



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)



KNCHR 3RD CYCLE UNIVERSAL PERIODIC REVIEW (UPR) MID-TERM REPORT

JANUARY 2021 – DECEMBER 2023

ABSTRACT

This report provides an overview of the implementation status of recommendations accepted by the Government of Kenya under the third cycle of the Universal Periodic Review. Out of the 319 recommendations, Kenya accepted 263, with progress noted on 48, partial implementation on 11, and no known action on 17. The COVID-19 pandemic has impacted implementation, but commendable actions have been taken in areas such as police reform, data protection, abolishing the death penalty, and improving access to justice for victims of sexual and gender-based violence. However, challenges remain, including the high cost of living and threats to the rule of law.

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INTRODUCTION

The Kenya National Commission on Human Rights (the KNCHR/the Commission) was established under Article 59 of the Constitution of Kenya, 2010, and operationalized by the Kenya National Commission on Human Rights Act, 2011. The Commission is mandated to promote respect for human rights and develop a culture of human rights in Kenya. Additionally, it oversees the implementation of the Prevention of Torture Act, 2017 and acts as the national monitoring agency under Article 33 (2) of the Convention on the Rights of Persons with Disabilities.

The Commission enjoys affiliate status with the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child. In addition, the KNCHR is a member of the Network of African National Human Rights Institutions (NANHRI), the regional umbrella body that brings together National Human Rights Institutions in Africa. Since conferment of 'A' status in 2005 on its compliance with the Paris Principles, the Commission has been subsequently reaccredited with 'A' status by the Global Alliance of National Human Rights Institutions (GANHRI) in the succeeding three five-year cycles in 2008, 2014 and 2019.

Pursuant to its constitutional and statutory mandate of promoting and protecting human rights, and as the designated state organ in ensuring compliance with obligations arising from human rights treaties, the Commission submits alternative reports to United Nations and regional treaty bodies, participates in the review of the State by the various Committees, disseminates the concluding observations of the various treaty body mechanisms, supports the development of implementation plans of concluding observations and monitors the implementation of concluding observations made by treaty body mechanisms. The Commission engaged in the third cycle of the Universal Periodic Review through preparation and submission of a report that informed the review; supporting the preparation of the Civil Society UPR report and the State report; engaging different stakeholders including recommending States; lobbying for the State to accept more recommendations post-review; supporting the development of the Government's UPR implementation plan; monitoring the implementation of accepted recommendations and engaging in advocacy dialogues with state and non-state actors towards implementation of the recommendations.

The Commission submits this report to the Office of the United Nations High Commissioner for Human Rights to inform it of the status of implementation of recommendations accepted by the Government of Kenya under the third cycle of the Universal Periodic Review. The report highlights the progress of implementation of selected recommendations.

METHODOLOGY

In compiling this report, the Kenya National Commission on Human Rights used the Government Implementation Plan (2021-2025) as the primary reference document as well as the Outcome document of the UPR Working Group of the Human Rights Council. The report was prepared through desk-top research and broad consultations with the ministries, departments and agencies responsible for implementation of the accepted recommendations. Information and data were retrieved from the monitoring activities, advisories, complaints statistics, and research reports of the Commission as well as data from government reports. The Commission dispatched letters and made follow-up calls to 28 different ministries, departments and agencies requesting information on the status of implementation of accepted recommendations. The Commission also engaged in validation meetings and subjected its findings to the convenors of thematic clusters under the Kenya UPR Stakeholders Coalition on the UPR (CSOs) for their comments. The Commission also participated in advocacy dialogue fora in 2023 bringing together both state and non-state actors to track progress and encourage duty bearers to accelerate the implementation of the pending recommendations ahead of Kenya's fourth cycle UPR review in 2025.

The Commission wishes to appreciate the partnerships with the CSOs and Department of Justice in the UPR process. The Commission especially acknowledges the following government institutions and Departments that provided useful feedback data to the Commission:

- Anti-Female Genital Mutilation Board
- Ethics and Anti-Corruption Commission
- Independent Policing and Oversight Authority
- Ministry of Interior and National Administration
- National Land Commission
- National Council for Persons with Disabilities
- Office of the Director of Public Prosecutions
- State Department for Crop Development
- State Department for Gender and Affirmative Action
- State Department for Irrigation
- State Department for Lands and Physical Planning
- State Department for Livestock Development
- State Department for Social Protection
- State Department for Water and Sanitation

EXECUTIVE SUMMARY OF KEY DEVELOPMENTS AND UPR IMPLEMENTATION

Kenya was reviewed under the third cycle of the Universal Periodic Review process on 23rd January 2020. Out of the 319 recommendations made to Kenya by 118 State delegations, Kenya accepted to implement 263 of them before its next review. In its assessment of 84 selected accepted recommendations, the Kenya National Commission on Human Rights has established that majority of them (48) are in the process of being implemented. Furthermore, 8 of the accepted recommendations have been fully implemented, while 11 have been partially implemented. Little or no known action has been taken by the Government to implement 17 accepted recommendations.

The implementation of the accepted recommendations has primarily been affected by the outbreak of the COVID-19 pandemic. Nevertheless, the Government has taken commendable action to reform the police service, to improve the regulatory framework on data protection, to abolish the death penalty, and to improve the juvenile justice system, access to health care including mental health and the rights of refugees and asylum seekers in Kenya. In addition, a *National Action Plan on Business and Human Rights for the Implementation of the United Nations Guiding Principles on Business and Human Rights* has been adopted and launched. This Action Plan offers a comprehensive strategy for protection against human rights-related violations by business enterprises, including State-owned enterprises. Notably, Kenya is the first African country to have developed and launched a National Action Plan on Business and Human Rights. Furthermore, specialized sexual and gender-based violence courts and registries have been established across the country to facilitate access to justice for victims of sexual and gender-based violence. No efforts have been made to implement the recommendations given to ratify international treaties. Furthermore, the escalating cost of living coupled with threat to the rule of law through circumventing of court orders threatens the enjoyment of economic and social rights.

FOLLOW-UP TO UPR RECOMMENDATIONS RECEIVED

UPR RECOMMENDATION	STATUS OF IMPLEMENTATION	DESCRIPTION OF ACTIVITIES UNDERTAKEN, RESULTS AND CHALLENGES
LEGAL AND INSTITUTIONAL REFORMS		
RATIFICATION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS		
<p>142.2: Ratify the Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography to strengthen and harmonize existing national laws and policies</p> <p>Also covers:142.1,142.3, 142.4, 142.5, 142.6, 142.7, 142.8, 142.9, 142.10, 142.11</p>	Not implemented	<p>The State has not taken any steps to ratify the Optional Protocol. However, key laws and policies that protect children from prostitution and pornography have been enacted. Notably, the 2022 Children Act¹ recognizes “the use or exposure of a child in, electronic or online, platforms for purposes of prostitution, pornography or any other unlawful sexual practice” as a form of child abuse. A child who has been sexually abused or is likely to be exposed to sexual abuse and exploitation, including prostitution and pornography is identified as one who needs care and protection. A person who abuses a child is liable to imprisonment for a term not exceeding five years or to a fine not exceeding two million shillings, or to both fine and imprisonment. <i>A Training Handbook for the Investigation and Prosecution of Online Child Sexual Exploitation and Abuse</i> was launched in July 2023.</p>
<p>142.12: Consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at</p>	Not implemented	<p>The State has not taken any steps to ratify the Optional Protocol. The KNCHR continues lobbying the state to embark on the process of ratification.</p>

¹ Children Act, 2022. Available at http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2022/TheChildrenAct_2022.pdf

the abolition of the death penalty		
<p>142.18: Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</p> <p>Also covers 142.13 142.14 142.15 142.16 142.17 142.19 142.20 142.22</p>	<p>Not implemented</p>	<p>The State has not taken any steps to ratify the Optional Protocol. The KNCHR continues lobbying the state to embark on the process of ratification.</p>
<p>142.13: Consider ratifying the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</p> <p>Also covers 142.14 142.15 142.16 142.17 142.27</p>	<p>Not implemented</p>	<p>The State has not taken any steps to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The KNCHR continues lobbying the state to embark on the process of ratification.</p>

<p>142.21: Complete the process of ratifying the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa</p>	<p>Implemented</p>	<p>The Government of Kenya ratified both² Protocols on 15th November 2021 and deposited its instruments of ratification at the African Union on 4th February 2022.</p>
<p>UN SPECIAL PROCEDURES</p>		
<p>142.23: Extend an open invitation to the special procedures of the Human Rights Council</p>	<p>Not implemented</p>	<p>The Government of Kenya has expressed its commitment to extend an open invitation to the special procedures of the Human Rights Council. However, there have been no reports of specific action taken by the Government in response to requests by special procedures since the last UPR review. The KNCHR recommends that the Government establishes clear guidelines and procedures for responding to requests by special procedures and ensures that relevant government agencies and officials are aware of the importance of cooperation with the special procedures. The Government should also provide regular updates on progress made in implementing this recommendation.</p>
<p>KENYA NATIONAL COMMISSION ON HUMAN RIGHTS</p>		

² See [https://au.int/sites/default/files/treaties/36438-sl-PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS ON THE RIGHTS OF OLDER PERSONS.pdf](https://au.int/sites/default/files/treaties/36438-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLES%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20OLDER%20PERSONS.pdf) and [https://au.int/sites/default/files/treaties/36440-sl-PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS ON THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA.pdf](https://au.int/sites/default/files/treaties/36440-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLES%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20PERSONS%20WITH%20DISABILITIES%20IN%20AFRICA.pdf)

<p>142.38: Take measures to strengthen the independence and efficiency of the Kenya National Commission on Human Rights, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights</p>	<p>Partially implemented</p>	<p>Several steps have been taken to strengthen the independence and efficiency of the Commission. KNCHR Commissioners were appointed in February 2022 under Gazette notice No. 2047. However, the Commission still faces human resource constraints and receives inadequate budgetary allocation from the Government in comparison to other State-funded institutions and agencies. The Commission has consistently received a half of its requested budget allocation and is therefore unable to adequately implement its mandate and to meet its overhead costs. Positively, the financial allocation to the Commission has increased over the years since 2020. During the 2020/2021, 2021/2022, and 2022/2023 financial years, the Commission received 374, 399 and 441 million KES respectively.</p> <p>In terms of staffing, the Commission is required to have 461 staff to operate optimally. The Commission currently has 125 staff in post. The Commission is therefore operating at 27% of its required establishment.</p> <p>Notably, the Economic and Social Rights Bill introduced in Parliament grants the Commission the powers to monitor and promote the implementation of economic and social rights in Kenya.³ The Bill was passed by the Senate on 20th June 2023 and referred to the National Assembly. As at 4th July 2023, the Bill had been read the first time at the National Assembly.</p>
<p>Also covers 142.36, 142.37</p>		
<p>NATIONAL POLICY AND ACTION PLAN ON HUMAN RIGHTS</p>		
<p>142.45 Consider reviewing the National Policy and Action Plan on Human Rights to ensure that it addresses all emerging issues</p>	<p>In the process of being implemented</p>	<p>The Kenya National Commission on Human Rights and the Office of the Attorney General are spearheading the review of the National Policy and Action Plan on Human Rights. Several discussions on the roadmap towards the review have been held. Progress includes the development of a concept paper analyzing the extent of the implementation of the Policy, emerging human rights concerns that should be incorporated in the reviewed policy and the formation of a multi-sectoral committee to lead the review of the process. Regional human rights</p>

³ See <http://www.parliament.go.ke/sites/default/files/2023-06/The%20Economic%20and%20Social%20Rights%20Bill%20Senate%20Bill%20No.%207%20of%202022.pdf>

<p>Also covers 142.42, 142.43 142.44</p>	<p>forums and a national human rights forum have also been held to kick start the review process.</p>
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CIVIL AND POLITICAL RIGHTS

