The State should adopt a comprehensive wage determination framework to guide salary reviews for all sectors, with clear parameters for minimum wage adjustments.</li> </ul>
<p><b>11. Human Rights Violations by Multi-National Corporations (MNCs) and the need for Equitable Benefit Sharing of Natural Resources</b></p>				
<p>Some local communities such as the Turkana on whose land oil exploration</p>	<p>The State report is silent on this matter.</p>	<p>No reporting on this for the period under review.</p>	<ul style="list-style-type: none"> <li>- What safeguards has the State put in place to ensure that there is equitable benefit sharing of</li> </ul>	<ul style="list-style-type: none"> <li>- The State should undertake a baseline survey on the impact of</li> </ul>

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<p>is taking place, have complained of discriminatory employment practices by a lead oil explorer company.</p> <p>Research in Kenya's tea sector and in particular a multi-national tea packer company highlighted instances of sexual harassment, ethnic and gender discrimination in tea estates coupled with dire housing conditions for workers.</p>			<p>natural resources between Multi-National Corporations (MNCs), the State and communities?</p> <ul style="list-style-type: none"> <li>- What measures has the State put in place to address human rights violations that may arise from the activities of MNCs?</li> </ul>	<p>MNCs on human rights and develop a National Action Plan for the implementation of the United Nations Guiding Principles on Business and Human Rights.</p> <ul style="list-style-type: none"> <li>- The State should investigate and ensure accountability for human rights violations.</li> <li>- The State should also actively support efforts to develop a binding international instrument on business and human rights including the establishment of effective grievance mechanisms.</li> <li>- The State should ensure that agreements relating to the exploitation of natural resources are publicly available and provide for equitable benefits sharing with local communities.</li> </ul>
<b>12. Addressing Sexual and Gender-based Violence</b>				
<p>In 2011, the number of reported sexual offences increased to 4,703 from</p>	<p>Gender Violence Recovery centres have been opened in major public hospitals across</p>	<p><b>The Human Rights Committee</b> at its 105<sup>th</sup> Session in July 2012 called</p>	<ul style="list-style-type: none"> <li>- What measures has the State undertaken to improve investigations and prosecution</li> </ul>	<ul style="list-style-type: none"> <li>- The State should establish and make operational one-stop</li> </ul>

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<p>3,525 in 2007.<sup>5</sup> In 2013, the Inspector General of Police reported that <a href="#">rape cases had increased by 22%</a>. Furthermore, insufficient resources and infrastructure inhibit comprehensive and quality medical care for survivors.</p>	<p>the country to deal with matters of gender violence.</p> <p>The Office of the Attorney General and Department of Justice has formulated a Reference Manual that expounds on the Sexual Offences Act of 2006 as well as sets standards and recommendations on best practices to various key service providers.</p> <p>In 2014, The Chief Justice published Sexual Offences Rules of Court, 2014 which address the plight of victims and witnesses during the prosecution of sexual offences.</p>	<p>on Kenya:</p> <ul style="list-style-type: none"> <li>- To adopt a comprehensive approach to preventing and addressing Female Genital Mutilation (FGM), and gender-based violence in all its forms and manifestations.</li> <li>- To improve its research and data collection methods in order to establish the extent of the problem, its causes and consequences on women.</li> <li>- To vigorously implement the Sexual Offences Act of 2006 and finalize the draft Prosecution Guidelines on Sexual Offences and Gender Based Violence, and enact legislation on the protection against domestic violence.</li> </ul>	<p>in cases of sexual and gender based violence?</p> <ul style="list-style-type: none"> <li>- What assistance programmes has the State put in place to aid survivors of sexual and gender-based violence? To what extent have the Gender Violence Recovery Centers been effective in addressing the physical and psychological needs of survivors of SGBV?</li> </ul>	<p>sexual and gender-based violence centers in public hospitals at the County Ward level to provide comprehensive medical and psychosocial assistance to survivors.</p> <ul style="list-style-type: none"> <li>- The State should ensure effective investigations of sexual violence including through sufficient financing and establishment of forensic testing laboratories.</li> <li>- The State should also develop targeted public campaigns to address entrenched discriminatory practices that fuel gender based violence.</li> </ul>

<sup>5</sup> Peace Initiative Kenya (2013) ‘A Report of the Status of GBV in Kenya’, 3-4.