SECURITY SECTOR REFORMS		
<p>142.49: Continue with the Security Sector reforms to enable police to effectively protect and respect human rights</p> <p>Also covers 142.52</p>	<p>In the process of being implemented</p>	<p><i>A National Taskforce on Improvement of the Terms and Conditions of Service and Other Reforms for Members of the National Police Service and Kenya Prisons Service</i> was established on 21st December 2022 through Gazette Notice No. 15792.⁴ The objectives of the Taskforce include, among others: to identify the legal, policy, administrative, institutional and operational constraints on effective service delivery by the National Police Service and the Kenya Prisons Service and to review and recommend improvement of the terms and conditions of the Service.</p> <p>The National Taskforce completed its assignment and presented its report⁵ to the President on 16th November 2023. The Taskforce established that the three Services are bedeviled with a myriad challenges, foremost among them being underfunding; endemic corruption; leadership in the three Services; poor handling of human capital management and development; and other structural challenges. The Taskforce made a number of recommendations. President Ruto issued a directive to the relevant organs of government to commence implementation of the various recommendations of the taskforce, beginning with the following:</p>

⁴ See <https://gazettes.africa/archive/ke/2022/ke-government-gazette-dated-2022-12-21-no-281.pdf>

⁵ Executive Summary of the Report of the National Taskforce on Police Reforms, available at <https://icj-kenya.org/news/executive-summary-report-of-the-national-taskforce-on-police-reforms/#:~:text=The%20Taskforce%20was%20set%20up,welfare%20and%20the%20terms%20and>

1. Alignment of the terms and conditions of service for the National Police Service (NPS), Kenya Prisons Service (KPS) and National Youth Service (NYS) with other security organs.
2. Review the pay, living conditions, medical cover, housing and other aspects of welfare for members of the services and simply do the right thing by our officers.
3. Review legislative and policy framework governing operations within the NPS, KPS and NYS to ensure better service to Kenyans, greater accountability, transparency, respect for the rule and integrity, and the subordination of these critical security services to civilian oversight and authority, in line with our deepening democratic credentials.
4. Institutionalize long-term equipment modernization for NPS, KPS and NYS.
5. Automate human resource and finance management procedures in the NPS, KPS, NYS including processes for recruitment, transfer promotions and payments of salaries and allowances.
6. Implement the human resource policy on transfer for all officers in the three services to ensure no officer serves for more than three years in the same county.

On 13th October 2021, the National Police Service launched its first ever policy for an integrated response to sexual and gender-based violence. The Policy is intended to steer the National Police Service in the establishment, management and operations of one-stop centers dubbed “Policare” to strengthen the capacity of the Service to prevent and respond to sexual and gender-based violence cases. The Policare service providers include, among others, the police, forensic investigators, health providers, psychologists and gender experts. Two Policare centers have been established. However, they are not yet operational.

The Ministry of Interior and National Administration has developed ***Standard Operating Procedures (SOPs) on prevention and response to gender-based***

violence. The SOPs provide a detailed and uniform guide to handle gender-based violence cases in all stations across the country.

The National Police Service has installed and operationalized digital Occurrence Book (OB) in 54 police stations within Nairobi region on a pilot basis.

Use of force and firearms is regulated under section 61 of the National Police Service Act (2011) providing for the “power to use firearms”. Generally, the prevailing law advocates for policing by non-violent means and force may only be used as a last resort. The sixth schedule of the Act sets the rules/conditions and circumstances where a police officer may use force and firearms. Notably, however, the Regulations on the use of force and firearms under the sixth schedule have however not been adopted. Use of firearms is also regulated by Chapter 58 of the Service Standing Orders on “Public Order Management,” Appendix 58 (A)- use of firearms by police.

The decision in *Nairobi High Court Constitutional petition No. 379 of 2017- The Katiba Institute & Another Vs. the Attorney General, the Inspector General and 4 others* nullifying Paragraph 1 (c) (d) and (e) of Part B of the Sixth Schedule of the National Police Service Act necessitates an amendment of the Schedule in line with the judgment delivered on 16th December 2022. The decision annulled protection of property, prevention of a person charged with a felony from escaping lawful custody and/or rescue of such a person as circumstances justifying the use of force.

Public Service Management is one of the critical functions of the Service by dint of Sections 24, 27 and 35 of the National Police Act requiring the Service to maintain law and order, preserve peace and generally prevent crime. This is achieved through enforcement of the National Police Service Act, the Public Order Act (Chapter 56) and Chapter 58 of the Service Standing Orders on “Public Order Management”.

Amendments to public order management laws and regulations are however necessary to align them with important lessons learnt during enforcement of

public order during the COVID-19 pandemic and electioneering periods; and also take into account the restrictions on the use of forces as redefined by the ***Nairobi High Court Constitutional Petition No. 379 of 2017- The Katiba Institute and Another Vs. the Attorney General, the Inspector General and 4 others.***

Efforts made to strengthen accountability mechanisms in the security sector

Out of the 24,569 complaints lodged with the Independent Policing Oversight Authority (IPOA) since inception, 10,351 were received between the 2019/2020 financial year and December 2022. Over the last one year, the Ministry of Interior and National Administration addressed quite a number of complaints, mostly lodged by walk in clients. Safe for those that require investigations, most complaints were addressed at the relevant units through liaison with relevant police establishments on the issues arising and/or provision of appropriate information. Complaints requiring investigations were appropriately referred to the Directorate of Quality Assurance at Kenya Police Service, Complaints Unit at the Directorate of Criminal Investigations and Internal Affairs Unit for further action. 2,641 complaints were reported to the Ministry of Interior and National Administration in 2020 compared to 3,590 and 4,891 in 2021 and 2022, respectively.

As at 31st December 2022, 4,251 cases were investigated, 181 were prosecuted and 19 were convicted by the IPOA. During the 2020 year, the Ministry of Interior and National Administration investigated 136,972 cases, prosecuted 96,967 cases and convicted 31,211 cases. During the 2021 year, the Ministry investigated 156,104 cases, prosecuted 106,728 cases and convicted 40,612 cases. During the 2022 year, the Ministry investigated 159,216 cases, prosecuted 131,752 cases and convicted 32,555 cases.

16 disciplinary cases have been concluded by the IPOA. The Ministry of Interior and National Administration commenced and concluded 794 cases in the year 2020, 443 in the year 2021 and 807 cases in the year 2022.

<p>142.141: Further enhance civilian oversight over the Police Service by thoroughly implementing the IPOA Act of 2011</p>	<p>In the process of being implemented</p>	<p>The Standard Operating Procedures (SOPs) on Investigation and Prosecution of Serious Human Rights Violations Committed by Police Officers⁶ were launched by the Independent Policing Oversight Authority in December 2020. The Standard Operating Procedures aim to develop a structured framework for enhancing accountability and protection of victims in investigation and prosecution of offences in relation to serious human rights violations committed by police officers. They are currently being implemented. A sensitization meeting on the Standard Operating Procedures was carried out for 7 staff members of the IPOA from 26th to 31st March 2023.</p> <p>A needs assessment for the Trainer of Trainers training was conducted on 21st February 2023. 14 staff members from the IPOA attended the training. A Trainer of Trainers training was conducted from 27th February 2023 to 3rd March 2023 targeting participants from IPOA, Directorate of Criminal Investigations, International Justice Mission and Office of the High Commissioner for Human Rights.</p> <p>Regarding financial allocation, the IPOA was allocated a total of Kshs. 2.538 billion from the year 2020 to 2023.</p>
<p>Also covers 142.147</p>		
<p>PREVENTION OF TORTURE</p>		
<p>142.55: Strengthen training and awareness programmes for State officials in the field of human rights for the effective implementation of the law on prevention of torture</p>	<p>In the process of being implemented</p>	<p>The Kenya National Commission on Human Rights, in partnership with the Office of the Director of Public Prosecutions, the Independent Policing Oversight Authority and the National Police Service and other State agencies working on police reforms and accountability carries out trainings for the police on a human rights-based approach and the Prevention of Torture Act.</p>

⁶ See <https://www.odpp.go.ke/wp-content/uploads/2023/05/ODPP-SOPS-on-Investigation-Prosecution-of-Serious-Human-Rights-Violations-Committed-by-Police-Officers.pdf>

<p>142.91: Prevent torture and impunity through full implementation of the National Coroners Service Act 2017 and the Prevention of Torture Act 2017, including an evaluation tool to monitor progress</p> <p>Also covers: 142.92 142.94 142.137 142.138 142.140 142.142 142.144 142.145 142.146 142.148</p>	<p>In the process of being implemented</p>	<p>The National Coroners Service Act has not yet been operationalized. The State Law Office is in the process of setting up the necessary structures to ensure a fully functional National Coroners Service. The Office has also appointed an acting Coroner-General. The main area of contestation regarding the National Coroners Service is its independence. The Department of Justice and the Kenya National Commission on Human Rights constituted a Working Group in May 2023 to spearhead efforts towards the operationalization of the National Coroners Service Act.</p> <p>The implementation of the Prevention of Torture Act remains a challenge. The Kenya National Commission on Human Rights is mandated to monitor its implementation. However, inadequate funding limits its ability to effectively monitor the implementation of the Act. Additionally, it has been denied access to military facilities. Furthermore, no person has been charged under the Act.</p>
<p>142.93: Ensure torture victims' access to rehabilitation</p>	<p>Not implemented</p>	<p>The Victim Protection Trust Fund is yet to be fully operational, years after establishment. The KNCHR has been working to support the Office of the Attorney General and Department of Justice to develop regulations towards operationalization of the Victim Protection Trust Fund to actualize redress for victims of torture and other crimes under the Prevention of Torture Act, 2017 and the Victim Protection Act, 2014. As at the time of reporting, discussions over the draft Victim Protection (Trust Fund) Regulations, 2020 as well as the Victim Protection (General) Regulations led by the State Law Office had been concluded. The Regulations are awaiting finalization and adoption.</p>
<p>FREEDOM OF EXPRESSION AND OF THE MEDIA</p>		

142.28: Revise and enact the draft data protection bill and create a data protection framework in line with the international standards on the right to privacy

Implemented

The Data Protection Act⁷ was enacted in 2019. The following year the country set up the Office of its Data Protection Commissioner, who then specified three regulations⁸:

1. The Data Protection (General) Regulations, 2021
2. The Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021
3. The Data Protection (Complaints Handling and Enforcement Procedures) Regulations, 2021

All these Regulations came into effect in February 2022. The general regulations govern what businesses inside and outside the country can do with information about Kenyan citizens. The law represents a major step forward for people's online privacy in the country. Companies that breach the rules face fines of not more than Sh5 million or up to one percent of their annual turnover.

As a result, businesses⁹ and public institutions have been sued for breaching privacy, and victims awarded compensation. This includes the University of Kabianga¹⁰ which was ordered by a court to pay Mr. Shimlon Mwangi Kuria – a graduate of the University of Nairobi – a total of Sh500, 000 for using his image in its marketing materials without his permission. In addition, in September 2023, the Office of the Data Protection Commissioner issued Penalty Notices to three data controllers for failing to comply with the provisions of the Act on processing of personal data of data subjects. Fines ranging from 1,850,000 KES to 4,550,000

⁷ Data Protection Act, available at <https://www.odpc.go.ke/download/kenya-gazette-data-protection-act-2019/?wpdmdl=3235&refresh=65544dad2d691700023725>

⁸ Office of the Data Protection Commissioner (2023) Data Protection (General) Regulations, 2021 available at <https://www.odpc.go.ke/regulations/data-protection-general-regulations-2021/>

⁹ Mwangi, K. (2023) Whitepath, Regus slapped with Sh5m fine for breaching data laws available at <https://www.businessdailyafrica.com/bd/corporate/companies/whitepath-regus-slapped-with-sh5m-fine-for-breaching-data-laws-4196536>

¹⁰ Wangui, J.(2023) Universities pay price of using photos without permission available at <https://nation.africa/kenya/news/education/universities-pay-price-of-using-photos-without-permission-4146792>

	<p>KES were imposed on three businesses, including a school for various breaches of the Act.¹¹</p> <p>According to a survey¹² conducted by a software company, 36% of Kenyan businesses are not even aware of the rules – and the rest are unclear about how to comply with them.</p> <p>Notable gaps include:</p> <ol style="list-style-type: none"> 1. Lack of harmonization between the Office of the Data Protection Commissioner and the Commission on Administrative Justice, whose mandate is to ensure access to information 2. Some of the provisions under the Data Protection Act do not align with international human rights standards. These include Section 30 and 51¹³ of the Act. 3. Lack of harmonization of cross border data sharing
<p>142.156: Further the implementation of the Access to Information Act</p> <p>In the process of being implemented</p>	<p>In June 2021, the Commission on Administrative Justice (CAJ) published the Access to Information Regulations. The Regulations are undergoing public participation.¹⁴ The CAJ together with the Kenya School of Government, the Local Development Research Institute and ARTICLE 19 developed an access-to-information curriculum that targeted key implementers of access to information, including chief executive officers, information-access officers, mid-and top-level directors, heads of human resources, and complaints handling committees.</p> <p>Notably, in 2018, former President Uhuru Kenyatta issued an Executive Order directing all public institutions to fully disclose and publish public procurement</p>

¹¹ See <https://www.clydeco.com/en/insights/2023/10/data-protection-compliance-in-kenya-odpc>

¹² CMS (2023) Data Protection and Cybersecurity Laws in Kenya available at <https://cms.law/en/int/expert-guides/cms-expert-guide-to-data-protection-and-cyber-security-laws/kenya>

¹³ Data Protection Act (2019), available at <https://www.odpc.go.ke/download/kenya-gazette-data-protection-act-2019/?wpdmdl=3235&refresh=65b78e6a6c5191706528362>

¹⁴ Commission on Administrative Justice (2023) available at <file:///C:/Users/hp/Downloads/ATI%20%20REGULATIONS%202021%20-FOR%20PUBLIC%20PARTICIPATION%2025-05-2021.pdf>

information and manage them through a centralized electronic platform. Counties, including Elgeyo Marakwet and Makueni, have created open contracting portals while others such as Embu, Kisumu, Kwale Kiambu and Bomet have enacted their own Access to Information Acts.

The Government of Kenya, through the Ministry of Information Communication and Technology and the Digital Economy, has set June 2023 as the target month to digitize government records and digitalize 5,000 government services. In February 2023, the Government stated that through the E-citizen platform, some 839 services had already been boarded on to the portal with an average of 300 services being on boarded weekly to reach the target by June 2023.¹⁵ As at February 2023, 16.79% of public records have been digitized.

The challenges facing the implementation of the Act include the widespread secrecy in government operations including huge projects such as the Standard Gauge Railway and expenditure of COVID-19 billions in aid where Government has refused to divulge details despite cases being filed.¹⁶

The CAJ has received 506 complaints on access to information. 460 were against MDAs and 46 against private organizations. 95% of these cases were successfully addressed.

Regarding access to information on job opportunities, Section 2.2.2(ii) (b) of the Diversity Policy for the Public Service obligates public institutions to advertise available job vacancies in formats accessible to persons with disabilities including through sharing advertisements with the National Council for Persons with Disabilities (NCPWD). In its assessment, the Public Service Commission established that institutional websites were the most used modes of job

¹⁵ Kenya News Agency (2023) State To Digitize All Government Services By June available at <https://www.kenyanews.go.ke/state-to-digitize-all-government-services-by-june/>

¹⁶ Article 19 (2021) Kenya: Implement Access to Information regulations now available at <https://www.article19.org/resources/kenya-access-to-information-regulations/>

		advertisements. However, majority of them (76%) were not customized for accessibility to persons with disabilities. ¹⁷
142.157: Take further measures towards ensuring the safety of journalists, as well as towards guaranteeing the freedoms of expression, press, association and peaceful assembly	In the process of being implemented	<p>Professional associations and independent statutory institutions like the Kenya Editors Guild, the Kenya Union of Journalists and the Media Council of Kenya (MCK) continue to play a critical role in protecting journalists and the media industry. The Commission on Administrative Justice has partnered with the Media Council of Kenya to ease journalists’ access to information.¹⁸ Additionally, NETFUND and the MCK have partnered to enhance awareness and bolster journalists’ proficiency in environmental reporting.¹⁹</p> <p>Since March 20, 2023 when the Opposition embarked on mass action to protest the rising cost of living, and electoral fraud among others, journalists have been on the receiving end of harsh utterances from government officials, brutality by both police officers and protestors.²⁰ The Media Council of Kenya called the month of March 2023 the darkest in the history of Kenyan media, as over 25 local and international journalists were targeted by both state and non-state actors since the onset of the protests.²¹ Generally, the National Police Service (NPS) and Director of Public Prosecutions (DPP) are coy in promptly carrying out impartial investigations that can lead to prosecution and conviction of the attackers, thereby encouraging impunity.²²</p>

¹⁷ Public Service Commission, “Status of Compliance with Values and Principles in Articles 10 and 232 of the Constitution: Annual Report 2021/2022,” (December 2022), page 45

¹⁸ See <https://www.kbc.co.ke/ombudsman-mck-partner-to-ease-journalists-access-to-information/>

¹⁹ See <https://mediacouncil.or.ke/media-center/mck-newsroom/news/mck-teams-netfund-enhance-environmental-protection>.

²⁰ Media Council of Kenya (2023) Press Statement : Public Utterances Expose Journalists To Danger <https://mediacouncil.or.ke/sites/default/files/advisory-press-releases/Press%20Statement-%20Public%20Utterances%20Exposing%20Journalists%20to%20Attacks.pdf>

²¹ Njuguna, M. (2023) Media Council condemns brutal assault of journalists by police during demonstrations available at <https://ntvkenya.co.ke/news/media-council-condemns-brutal-assault-of-journalists-by-police-during-demonstrations/>

²² Kenya Media Sector Working Group (2023) Press Statement available at <https://twitter.com/medialawkenya/status/1642537474726535176/photo/1>

In general, Kenyan police officers have employed brutal force in suppressing demonstrations in total disregard of the law. The KNCHR²³ has called on the National Police Service officers to adhere to the checklist²⁴ on public order management during protests and assemblies that are very clear and must therefore be followed to the spirit and letter as enshrined in the Kenya Constitution and Police Service Standing Orders. Several organizations have conducted training sessions with police officers on human rights, including developing trainers' manuals on public order management.²⁵

On its own, the Government, through the National Police Service (NPS) has always ensured that the police recruits, selected annually for a nine-month training before pass-out, undergo successful Basic Police Training Course including the following topics: Human Rights, Community Policing, Public Order Management, Skills at Arms, and Countering Violent Extremism among others.²⁶

FREEDOM OF ASSEMBLY, ASSOCIATION AND PROTECTION OF HUMAN RIGHTS DEFENDERS

142.159: Ensure the safety of human rights defenders

In the process of being implemented

Kenya has contextualized the methodology for SDG Indicator 16.10.1 on number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months. Due to the lack of an agreed methodology, monitoring and reporting on the implementation of SDG 16.10.1 has not been prioritized by the Government. Furthermore, data on this

Also covers: 142.161, 142.163

²³ KNCHR (2022) Press Statement: The Kenya National Police Service Officers Must Adhere to the Checklist on Public Order Management available at <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1131/Press-Statement-The-Kenya-National-Police-Service-Officers-Must-Adhere-to-the-Checklist-on-Public-Order-Management>

²⁴ The sixth schedule of the National Police Service Act, 2011 clearly stipulates that a police officer shall always attempt to use non-violent means first and force only when non-violent means are ineffective. The force also needs to be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is used.

²⁵ International Commission of Jurists (2016) ICJ Kenya, Kenya Police Service to Promote Human Rights available at <https://icj-kenya.org/news/icj-kenya-kenya-police-service-to-promote-human-rights/>

²⁶ NTV (2023) Ruto to preside over police recruits pass out parade in Kiganjo available at <https://ntvkenya.co.ke/news/ruto-to-preside-over-police-recruits-pass-out-parade-in-kiganjo/>

		<p>Indicator has been collected in an uncoordinated manner by different organizations. Resultantly, data collected by civil society organizations is not recognized by the Government. The contextualization of the methodology under this Indicator will enable a more coordinated collection of data and ultimate protection of human rights defenders. The Commission and the Kenya National Bureau of Statistics have partnered in the collection of data. The partnership ensures that the two organizations facilitate the integration of data from all possible officials and through citizen-generated data sources for this indicator to be made possible using standard definitions, data collection methods, reference period, counting units and counting rules.</p>
<p>142.160: Create a safe and enabling environment in which human rights defenders and civil society can operate free from hindrance and insecurity, including through the full operationalization of the Public Benefit Organization Act 2013</p> <p>Also covers: 142.132, 142.162, 142.164</p>	<p>Not implemented</p>	<p>More than a decade after its adoption, the Public Benefits Organizations Act has still not been operationalized. It is awaiting gazettment by the relevant Cabinet Secretary.</p>
<p>143.3: Review the 2018 'Associations bill' and ensure that NGO laws are in line with the right to freedom of expression</p>	<p>Not implemented</p>	<p>No measures have been taken to review the Associations Bill.</p>
<p>RIGHT TO PRIVACY</p>		

<p>142.176: Ensure that surveillance and profiling of citizens respect the right to privacy including judicial oversight</p>	<p>Partially implemented</p>	<p>The Government of Kenya has taken some steps towards implementing this recommendation by putting in place some safeguards to ensure that surveillance and profiling of citizens respect human rights. Specifically, the Government has issued court orders for surveillance, indicating that there is some level of judicial oversight in the process. However, there have been reports of unlawful surveillance and profiling, indicating that the safeguards put in place are not sufficient to fully protect the right to privacy.</p> <p>The Government needs to do more to ensure that the safeguards put in place fully protect the right to privacy of citizens. Some of the challenges that the government may face include the need to balance national security concerns with the need to protect the right to privacy, as well as the need to build public trust in the safeguards put in place. The government needs to continue engaging with stakeholders, including civil society organizations and human rights groups, to address these challenges and ensure the full implementation of this recommendation.</p>
<p>COUNTER-TERRORISM MEASURES</p>		
<p>142.76: Step up efforts to combat terrorism</p>	<p>In the process of being implemented</p>	<p>The National Counter Terrorism Center (NCTC) in its 2022 Annual Report²⁷ indicated that a total of 504 engagements, trainings and media campaigns targeting areas that are prone to violent extremism were held. The sessions cover signs of radicalization, identifying and reporting suspicious persons, items and activities. In September 2023, the Center convened workshops to develop a framework for identification and reporting of suspicious activities. The activities are clustered under the nine pillars of the National Strategy for Countering Violent Extremism (NSCVE) as follows:</p> <ul style="list-style-type: none"> • Research pillar (19) • Training and capacity building pillar (185)
<p>Also covers: 142.77, 142.78, 142.79, 142.80, 142.151, 142.152, 142.246</p>		

²⁷ See the National Counter Terrorism Center (NCTC) Newsletter at https://counterterrorism.go.ke/wp-content/uploads/2023/05/NCTC-Newsletter-Vol-2_compressed-1-compressed.pdf

- Media and online pillar (38)
- Security and law-enforcement pillar (78)
- Faith and ideology pillar (18)
- Legal and policy pillar (65)
- Arts and culture pillar (7)
- Political pillar (50)
- Psychosocial pillar (40)

The Ministry of Interior and National Administration has developed and implemented the following counter-terrorism initiatives:

- Joint terrorism task force
- Public awareness on terrorism
- Re-integration programmes for the reformed radicalized individuals
- Capacity-building by international partners
- Multi-Agency Team joint operations
- Intelligence-led policing

The Office of the Director of Public Prosecutions prosecuted 119 cases of terrorism and radicalization spread across three financial years as below:

- 2020/2021 42 cases
- 2021/202249 cases
- 2022/2023 28 cases

Terror-related attacks targeting both civilians and security personnel have occurred in Lamu, Garissa, Wajir and Mandera Counties. Although reports from the National Police Service on the lives lost remains scanty, media reports indicate that at least 11 security personnel were killed and scores injured. In June 2023, 5 civilians were killed when armed assailants raided Salama village in Lamu County. This shows that with the recent trends, the Ministry of Interior and National Administration, the National Police Service and the National Counter