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		<ul style="list-style-type: none"> <li>- To thoroughly investigate and prosecute cases of FGM and domestic violence while ensuring victims are adequately compensated.</li> </ul>		
<b>13. Improving Maternal Health</b>				
<p>Maternal health remains a concern with mortality rates at 488 deaths per 100,000 births. Deaths from unsafe abortion account for 13% of maternal mortality in Kenya.</p> <p>The Ministry of Health developed National Standards and Guidelines for the Reduction of Maternal Mortality from Unsafe Abortion in 2012 and a National Training Curriculum for the Management of Unintended, Risky and Unplanned Pregnancies. The guidelines were un-procedurally withdrawn in 2013.</p>	<p>The National Reproductive Health Policy, 2007 is identified as the main policy framework that has since been complemented by the National Reproductive Health Strategy, 2009-15. The Reproductive Healthcare Bill 2014 is currently before Parliament for consideration.</p> <p>Other measures include:</p> <ul style="list-style-type: none"> <li>- Training and follow-up of health care workers including community midwives in skilled care during pregnancy and child birth.</li> <li>- Launch of the maternal and neo-natal health roadmap on maternal health in 2010; The creation of the Anti-FGM</li> </ul>	<p><b>The Committee Against Torture</b> at its 15<sup>th</sup> Session in May 2013 called on Kenya:</p> <ul style="list-style-type: none"> <li>- To end the practice of forcible detention of post-delivery mothers for non-payment of fees, including in private health facilities.</li> <li>- To strengthen its efforts to investigate allegations of involuntary sterilizations or other harmful practices in connection with reproductive health, and identify and punish those involved in such practices</li> <li>- To enact the Family</li> </ul>	<ul style="list-style-type: none"> <li>- How does the State intend to address deaths from unsafe abortions which account for 13% of maternal mortality in Kenya?</li> <li>- To what extent has the State integrated Traditional Birth Attendants (TBAs) into the health system and ensured they are equipped with the requisite skills?</li> </ul>	<ul style="list-style-type: none"> <li>- The State should urgently re-instate the National Standards and Guidelines for the Reduction of Maternal Mortality from Unsafe Abortion and the National Training Curriculum for the Management of Unintended, Risky and Unplanned Pregnancies.</li> <li>- The State should prioritize the increase of access to contraceptives and specifically for women in marginalized areas.</li> <li>- The State should also consider the inclusion of TBAs within the health system.</li> </ul>

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<p>Another cause of maternal mortality is that majority of women give birth at home with the assistance of Traditional Birth Attendants (TBAs) who are neither trained nor integrated into the national health system</p>	<p>Board to conduct awareness, coordinate FGM activities and advise the Government on matters relating to FGM.</p> <ul style="list-style-type: none"> <li>- The Plan of Action for Kenya’s Adolescent Reproductive Health and Development Policy 2005-2015.</li> <li>- Introduction of the Output Based Approach which is a voucher system for the poor to access quality services in some health facilities.</li> <li>- Free maternal healthcare services which has resulted in an increase in deliveries in hospitals since 2013.</li> </ul>	<p>Protection Bill.</p> <ul style="list-style-type: none"> <li>- To ensure that the National Gender and Equality Commission effectively monitors the conditions in reproductive health facilities by issuing periodic status reports.</li> <li>- To amend its legislation in order to grant women who have been subjected to rape or incest the right to abortion independently of any medical professional’s discretion.</li> <li>- To evaluate the effects of its restrictive legislation on abortion on women’s health with a view to regulating this area with sufficient clarity.</li> </ul>		
<b>14. Participation of Women in Governance</b>				
<p>While Article 81 (b) of the Constitution requires that no more than two-thirds of the members of elective public bodies be of the same gender, women only</p>	<p>The State report cites numerous affirmative measures provided for in the Constitution, various pieces of legislation and a series of</p>	<p><b>The Human Rights Committee</b> at its 105<sup>th</sup> Session in July 2012 called on Kenya:</p> <ul style="list-style-type: none"> <li>- To increase the participation of women</li> </ul>	<ul style="list-style-type: none"> <li>- What progress has the State made towards complying with the direction of the Supreme Court that required the enactment of legislation to give effect to the two-thirds</li> </ul>	<ul style="list-style-type: none"> <li>- Kenya should urgently enact legislation to realize and achieve the Constitutional gender parity provisions to secure the representation</li> </ul>

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<p>constitute 19% of the National Assembly and 26% of the Senate.</p> <p>Despite direction from the Supreme Court in 2012 for Parliament to enact legislation to give effect to the two-thirds gender rule by August 2015, no such legislation has been introduced to date.</p>	<p>policy and Executive actions.</p> <p>The State report notes that Kenya now has over 21 per cent women representation in Parliament, the highest ever in the country's history. It however notes that these percentages are still below the recommended threshold of 30 per cent under the Constitution.</p> <p>A Working Group has been appointed to develop a suitable legal framework that will facilitate compliance with the Constitutional provisions on the two third gender rule in representation of women in elective and appointive positions.</p>	<p>in the public and private sectors, and where necessary, through appropriate temporary special measures.</p> <ul style="list-style-type: none"> <li>- To ensure that the two-thirds rule enunciated by the new Constitution is implemented as a matter of priority.</li> <li>- To include in its next periodic report, disaggregated statistical data on the representation of women in the private sector.</li> </ul>	<p>gender rule by August 2015?</p>	<p>and participation of women in governance.</p>