		Terrorism Centre need to enhance the fight against terrorism and violent extremism while respecting human rights standards. The Commission notes that enforced disappearances of suspects have been committed in the context of counter-terrorism operations.
142.90: Continue the efforts to put an end to extra-judicial killings by police officers, including in the context of counter-terrorism measures	In the process of being implemented	The Standard Operating Procedures (SOPs) on Investigation and Prosecution of Serious Human Rights Violations Committed by Police Officers were launched by the Independent Policing Oversight Authority in December 2020. The Office of the Director of Public Prosecutions secured 48 convictions on crimes related to extra-judicial killings as indicated below: <ul style="list-style-type: none"> • 2021/2022 2 convictions • 2022/2023..... 46 convictions
RIGHT TO LIFE AND ABOLITION OF THE DEATH PENALTY		
142.81: Commute the death sentences of the remaining 810 death row inmates	Implemented	In July 2023, President William Ruto commuted the death sentence imposed on every capital offender before November 22 nd 2022, to life imprisonment, following a recommendation made by the Power of Mercy Advisory Committee.
142.82: Finalize the implementation of the National Court ruling declaring death sentence to be unconstitutional Also covers: 142.83	In the process of being implemented	The Commission further notes that despite the Supreme Court of Kenya in 2017 declaring the mandatory nature of the death sentence unconstitutional and a subsequent Taskforce report submitted to the Attorney General in 2018 recommending that the sentence of death penalty in the Penal Code be substituted with life imprisonment, limited efforts have been taken so far to implement the Court’s and Taskforce recommendations. In July 2023, President William Ruto commuted the death sentence imposed on every capital offender before November 22 nd 2022, to life imprisonment, following a recommendation made by the Power of Mercy Advisory Committee. It is high time that Parliament initiates the process of amending the Penal Code (Cap 63) and the Kenya Defense Forces Act, 2012 with a view of abolishing death penalty since it was last implemented in 1987.

<p>142.84: Continue taking steps to abolish the death penalty</p>	<p>In the process of being implemented</p>	<p>Several steps have been taken to abolish the death penalty including through carrying out researches on public perceptions on the death penalty. In a 2022 study report by KNCHR and the Death Penalty Project, it emerged that out of the 51% respondents against abolition of death penalty, majority (59%) would accept it as government policy, making the case for retention increasingly hard to justify. The report further revealed that support for retention among participants was conditional, falling dramatically when presented with the possibility that innocent people could be executed – an inescapable possibility in all criminal justice systems where the death penalty is applied. Support for retention also fell when the public considered how its regional and international neighbors who have already abolished capital punishment could regard Kenya.²⁸</p> <p>Notably, the Penal Code (Amendment) Bill, 2023 was introduced at the National Assembly in September 2023. The objective of the Bill is to amend the Penal Code, Cap 63 in order to abolish the death penalty. The Bill was read the first time at the National Assembly on 3rd October 2023, and is currently awaiting second reading.²⁹</p>
<p>Also covers:142.85 142.86 142.87 142.88 142.89</p>		

ACCESS TO JUSTICE AND LEGAL AID

<p>142.129: Continue implementing its legal aid policies to ensure equal access to justice for victims of racial discrimination, minorities and indigenous peoples</p>	<p>In the process of being implemented</p>	<p>The Judiciary Fund was operationalized in August 2022 pursuant to Article 173 of the Constitution.³⁰ An operational fund will aid in the planning and timely execution of operations and projects, and further eliminate previous challenges of delayed disbursements or budget cuts. The Fund is also a crucial step in securing the financial independence of the Judiciary and ensuring access to justice for victims of human rights violations.</p>
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²⁸ The Death Penalty in Kenya: A Punishment that has Died Out in Practice report available at <https://deathpenaltyproject.org/wp-content/uploads/2022/05/DPP-Kenya-Report-2022-Part-One-final-proof.pdf>

²⁹ See <http://www.parliament.go.ke/sites/default/files/2023-11/BILLS%20TRACKER%20AS%20AT%20WEDNESDAY%2C%208TH%20NOVEMBER%202023.pdf> p.15

³⁰ See <https://judiciary.go.ke/judiciary-fund-operationalised/>

	<p>Furthermore, the Government developed the National Action Plan on Legal Aid (2017-2022) to act as a roadmap for coordinated implementation of legal aid interventions. The Action Plan has eight strategic objectives, one of which is “to allot fiscal, human and technical resources for legal aid and awareness services in Kenya”. In order to ensure greater access to legal services, the National Legal Aid Service established offices in Nairobi, Mombasa, Kisumu, Nakuru and Eldoret.</p> <p>In March 2023, the National Legal Aid Service board was constituted with their Chairperson set to serve for a term of six (6) years. The Board is constituted of eleven members drawn from both state and non-state agencies. Operationalization of the Board enhances access to justice through provision of legal aid.</p> <p>Additionally, in April 2023, the Office of the Director of Public Prosecutions Uadilifu E-filing System and the Judiciary’s E-filing systems were integrated in order to create a one-stop platform for case filing geared towards enhanced delivery of justice. The integrated system allows police officers and accused persons to track the progress of cases in court electronically, and to upload additional documentation emanating from court proceedings such as rulings.³¹</p> <p>The Government has also taken steps to ensure access to justice for the marginalized communities of Mandera, Turkana and Samburu Counties by institutionalizing alternative justice systems models, rolling out e-filing of cases and establishing High Court sub-registries.</p>
<p>142.130: Set up specialized courts that enable the speeding up and the effective treatment of gender-based violence cases</p>	<p>In the process of being implemented</p> <p>The Government has set up specialized sexual and gender-based violence courts at Shanzu Law Courts in Mombasa, at Kibera and Makadara Law Courts in Nairobi, and at Siaya Law Courts. It has also established special sexual and gender-based violence registries in Meru, Nakuru, Kiambu, Machakos, Kisii, Kitale and Kakamega.</p>

³¹ See <https://www.kenyanews.go.ke/judiciary-to-merge-case-tracking-system-with-dpps-uadilifu/>

ANTI-CORRUPTION EFFORTS

142.68: Continue efforts aimed at fighting corruption as well as illicit financial flows and tax avoidance

In the process of being implemented

The Ethics and Anti-Corruption Commission has made efforts towards addressing corruption. Assets worth approximately 22.80 billion Kenya shillings have been recovered and surrendered back for public benefit by the Commission. Additionally, the Ethics and Anti-Corruption Commission convenes anti-corruption skills development programs for officers of public institutions. For example, from 27th to 31st March 2023, the Ethics and Anti-Corruption Commission (EACC), through its training wing, the National Integrity Academy, implemented a corruption skills development program for over 50 Integrity Assurance Officers (IAOs) drawn from over 12 institutions. The program aimed at equipping the participants with the skills and knowledge necessary to spearhead anti-corruption initiatives in their respective institutions.

Challenges facing anti-corruption efforts include non-implementation of the reform recommendations in audit committee reports by County Governors. The Office of the Director of Public Prosecutions has also carried out trainings for prosecutors on the prosecution of economic crimes, anti-corruption and money laundering.

A draft Kenya Integrity Plan (2023-2028) has been developed by the Kenya Leadership Integrity Forum (KLIF) to guide the multi-sectoral approach in the fight against corruption. The implementation of the Kenya Integrity Plan will be guided by four strategic objectives. These include:

1. To enhance the capacity of KLIF to implement a collective approach in the fight against corruption;
2. To promote strengthening of policy, legal and institutional framework in the fight against corruption;
3. To promote ethics and integrity in Public and Private sector; and
4. To promote ethics and integrity in the society.

Kenya Integrity Plan is aligned to the following policies and legal instruments:

Also covers: 142.69, 142.70, 142.71, 142.72

		<ul style="list-style-type: none"> (a) International and Regional Conventions; <ul style="list-style-type: none"> (i) United Nations Convention against Corruption (ii) African Union Convention on Preventing and Combating Corruption (b) United Nations Sustainable Development Goals; (c) Africa Union Agenda 2063; (d) East Africa Community Vision 2050; (e) The Constitution of Kenya; (f) Kenya Vision 2030; (g) Bottom-Up Economic Transformation Agenda; (h) Fourth Medium Term Plan (MTP IV); and (i) Sectoral Policies and Laws <ul style="list-style-type: none"> (i) The National Ethics and Anti-Corruption Policy (ii) Anti-Corruption Law.
<p>142.69: Take further measurable efforts to combat corruption, including by ensuring thorough and effective investigation, prosecution of all suspects and punish perpetrators</p> <p>Also covers: 142.70</p>	<p>In the process of being implemented</p>	<p>The Ethics and Anti-Corruption Commission has concluded 655 High Impact Investigations on corruption and related offences. 251 cases have been finalized in Court.</p>
<p>142.71: Continue taking targeted steps aimed at improving national legislation on the fight against corruption</p>	<p>In the process of being implemented</p>	<p>The Ethics and Anti-Corruption Commission has spearheaded the following legislative amendments:</p> <p>Amendment of Anti-Corruption and Economic Crimes Act, 2003 (No.3 of 2003); EACC proposed, through a Memorandum to Parliament, an amendment to the Anti-Corruption and Economic Crimes Act to harmonize its provisions with the</p>

functions of the Director of Public Prosecutions under Article 157 of the Constitution. The proposal sought to amend the Act to allow the Commission to seek court orders for State Officers under investigation or those charged with corruption or economic crimes be barred from accessing Office or exercising powers of the Office.

Amendment of Leadership and Integrity Act, 2012 (No. 19 of 2012); the EACC, in collaboration with the Office of the Attorney General & Department of Justice proposed to Parliament amendment of Leadership and Integrity Act to allow EACC to verify the suitability of candidates applying to be appointed to a public entity, and make recommendation to the recruiting entity on the integrity suitability of the candidates. It also proposed to allow the High Court on application by any person, to declare the assumption of office by a State Officer to be invalidated for not committing to the Specific Leadership and Integrity Code.

Amendment of the Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011); the Commission proposed, through a Memorandum to Parliament, amendment of the Ethics and Anti-Corruption Commission Act to require the presentation of its Annual Report within six months, from the current three months, to the end of the year to which it relates.

Amendment of the Bribery Act, 2016 (No. 47 of 2016); EACC, in collaboration with the Office of the Attorney General and Department of Justice, proposed to Parliament amendment of the Bribery Act, 2016 to include both private and public entities in the scope of the application of the Act and to make other miscellaneous amendments in Sections 1, 4 and 10.

The Bribery Regulations, 2022 were enacted vide Legal Notice 88 of 2022.

FREEDOM OF RELIGION

142.150: Ensure that the right to freedom of religion or belief is fully protected and promoted

In the process of being implemented

The Government has lifted the ban on the registration of churches and other religious organizations in Kenya which had been in place since 2014. The new directives issued by the Government following this moratorium however require a person to have either a diploma or degree in Theology from a theological institution before registering a religious organization. The individual is also required to:

1. Present a sworn affidavit by each officer indicating whether they are registered members or officers of other religious societies and the names of such societies
2. Present an introduction or recommendation letter from a registered religious society in good standing signed by any two officers of such society.
3. Present a national identification card, a Kenya Revenue Authority certificate, and a tax compliance or exemption certificate from each officer of the society.

Following the deaths of at least 400 members of the Good News International Church through alleged starvation under instruction from their Pastor, the Government constituted a **Presidential Taskforce on the Review of the Legal and Regulatory Framework Governing Religious Organizations in Kenya**. The objective of the Taskforce is to "identify the legal, institutional, and governance challenges/gaps that have allowed or may allow for religious extremist organizations, sects, cults, and other similar outfits in Kenya to engage in practices detrimental to individual health and safety, the public interest, or our national values."

In the first quarter this year, the Commission documented reports of the burning of a Mosque and a Church in Kibra during the Opposition-led demonstrations in March 2023 in Kibra settlement. This is an indicator of religious intolerance and a violation of the freedom of conscience, religion, belief and opinion.

TRANSITIONAL JUSTICE

142.149: Implement the recommendations made by the Truth, Justice and Reconciliation Commission, including investigating and punishing those responsible for serious human rights violations as well as providing remedy to the victims;

In the process of being implemented

The KNCHR continues to advocate for the implementation of the recommendations of the Truth, Justice and Reconciliation Commission including reparations to victims of historical injustices. Since 2019, the KNCHR has advocated for a substantive legal framework to address the right to effective remedy. The State, in partnership with the Commission and the International Center for Transitional Justice developed the draft Public Finance Management (Reparations for Historical Injustices Fund) Regulations, 2017. The purpose of these Regulations is to provide a framework for the establishment and operationalization of a reparations program. As at the time of reporting, the mechanism is yet to be formalized and adopted by the State. The Regulations however stalled and no action has been made.

Also covers: 142.135

Efforts have been made to draft a policy on reparations. A draft Policy has been finalized and is awaiting adoption. In concert with various stakeholders, the Commission has been lobbying for the enactment of the Reparations for Historical Injustices Bill, 2021 which is currently in its draft stages. The Bill aims to, “provide a legislative framework for reparations to victims and survivors of gross human rights violations and historical injustices experienced between 12th December 1963 to date by operationalizing implementation of the report of the Truth Justice and Reconciliation Commission established under section 3 of the Truth, Justice and Reconciliation Act, No. 6 of 2008 and other related reports referred to therein.”

The KNCHR has further been working to support the Office of the Attorney General and Department of Justice to develop regulations towards operationalization of the victim protection trust fund to actualize redress for victims of torture and other crimes under the Prevention of Torture Act, 2017 and the Victim Protection Act, 2014. As at the time of reporting, discussions over the draft Victim Protection (Trust Fund) Regulations, 2020 as well as the Victim

Protection (General) Regulations led by the State Law Office had been concluded. The Regulations are awaiting finalization and adoption.

The failure by the National Assembly to adopt the full TJRC report has hindered the implementation of the report. Following a petition for its adoption, the Senate's Standing Committee on Justice, Legal Affairs and Human Rights in its report of July 2020, observed that, “the failure to operationalize the reparations framework by the state continues to unduly lengthen the suffering of survivors and the families of the victims of Kenya’s historical injustices and human rights violations”. The Committee further recommended on the need for the National Assembly to formally consider the TJRC report in order to pave way for its implementation and that the CS Treasury submits to Parliament the Public Finance Management (Reparations for Historical Injustices Fund) Regulations, 2017 so as to anchor the restorative justice fund into legal framework.

Additionally, the Commission in partnership with civil society organizations has been engaging County Governments to develop county laws and interventions on reparations of county-based historical injustices. The key intervention under the County frameworks is memorialization and county dialogue on historical injustices to complement National Government interventions.

COUNTER-TRAFFICKING IN PERSONS

142.170: Accelerate efforts to combat trafficking in persons

In the process of being implemented

Also covers: 142.171, 142.172, 142.173, 142.174, 142.175, 142.229, 142.258

The Government has taken several positive measures to combat trafficking of persons in Kenya. These include the launch of a **National Plan of Action to Combat Trafficking in Persons (2022-2027)** which outlines strategies for comprehensive victim-centered support. The Action Plan focuses on the pillars of prevention, protection, prosecution and partnerships in order to address trafficking of persons. In addition, the Government has finalized the guidelines for the disbursement of funds for trafficking victims from the National Assistance Trust Fund for Assisting Victims of Trafficking and used the funds to support economic reintegration for trafficking survivors. Furthermore, an updated **National Plan of Action Against Sexual Exploitation of Children 2022-2026** which

includes activities to prevent online child sex trafficking has been launched. Lastly, to prevent online child sexual exploitation and abuse, the Government has launched a **Training Handbook on the Investigation and Prosecution of Online Child Sexual Exploitation and Abuse in Kenya**.

The Government has also adopted a **vulnerability assessment tool for screening potential victims of trafficking**; launched the **Guidelines for assisting victims of trafficking in Kenya** and the **Standard Operating Procedures for investigating trafficking in persons cases in Kenya**; and rolled out trainings for investigators, prosecutors, government agencies and civil society organizations.

Additionally, the Government continues to investigate and prosecute cases of trafficking in persons. From 2020 to 2023, for instance, the Office of the Director of Public Prosecutions investigated and prosecuted 323 cases of trafficking in persons. Corruption and official complicity in trafficking crimes however inhibit law enforcement action against human trafficking. The lack of a centralized law enforcement data collection system on trafficking crimes, results in underreporting.

Furthermore, several efforts to amend the Counter-Trafficking in Persons Act, 2010 are ongoing. A key proposal to remove the option of paying a fine in place of imprisonment for the crime of human trafficking has however not been approved by the Ministry of Labour and Social Protection.

The Office of the Attorney General and the National Council on the Administrative Justice (NCAJ) as at December 2021, have developed the **draft National Policy on the Prevention, Response and Protection from Unlawful Acts and the Administration of Justice in Sexual Offences Matters**, better known as the Sexual Offences Policy.³² The Ministry of Labour and Social Protection has also developed a **draft Labour Migration Management Bill, 2023** to promote safe,

³² State Law Office (2023) Draft National Policy on the Prevention, Response and Protection from Unlawful Acts and the Administration of Justice in Sexual Offences Matters available at <https://www.statelaw.go.ke/wp-content/uploads/2021/12/Sexual-Offences-Policy-2021.pdf>

ethical and orderly labour migration and to safeguard the rights and welfare of Kenyan migrant workers.		
ELECTORAL REFORMS		
<p>142.136: Intensify efforts to secure redress for survivors of sexual violence following 2007 and 2017 Presidential elections, and establish mechanisms to ensure such crimes are never repeated</p> <p>Also covers: 142.168</p>	<p>Partially implemented</p>	<p>To date, no prosecutions for election-related sexual violence have taken place. On 10th December 2020, the High Court of Kenya, in Petition No. 122 of 2013, ruled that the Government of Kenya failed to conduct independent and effective investigations and prosecutions of cases of sexual and gender-based violence committed during the 2007 and 2008 elections. It awarded KES 4 million (approximately USD 30,000) to each of the four of the eight petitioners as general damages for the violation of their constitutional rights.</p> <p>A number of initiatives were undertaken to combat and prevent electoral-related sexual violence. For instance, in the run up to the 2022 General Elections, UN Women and the Office of the United Nations High Commissioner for Human Rights-Kenya supported the training of 987 law enforcement officers; out of which 141 were police commanders and 846 officers on how to handle electoral-related sexual and gender-based violence.³³ In addition, the Independent Electoral and Boundaries Commission implemented an elaborate programme dubbed the Election Security Arrangement Project (ESAP) in conjunction with the National Police Service (NPS), Office of the Director of Public Prosecution, the Judiciary, National Cohesion and Integration Commission, Independent Police Oversight Authority, National Steering Committee on Peacebuilding and Conflict Management, Office of the Registrar of Political Parties and Civil Society. The objective of the project was to undertake election security coordination and a framework for managing the security aspects of the 2022 General Election.³⁴</p>
<p>142.155: Implement the recommendations of the</p>	<p>Partially implemented</p>	<p>In its 2022 Report on Media Access and Press Freedom during the 2022 General Elections, the Media Council of Kenya observed that there was no effort by the</p>

³³ See <https://africa.unwomen.org/en/stories/news/2022/07/police-training-rolled-out-across-kenya-ahead-of-elections>

³⁴ See ESAP available at https://www.iebc.or.ke/news/?ESAP_Team_Reviews_Elections_Security_Training_Materials

<p>2017 EU Election Observation Mission, especially to strengthen the independence of the media and journalists and to provide protection for civil society</p>		<p>Government to close or restrict use of the Internet during the period. The report however noted increased cases of press freedom violations including denial of access to voting areas and critical information from relevant public bodies, profiling of journalists and media outlets, online trolling of journalists and media outlets and in some cases physical attacks on journalists. This affected about 43 journalists in 12 incidences documented by the Council.³⁵</p>
<p>142.167: Ensure that all human rights are duly respected and protected in the run up to and during the coming general elections in 2022</p> <p>Also covers: 142.169</p>	<p>Partially implemented</p>	<p>In the run up to the 2022 General Elections, the Commission developed an operationalization document under its Strategic Plan 2020-2024. The plan was a key navigation instrument that steered the development and execution of key electoral activities for the 2022 General Elections.</p> <p>In its audit of the 2022 general elections, the Commission noted that Kenya has made enormous strides in some elements of the election process while in others it is still lagging or retrogressing. On the positive strides, the Commission noted that the security agencies carried out their work in a manner that adequately facilitated the right to vote and be voted for. In the areas that had insecurity or experienced violence the security officers moved in swiftly to mitigate the situation and de-escalate violence with professionalism and restraint. The Commission also observed quicker action from the Office of the Director of Public Prosecution to prosecute electoral-related offenses especially those perpetuated on the polling day. The Judiciary also put in place the necessary measures to increase access to justice including increasing the number of judicial officers to handle election petitions. In terms of the election of special interest groups, there was an increased number of women, youth, and persons with disabilities elected to office.</p>

³⁵ See Media Council report at <https://mediacouncil.or.ke/sites/default/files/downloads/REPORT%20ON%20MEDIA%20PERFORMANCE%20DURING%20THE%202022%20GENERAL%20ELECTION.pdf> p. 2

		Furthermore, the Commission observed a substantial drop in certain violations namely on the right to life as compared to 2017. However other violations such as assaults, intimidation, harassment, voter bribery, and misuse of children in elections are still worrying. One particularly disturbing observation was the increase in civilian misuse of firearms which contributed to at least 70% of the deaths and assaults recorded. A new phenomenon not previously observed was the violence inside the tallying centers. Compared to 2017, there was a substantial drop in civilian unrest and violence as a result of the electoral process. This is despite the highly polarized environment and intolerance that the political leaders portrayed especially during campaigns and the post-poll period.
142.134: Combat hate speech, particularly during election periods, and punish incitements to racial or ethnic hatred	Partially implemented	The National Cohesion and Integration Commission spearheaded the development of Kenya’s National Action Plan Against Hate Speech ³⁶ . The Action Plan aims to provide a platform for synergy building among stakeholders who prevent and counter hate speech while at the same time guiding the implementation of hate speech management in Kenya. The Action Plan was launched on 15 th June 2022, before the August 2022 general elections. From 2020 to 2023, the Office of the Director of Public Prosecutions prosecuted 9 cases of hate speech.
ECONOMIC, SOCIAL AND CULTURAL RIGHTS		
SUSTAINABLE DEVELOPMENT GOALS		
142.39: Improve the mechanisms for collection of disaggregated data in order to facilitate an integrated assessment of advances in the promotion of human	In the process of being implemented	Kenya has contextualized the methodology for SDG Indicator 16.10.1 on <u>number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months</u> . Due to the lack of an agreed methodology, monitoring and reporting on the implementation of SDG 16.10.1 has not been prioritized by the Government. Furthermore, data on this

³⁶ Action Plan available at https://cohesion.or.ke/images/docs/downloads/Kenyas_National_Action_Plan_Against_Hate_Speech.pdf

rights and in the implementation of the SDGs;

Also covers: 142.53

Indicator has been collected in an uncoordinated manner by different organizations. Resultantly, data collected by civil society organizations is not recognized by the Government. The contextualization of the methodology under this Indicator will enable a more coordinated collection of data. The Commission and the Kenya National Bureau of Statistics have partnered in the collection of data. The partnership ensures that the two organizations facilitate the integration of data from all possible officials and through citizen-generated data sources for this indicator to be made possible using standard definitions, data collection methods, reference period, counting units and counting rules.

In June 2023, the Commission and the Kenya National Bureau of Statistics renewed a seven-year memorandum of understanding to “Strengthen cooperation on data collection, disaggregation, dissemination and analysis to help measure progress and ensure that no one is left behind in the 2030 Sustainable Development Agenda, consistent with national and international human rights standards.”

The Kenya National Bureau of Statistics and relevant actors have conducted and released the 2022 Economic Survey,³⁷ 2022 Kenya Demographic and Health Survey³⁸ and plans are underway to profile and assess the needs of persons with disabilities through an anticipated national-wide survey.

In November 2023, the Kenya National Bureau of Statistics established a **Technical Working Committee on Citizen-Generated Data**. The purpose of the Committee is to strengthen stakeholder collaboration in adoption of quality citizen-generated data as an alternative source of data for official reporting where data gaps exist. This will contribute towards updating the national SDGs indicator framework and prioritizing of identified development needs.³⁹

³⁷ 2022 Economic survey <https://www.knbs.or.ke/wp-content/uploads/2022/05/2022-Economic-Survey1.pdf>

³⁸ 2022 KDHS report <https://www.knbs.or.ke/download/2022-kdhs-key-indicators-report/>

³⁹ See <https://www.the-star.co.ke/news/realtime/2023-11-22-knbs-unveils-working-committee-on-citizen-generated-data/>

POVERTY ERADICATION AND FULFILLMENT OF THE BIG 4 AGENDA

142.65: Continue to promote economic, social development and improve the living standard of its people

In the process of being implemented

The Government of Kenya through the Ministry of Youth Affairs, Sports and the arts has designed the Kazi Mtaani Programme which is a youth initiative designed to cushion the most vulnerable youth in the informal settlement from the effects of the pandemic. The Program which started with a budget of Kshs 10 billion employed 283,210 youths in informal settlements across the 47 counties in Kenya. Most of the Kazi Mtaani beneficiaries responded stating that they indeed benefited from the program. However, a number of issues were cited for instance; ghost workers and nepotism in the recruitment process. There were claims that the recruitment process was not free and fair. Further, there were few positions in contrast with the large number of applicants and those with disabilities felt left out of the program since it was mainly manual labor focused.

Also covers: 142.180, 142.183, 142.184, 142.185, 142.186, 142.187, 142.188, 142.189, 142.190, 142.234

Other Government initiatives for the poor and vulnerable include the National Safety Net Program and the Inua Jamii Program. The Inua Jamii Program provides social protection and support to vulnerable populations including the elderly persons, persons with disabilities and orphaned children. The Government disbursed 8.58 billion to 1.07 million beneficiaries of the Inua Jamii Cash Transfer Program. Furthermore, under the Uwezo Fund, a total of 4,668 groups of Youth, Women and PWDs were supported in poultry keeping, livestock, fish farming, crops growing, value addition in honey processing, seed banking, and tree fruit nurseries. The Government of Kenya continues to make steady increase in financing cash transfers.

The high cost of living that has however made it difficult for many Kenyans to access basic goods and services and enjoy their economic and social rights. This current state of affairs flies in the face of the current Government's commitment to reduce the high cost of living within its first 100 days.

<p>142.245: Device ways and means to be in a position to allocate adequate resources for the effective implementation of actions geared to the advancement of human rights and conditions of children and working mothers</p>	<p>In the process of being implemented</p>	<p>The Ministry of Health has developed an implementation framework for securing a breastfeeding-friendly environment at work places.⁴⁰ A report by the Ministry of Health stated that only 3 state institutions, 14 NGOs and 50 corporate organizations have complied with requirement to provide breastfeeding facilities.</p> <p>Different organizations have put in place measures to protect the rights of working mothers. Some key examples include:</p> <ul style="list-style-type: none"> • At the State Department for Lands and Physical Planning, working mothers are allowed to work flexibly in order to attend to their babies. Employees of the State Department for Crop Development are allowed to be accompanied by their nannies to field assignments. • The State Department for Housing and Urban Development has created more job opportunities for mothers and women in general. For instance, it has partnered with an organization called “Buildher”, which empowers women through construction to do painting and tiling at the Starehe Point Housing Project where the Government will build 6,704 affordable housing units. • The Ethics and Anti-Corruption Commission has incorporated in its Corporate Services and Procedure Manual, provision for Nursing employees to attend to the new-born for a period of three (3) months of duty, for three (3) hours per day time off immediately on resumption of duty from maternity leave.
<p>142.47: Enhance mobilization of resources for the realization of the “Big Four” national plan;</p>	<p>Partially implemented</p>	<p>The Big Four Agenda projects have not been allocated adequate resources due to inadequate funds from delayed reimbursement and budget cuts. The Government has instituted the Affordable Housing Program which targets the delivery of 250,000 affordable and decent housing units per annum. The program also aims at increasing the mortgages from the current 30,000 to 1,000,000 with favorable ownership terms that have monthly payments of as low as 5,000</p>

⁴⁰ See <https://www.health.go.ke/wp-content/uploads/2020/10/Implementation-Framework-for-Securing-a-Breastfeeding-Friendly-Workplace.pdf>

<p>Also covers: 142.48</p>	<p>Kenyan shillings per month. So far, the State Department for Housing and Urban Development has completed 1,370 affordable housing units at Park Road in Nairobi housing about 5,343 beneficiaries.</p> <p>By 2020, the Universal Health Coverage Program had 39,349 elderly persons and 2,651 persons with disabilities, 181,968 vulnerable households 1,163,173 mothers of children. This did not meet set targets for the program.</p> <p>Furthermore, progress has been made to enhance food and nutrition security. The percentage of implementation of the Kenya National Food and Nutrition Security Policy is 50%. Additionally, 37 out of 47 counties are covered under the Kenya Agriculture Insurance Program. Payouts have been paid and a policy drafted under the program. The implementation rate of the program is about 100%, despite decline in funding.</p>
<p>RIGHT TO FOOD</p>	
<p>142.66: Advance efforts aimed at growing the economy and enhancing food security</p>	<p style="text-align: center;">Not implemented</p> <p>The Physical and Land Use Planning Regulations of 2021 Legal notice No.238- 253 were prepared under section 90 of the Physical and Land Use Planning Act No. 13 of 2019. The Physical and Land Use Planning Act makes provision for the planning, use, regulation and development of land. The Regulations were approved by the National Assembly and Senate and disseminated to the 47 counties. Sensitization on the Regulations is ongoing. The Regulations on the Physical Planning and Land Use Act however do not secure the critical rights of minorities and indigenous peoples to food.</p> <p>The realization of food security has been hampered by a prolonged drought in the region leading to the declaration of drought as a national disaster in September 2021. Notably, in 23 Arid and Semi-Arid Land (ASAL) counties, 970,214 children aged 6 to 59 months were malnourished compared to 884,464 children aged 6 to 59 months reported in July 2022.⁴¹ The declaration of drought as a national disaster was to be followed by sustained efforts to support affected</p>

⁴¹ See <https://www.ndma.go.ke/index.php/resource-center/send/87-2022/6833-2022-short-rains-assessment-national-report> page 11

communities. However, the National and County governments' efforts did not resolve the situation. According to the National Drought Management Authority the population facing acute food insecurity and consequently requiring humanitarian assistance increased to 4.4 million from the 3.5 million people.

Furthermore, the increasing cost of living is hindering the enjoyment of the right to food. Currently, the cost of basic household necessities such as maize flour, fuel and electricity remains high. The cost of fuel in the country hit an all-time high in September 2023. One litre of petrol costs more than 200 KES (\$1.36). The rise in the cost of fuel has a huge implication on the cost of transport, food and electricity and principally all sectors of the household social and economic lives.

Though commendable, the government's prioritization of agriculture through fertilizer subsidy programmes will take a while to translate to a lower cost of living and the realization of the right to food. The projection that the country will realize a production of additional 18 million bags of maize is desirable, given it is the staple food for majority of the households in the country. The reported scandal over fraudulent allocation of fertilisers worth Ksh 10M to cartels is a blot to these efforts. This calls for conclusive investigations and enhanced transparency in the distribution of family inputs.

Furthermore, in October 2022, the Kenyan Government issued a directive lifting a ten-year old ban on the importation of Genetically Modified Organisms (GMOs) into Kenya.⁴² The directive was issued without conducting any public participation. In November 2022, the High Court suspended the implementation of the directive until a petition challenging the safety of GMOs was heard and determined.⁴³ In October 2023, the Environment Court dismissed this petition on

⁴² See <https://www.standardmedia.co.ke/farmkenya/crop/article/2001457267/government-lifts-ban-on-gmo-okays-cultivation-and-importation>

⁴³ See <https://www.standardmedia.co.ke/national/article/2001461923/court-suspends-decision-to-lift-the-ban-on-gmo-foods>

		the basis that no evidence had been presented showing that GMOs were harmful. ⁴⁴
142.198: Continue the efforts to end malnutrition in all vulnerable layers of the society	Partially implemented	The Government has made efforts to implement the Kenya Nutrition Action Plan through the establishment of a multi-sectoral platform for nutrition, nutrition surveillance systems, and nutrition-sensitive interventions. However, the percentage of implementation is yet to be determined. The challenge is to reach vulnerable populations in remote areas and ensure they have access to adequate nutrition. The Government needs to allocate more resources to this program.
BUSINESS AND HUMAN RIGHTS		
142.74: Ensure the final approval, launch and execution of the National Action Plan for the implementation of the Guiding Principles on Business and Human Rights Also covers: 142.73, 142.75	In the process of being implemented	<p>The National Assembly adopted the National Action Plan on Business and Human Rights on 9th November 2022 as Sessional Paper No.3 of 2021. The Action Plan was officially launched on 12th May 2023. The Kenya National Commission on Human Rights and the Office of the Attorney General are spearheading the dissemination and trainings on the Action Plan.</p> <p>The State Department for Lands and Physical Planning has developed the National Land Information Management System (NLIMS) to enhance security of land records, improve access to land-based information, cut down the cost of land transactions as well as ensuring effective, efficient and transparent processes. Digitization of land records and automation of processes in Murang'a is ongoing while Nairobi is fully digitized.</p> <p>The State Department for Lands and Physical Planning has completed the development of the National Land Value Index in 22 counties namely: Kisumu, Mombasa, Bomet, Kericho, Narok, Nakuru, Kakamega, Busia, Bungoma, Vihiga, Siaya, Nyamira, Meru, Machakos, Uasin Gishu, Trans Nzoia, Kilifi, Kajiado, Kiambu, Nandi, Kisii and Kirinyaga. The remaining counties are at different stages</p>

⁴⁴ See <https://www.citizen.digital/news/court-allows-importation-of-gmo-rules-no-evidence-gmos-will-harm-people-n329174>

of completion i.e. inspection and data collection, data validation and stakeholder’s forum for public participation.

The Kenya National Commission on Human Rights and the Office of the Attorney General have commenced the process of developing model guidelines for setting up of Operational Level Grievance Mechanisms by businesses.

RIGHT TO HOUSING

142.181: Continue implementing the affordable housing program for low-income people to achieve the Millennium Goals regarding the right to adequate housing

In the process of being implemented

In 2018, as part of the Big Four Agenda, the Government pledged to build 500,000⁴⁵ housing units for the lower and middle-income population segments by 2022. By the end of 2021, the five-year plan had yielded⁴⁶ only 431 units or 0.8% of the target. The new Kenya Kwanza Administration led by President William Ruto has embarked on this agenda, launching several housing projects across the country.

Through the State Department for Housing and Urban Development, the Government has launched 426 potential projects which are set to deliver over 647,922 housing units across the country. These projects are at various stages of development. The overall status is as summarized below:

Ongoing projects- 9,935 units

- Pangani Affordable Housing- 1,562 units
- Nakuru Bondeni Affordable Housing- 605 units
- Buxton Point Mombasa Affordable Housing- 1,850 units
- Bachelors Jeevanjee Estate Affordable Housing- 1,800 units
- Moke Gardens Affordable Housing- 4,118 units

Recently launched by the President and ongoing- 36,092 units

⁴⁵ State Department for Planning (2022) Implementation Status of the Big Four Agenda 2018/2019 available at https://monitoring.planning.go.ke/wp-content/uploads/2020/10/Big-Four-Agenda-Report-2018_19.pdf

⁴⁶ Otieno, B. (2022) State affordable housing drive ‘added 93 homes last year’ available at <https://www.businessdailyafrica.com/bd/economy/state-affordable-housing-drive-added-93-homes-last-year--3817674>

- Mukuru Met Site Social Housing- 13,076 units
- Kibera Soweto B Social Housing- 4,054 units
- Mavoko Affordable Housing- 5,360 units
- Starehe Affordable Housing- 6,704 units
- Shauri Moyo A Affordable Housing Project- 3,848 units
- Ruiru Affordable Housing Project- 1,050 units
- Homa Bay Affordable Housing (NHC)- 2,000 units

Projects contracted and ready for launch- 31,000 units

- Makongeni Affordable Housing- 30,000 units
- Thika Affordable Housing Project- 1,000 units

Planned projects- 570,895 units

Key challenges hindering access to affordable housing include inadequate funding, shortage of land for development, cost of construction, poor physical and social infrastructure, and high cost of resettling those moved to pave way for development. Furthermore, inhumane evictions and destruction of homes have been carried out.

To find funding for affordable housing, the government in May 2023 proposed a 3% house development fund taxation for all salaried Kenyans. This taxation was very controversially effected in July 2023. There have since been conservatory orders by the Court halting the implementation of the levy-. There is need for the issues raised including those concerning public participation and the lack of a clear governing framework that aligns to the Constitution and human rights-based approach to be addressed before the roll out of such a programme. The Commission has rendered its opinion and will continue to render its advisory and advocacy on proposed laws in respect to the rule of law and in line with the Constitution.

The Commission further urges that in its quest to fulfil the right to adequate housing for all Kenyans, the government must respect the rights of its citizens. Any evictions must strictly abide by national and international standards.

<p>Furthermore, adequate meaningful consultations, quality and adequate sanitation as well as accountability and transparency in the award of tenders must be observed in the current wave of affordable housing programmes.</p>		
<p>RIGHT TO WATER AND SANITATION</p>		
<p>142.182: Accelerate the development of the national public water works for water resources storage to better ensure the right to water and sanitation of its people</p> <p>Also covers: 142.190</p>	<p>In the process of being implemented</p>	<p>The Government has developed a National Water Policy to provide for the sustainable management, development and use of water resources in the country. Its overall objective is to provide a framework that is dynamic, innovative, and effective for re-engineering the water sector. It addresses the gaps in water resources management.</p> <p>The Water Resources Regulations 2021 have been implemented to give effect to section 36 of the Water Act on regulation of Water rights and Works.</p> <p>According to the Water Resources Authority, six basin areas account for 90% of Kenya’s total annual water supply. They include the Lake Victoria North Basin, the Lake Victoria South Basin Area, the Tana River Basin Area, the Rift Valley Basin, the Athi river Basin, and the Ewaso Ng’iro North Basin.</p>
<p>RIGHT TO SOCIAL PROTECTION</p>		
<p>142.192: Continue consolidating social protection programs in favour of its population, in particular for the most vulnerable sectors</p>	<p>In the process of being implemented</p>	<p>Whereas there are a number of social protection interventions targeting vulnerable members of the society-orphans and vulnerable children, persons with severe disabilities and older persons through cash transfers under the Inua Jamii programmes, the disbursement schedules have not been certain and regular. Although the commitment by the President on timely and prompt disbursement to Inua Jamii beneficiaries is a step forward, the Commission notes that the last mass registration of Older Persons Cash Transfer Programme (OPCTP) beneficiaries was in 2016, prior to the process initiated in September 2023. In January 2023, the Ministry of Labour and Social Protection released Ksh8.6 Billion for payment of 1,072,226 beneficiaries covering the months July, August, September and October 2022. The disbursements for November 2022 to</p>

	<p>June 2023 were recently released on 22nd June 2023. Positively, the government has so far registered 601,539 Kenyans to the Inua Jamii programme out of the 700,000 people targeted in the fresh enrolment exercise that kicked off in September 2023 across different parts of the country. The registrations were carried out as follows:</p> <ul style="list-style-type: none"> • Older Persons Cash Transfer (OPCT): 371,725 beneficiaries • Cash Transfer Orphans and Vulnerable Children (CT OVC): 167,575 beneficiaries • Persons with Severe Disabilities (PWSD): 62,239 beneficiaries <p>Persons with disabilities also face challenges accessing social protection. According to the Support Needs Assessment Report for Persons with Disabilities and their Primary Caregivers⁴⁷ launched in October 2023 by the Ministry of Labour and Social Protection, many persons with disabilities particularly cognitive and communication faced registration challenges and about 48% of them lack disability registration cards.</p> <p>The Commission therefore calls for public awareness and implementation of timely and clear procedures of assessment and registration of vulnerable groups that are easily accessible including to those in the marginalised areas; timely disbursement of cushion funds and adequate recognition and support to primary caregivers of persons with severe disabilities/high support needs.</p>
<p>142.243: Draw up a comprehensive policy to address the causes of the rise in the number of children in street situation, by providing appropriate social protection and</p>	<p>In the process of being implemented</p> <p>The Government has established a Street Families Rehabilitation Trust Fund to promote the rescue, reintegration and resocialization of street families into community care. Through the fund, a national census on the actual population of street families will be conducted.</p>

⁴⁷ Support Needs Assessment Report available at <https://www.unicef.org/kenya/media/3696/file/Support%20Needs%20Assessment%20Report.pdf>

services and by supporting family reunification programs.

RIGHT TO HEALTH

142.180: Continue to elaborate the development plan of the country and dedicate the resources necessary to improve the living standards of Kenyans, particularly in the areas of health and housing;

In the process of being implemented

While there have been notable strategic investments and interventions by the government towards attainment of Universal Health Coverage (UHC) and strengthened health care systems, investments and allocation to the sector have fallen far below the continental threshold of 15% in line with the Abuja Declaration of 2001. The highest ever allocation to the healthcare sector was 11.1% in the 2020/2021 financial year. During the 2023/2024 financial year, the Government allocated 18.4 billion KES to Universal Health Care.⁴⁸ This is a sharp decline compared to the 62.3 billion KES allocated to Universal Health Care during the 2022/2023 financial year.⁴⁹

Also covers: 142.209

The Government has pledged to increase the number of healthcare workers, but has not yet taken concrete measures to do so. According to the Human Resources for Health Policy Brief of the Ministry of Health, Kenya has a shortage gap of 3,238 medical officers, with the required number being at least 5,317. There is also a deficit of 2,313 consultants, 1,070 dentists, 4,614 public health officers, 1,020 pharmacists, 4,167 pharm technologists, 3,970 specialist clinical officers and 9,301 general clinical officers.

The Government has enacted the **Primary Healthcare Act, 2023, the Social Health Insurance Act, 2023, the Digital Health Act, 2023** and the **Facility Improvement Financing Act, 2023**. The new health laws have been heralded as a game-changer in the provision of comprehensive and quality healthcare under universal health coverage, especially through allocation of resources to cover emergency and chronic diseases treatment, which would bring much-needed relief to many

⁴⁸ See <https://www.treasury.go.ke/wp-content/uploads/2023/06/Press-Release-Budget-Statement.pdf> P. 13

⁴⁹ See <http://www.parliament.go.ke/sites/default/files/2022-04/The%20Budget%20Summary%20for%20the%20Fiscal%20Year%202022-2023.pdf> P.21

households. Under the new Facility Improvement Financing, public health facilities will now be able to retain all monies raised or received and use the funds to ensure availability, accessibility, acceptability, affordability and quality of health care services. Of key concern is **Section 27(2) of the Social Health Insurance Act, 2023** which proposes to use a means-testing instrument to determine annual contributions from persons in the informal sector. Changing the premium contributions from monthly to annual will impose a great financial strain on Kenyans, thereby discouraging new membership and locking needy households out from accessing care under the Act. Furthermore, all Kenyans will be required to make mandatory contributions to the Social Health Insurance Fund or risk being denied access to Government services.⁵⁰ The Commission calls for extensive public participation during development of regulations under the Act and for wider public awareness on the provisions and implications of the new health laws.

On 26th June, 2023 the President unveiled the Kenya Health Human Resource Advisory Council established under Section 30 of the Health Act, 2017 whose operationalization was long overdue. The Council is expected to address inter-county transfer of health professionals, and transfers from one level of government to the other, standardize the welfare and schemes of service for health professionals among others.

Of grave concern is the endemic corruption that has plagued the health sector. An investigation on corruption and unethical conduct in the Kenyan health sector conducted by the Ethics and Anti-Corruption Commission found that the Ministry of Health is the most corrupt government Ministry. The Commission found that eight out of ten health projects in the country are always inflated. The investigation also revealed that 21 per cent of health projects were awarded due to favoritism, 20 per cent due to conflict of interest and 16 per cent due to bribery. It also established that 21 per cent of health projects are subject to cost manipulation at the design stage, while 15 per cent are subject to distorted

⁵⁰ See <https://nation.africa/kenya/news/-no-shif-registration-no-state-services--4439182>

		procurement plans. Various projects that cost billions of tax payers’ money had a number of irregularities, for example the construction of the Kakamega Teaching and Referral Hospital which was budgeted at 6 billion KES had stalled with no documents to show its status.
142.194: Step up efforts to increase access to health facilities to cover remote areas and all sectors of its society	In the process of being implemented	The Ministry of Health has put in place measures to ensure access to healthcare in remote areas. One of the ways it has done this is through the training of community health volunteers. Approximately 90,000 community health volunteers have been trained under the Universal Health Coverage program.
142.199: Continue to protect and promote the right to health for all, through strengthening Universal Health Coverage Also covers: 142.191 142.204 142.205 142.201 142.210	In the process of being implemented	The Government has taken several positive measures to strengthen universal health coverage in Kenya. The Kenya Universal Health Policy (2020-2030) ⁵¹ has been developed and launched by the Ministry of Health. The goal of the Policy is to ensure all Kenyans have access to essential quality health services without suffering financial hardship. The National Health Insurance Fund (Amendment) Act, 2022 was signed into law in January 2022. The amended Act seeks to actualize the realization of universal health coverage by making the Fund a strategic purchaser of health services with a sustainable revenue base. The percentage of health coverage by the end of 2021 was 23.6% against a target of 60%. This is attributed to inadequate funding and low registration of beneficiaries. ⁵² In August 2023, the Cabinet approved three Bills that would replace the National Health Insurance Fund and in its place establish three funds: the Primary Health Care Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund. The Bills include the 2023 Primary Health Care Bill, the 2023 Facility Improvement Financing Bill, the

⁵¹ Ministry of Health, “Kenya Universal Health Coverage Policy, 2020-2030,” available at http://guidelines.health.go.ke:8000/media/Kenya_Universal_Health_Coverage_Policy_2020_2030.pdf

⁵² See <https://monitoring.planning.go.ke/wp-content/uploads/FINAL-BIG-FOUR-REPORT.pdf> p. 21

2023 Digital Health Bill and the 2023 Social Health Insurance Bill. This new architecture is expected to provide a framework for improved health outcomes.⁵³

The Government also intends to establish 315 Primary Health Care Networks across Kenya to accelerate Universal Health Coverage. In September 2023, the Ministry of Health, in collaboration with Development Partners held a Master Trainers of Trainers Training towards scaling up of Primary Health Care Networks. The Master Trainers of Trainers drawn from the 47 counties are expected to build capacities in their counties to operationalize the Primary Care Networks. The Government also intends to hire community health promoters, whose functions include, among others, delivering key health information to families; guiding families on health improvement and disease prevention; and promote appropriate health care for the sick, persons with disabilities and people with chronic conditions.

The Government has also taken positive steps to protect and promote mental health. In September 2023, it launched the **National Guidelines on Workplace Mental Wellness**. These guidelines emphasize promotion, prevention, care and support and the right of everyone in any working organization to be included in the wellness journey. Employees are required to engage in self-care, coping skills, seeking social support and care, while employers are required to enhance supportive working environment that can easily link employees to care and provide necessary resources to operationalize the guidelines.

HIV PREVENTION

142.197: Continue strengthening HIV prevention and education

In the process of being implemented

The Government has developed several programs aimed at strengthening HIV prevention and education. In June 2023, for instance, the Ministry of Health launched the use of vaginal rings among adolescent girls and young women in a bid to reduce new HIV infections.⁵⁴ However, for the first time in more than a

⁵³ See <https://www.citizen.digital/news/cabinet-approves-scraping-of-nhif-three-new-funds-to-be-introduced-n326346>

⁵⁴ See <https://www.citizen.digital/news/hiv-game-changer-ministry-of-health-launches-vaginal-rings-n321996> .

<p>policies and programmes in the health sector</p>	<p>decade, the number of new HIV infections increased in 2021 by 7.8% from 32,027 in 2020 to 34,540 in 2021. 10 out of 47 counties accounted for 57% of all new HIV infections that occurred in 2021. An estimated 52% of all new infections occurred among adolescents and young adults aged 15-29. Women and girls continue to bear the brunt of the epidemic. In 2021, an estimated 66.7% (23,051) of all new HIV infections occurred among women and girls. Boys and men accounted for 33.3% of all new infections. Among adult men and boys, those aged 20-39 contributed to 76% (6,700) of the 8,874 new HIV infections that occurred among those aged 15 and above.⁵⁵</p> <p>In September 2023, the Government launched the Kenya Plan to End AIDS in Children by 2027. This four-point plan of action aims to end pediatric AIDS by 2027, including through addressing mother-to-child transmission of HIV, Syphilis and Hepatitis.⁵⁶</p>
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SEXUAL AND REPRODUCTIVE HEALTH RIGHTS

<p>142.202: Review all legal, policy and structural barriers that impede the provision of sexual and reproductive health (SRH) services, in particular against adolescent girls, young women and members of key populations more vulnerable to HIV, and</p>	<p>Not implemented</p>	<p>A National Reproductive Health Policy (2022-2032) has been developed by the Ministry of Health. Under the Policy, parental/guardian/children’s officer consent is required for the provision of reproductive health services for minors (those aged below eighteen years).⁵⁷ Healthcare workers also risk being imprisoned for giving minors contraceptives.⁵⁸</p> <p>The Reproductive Healthcare Bill, 2019, which sought to provide for the right to reproductive healthcare; to set the standards for reproductive health and to provide for the right to make decisions regarding reproductive health was</p>
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⁵⁵ National Syndemic Diseases Control Council, “World Aids Day Report 2022: It is a Race Against Time,” (2022), available at https://nsdcc.go.ke/wp-content/uploads/2022/12/WAD-Report_F4-1.pdf p. 1-2

⁵⁶ See <https://www.health.go.ke/node/703>

⁵⁷ Ministry of Health, National Reproductive Health Policy 2022-2032, Government of Kenya, July 2022, available at <https://www.health.go.ke/wp-content/uploads/2022/07/The-National-Reproductive-Health-Policy-2022-2032.pdf> p. 26 and 27

⁵⁸ See <https://nation.africa/kenya/news/you-risk-being-imprisoned-for-giving-minors-contraceptives-3791698>

<p>implement comprehensive human rights-based programmes in this area</p>	<p>rejected by the State over concerns that it would normalize abortion on demand.⁵⁹</p>
<p>142.111: Actively implement the positive measures to end gender-based violence and harmful practices, including through recent legislative frameworks, a pledge to end female genital mutilation, and its commitment to reduce maternal deaths</p>	<p>In the process of being implemented</p> <p>The Government has taken steps to end gender-based violence by launching the Child Justice and Sexual and Gender-Based Violence strategies and the Convicted Sexual Offences Electronic Register; establishing specialized sexual and gender-based violence Courts at Kibera and Makadara Law Courts and launching the Training Handbook for the Investigation and Prosecution of Online Child Sexual Exploitation and Abuse. The Government has also adopted the Protection Against Domestic Violence Rules, 2020.</p> <p>On 13th October 2021, the National Police Service launched its first ever policy for an integrated response to sexual and gender-based violence. The Policy is intended to steer the National Police Service in the establishment, management and operations of one-stop centers dubbed “Policare” to strengthen the capacity of the National Police Service to prevent and respond to sexual and gender-based violence cases. The Policare service providers include, among others, the police, forensic investigators, health providers, psychologists and gender experts. Two Policare centers have been established. However, they are not yet operational. Additionally, a taskforce has been established to review the sexual offences laws. Despite this progress, cases of intimate partner violence and femicide remain on</p>

⁵⁹ See <https://www.pd.co.ke/news/state-rejects-health-care-bill-that-seeks-to-legalise-abortion-47724/>

⁶⁰ Assisted Reproductive Technology Bill, 2022, available at <http://www.parliament.go.ke/sites/default/files/2023-02/THE%20ASSISTED%20REPRODUCTIVE%20TECHNOLOGY%20BILL%20%2C%202022.pdf>

the rise. In January 2024 alone, 16 women were victims of intimate partner violence.⁶¹

In 2021, the Government launched the [Standard Operating Procedures Manual and Rapid Reference Guide on Prosecution of Female Genital Mutilation Cases](#). Anti-FGM and Child Marriage Prosecution Units have been established within the Office of the Director of Public Prosecutions to fast-track the prosecution of FGM and child marriage cases. Other efforts include the launch of the Pasha Mobile App to enhance reporting and responses to FGM cases and enable survivors to access legal aid and psychosocial support.⁶² County Governments, in partnership with the national Government and local and international organizations have adopted anti-FGM policies and strategies.⁶³

MENTAL HEALTH

142.27: Finalize the adoption processes of the draft bills on children, mental health, and persons with disabilities

Implemented

The President assented to the Mental Health (Amendment) Act, 2022⁶⁴ on 21st June 2022. The Act came into force on 11th July 2022. The Act clearly outlines the roles of both national and county governments towards the prevention, care and treatment of persons with mental illness.

The Commission calls for more to be done by both the county and national government in-terms of mental health care, especially on eliminating stigma, improving access/infrastructure, human resource, addressing the cost of treatment as well as the setting up of county mental health councils. The Commission further calls for more support including funding of the Kenya Board on Mental Health and its operationalization to enable it effectively carry out its mandate under the Act.

⁶¹ See <https://nation.africa/kenya/news/protests-across-kenya-over-the-rise-of-femicide-4505576>

⁶² See <https://kenyanewspaper.co.ke/anti-fgm-board-partner-with-unicef-to-launch-reporting-application-pasha-app/>

⁶³ See <https://www.kenyanews.go.ke/migori-adapts-new-strategy-in-the-fight-against-fgm/>, <https://www.kenyanews.go.ke/narok-county-anti-fgm-policy-launched/>

⁶⁴ Mental Health (Amendment) Act, 2022, available at http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2022/TheMentalHealth_Amendment_Act_2022.pdf

		<p>The President assented to the Children’s Act, 2022 on 6th July 2022. The Act became operational on 26th July 2022.⁶⁵</p> <p>The Persons with Disabilities Bill, 2023⁶⁶ was read for the first time in the Senate on 22nd March 2023, and thereafter committed to the Senate Standing Committee on Labor and Social Welfare. There was a call for public participation on the Bill. The Bill was read the second time at Senate on 1st August 2023 and is now at the Committee of the Whole Stage.⁶⁷</p>
RIGHT TO FAMILY		
142.46: Immediately adopt the National Policy for the Promotion and the Protection of the family	Not implemented	The Government has started the process of developing the National Policy for the Promotion and Protection of the Family. The Ministry of Labor and Social Protection is leading the development of the policy, which is expected to be completed in 2023. The Policy is aimed at promoting family stability, strengthening family ties, and addressing the challenges faced by families in Kenya. However, the COVID-19 pandemic slowed down the process of developing the policy, and more efforts are needed to ensure that it is completed on time. The Policy has been resubmitted to Cabinet for consideration and adoption.
142.247: Take further measures to eliminate institutionalization of vulnerable children and orphans, and provide them with a family environment	In the process of being implemented	The Government has launched a National Care Reform Strategy for Children in Kenya (2022-2032) . The strategy seeks to guide national steps towards Prevention and Family Strengthening, robust alternative family care, and Tracing, reintegration and transitioning from institutional care to Family and Community Based Care for all children in need of care and protection. It sets out areas of focus for various agencies in the sector for the next ten years and calls for

⁶⁵ Children’s Act, available at http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2022/TheChildrenAct_2022.pdf

⁶⁶ Senate of Kenya (2023) Persons with Disabilities Bill, 2023 available at <http://www.parliament.go.ke/sites/default/files/2023-03/The%20Persons%20with%20Disabilities%20Bill%2C%202023.pdf>

⁶⁷ See <http://www.parliament.go.ke/sites/default/files/2023-09/BILLS%20TRACKER%20UPDATED%20AS%20AT%2022ND%20SEPTEMBER%2C%202023.pdf>

		<p>collaborative effort and active coordination to achieve collective impact approach.</p> <p>Section 223 (1) of the Children Act, 2022 discourages the institutionalization and detention of children in conflict with the law pending trial. Such measures should only be used as means of last resort and should be replaced by alternative measures such as placement with a family, in an educational setting or home.⁶⁸</p>
LABOUR AND EMPLOYMENT		
<p>142.177: Continue to take measures aimed at addressing the issue of youth unemployment</p> <p>Also covers: 142.177</p>	<p>Not implemented</p>	<p>The Government has not taken any measures to address youth unemployment. According to data released by the Kenya National Bureau of Statistics, the number of jobless persons grew 2.94 percent from 2.89 million in September 2022. Young people below the age of 29 were hardest hit by joblessness. More than half of Kenyans without jobs, or 1.54 million people, were between 20 and 29 years.⁶⁹</p>
RIGHT TO EDUCATION		
<p>142.207: Continue to Increase investment in education, and improve education in rural areas</p> <p>Also covers: 142.208, 142.209, 142.210, 142.215, 142.217</p>	<p>In the process of being implemented</p>	<p>Funding for education increased from 460.4 billion allocated for the 2018/19 financial year to 544.4 billion and 628.5 billion for the 2021/2022 and 2022/2023 financial years respectively.⁷⁰ An Education Management Information System (EMIS) to provide data for effective planning and resource allocation in the education sector is currently being implemented by the Ministry of Education.</p> <p>The Government has taken steps to enhance access to education through the implementation of the Digital Literacy Programme. With support from Huawei and in partnership with UNESCO and the Kenya ICT Authority, 13 schools were connected to the internet under Kenya's National Optic Fiber Backbone Infrastructure (NOFBI) between 2021 and 2023. This initiative has helped</p>

⁶⁸ Children Act, 2022, available at http://kenyalaw.org/ki/fileadmin/pdfdownloads/Acts/2022/TheChildrenAct_2022.pdf

⁶⁹ See <https://www.theeastafrican.co.ke/tea/business/number-of-jobless-kenyans-rises-to-2-97m-4184722>

⁷⁰ See <https://www.treasury.go.ke/wp-content/uploads/2022/06/FY-2022-23-Programme-Based-Budget-Book.pdf>

increase access to education for learners in rural areas, particularly girls and those with disabilities.

The Commission has been monitoring the roll out of the Competency Based Curriculum (CBC) and has engaged the Presidential Working Party on Education Reform in Kenya with recommendations on mainstreaming a human rights-based approach to education. The Commission notes the Government's commitment to attaining 100% transition from primary to secondary school, and efforts to transition and place Grade 7 learners to Junior Secondary Schools under the CBC. The Commission however remains concerned over the confusion in the transition process that saw about 160,000 learners left out of school, of which 50,143 did not join Junior Secondary Schools and 111,046 did not join form one, despite the Ministry of Education's efforts towards 100% transition. The Commission welcomes efforts towards bridging the teacher-student ratio- noting the announcement by the President of recruitment of 56,750 new teachers to meet the shortage that crippled the education sector for a long time.⁷¹ Under the Teacher Management Secondary Sub-Programme, the TSC is reported to have recruited 13,000 teachers against a target of 15,695 teachers and posted 1,222 newly recruited teachers to schools with high shortages in the 2022/2023 FY.

Furthermore, public universities in Kenya continue to be grossly underfunded with a 56 billion debt in unremitted staff pensions and statutory deductions. In the current financial year, for instance, the funding requirement for public universities is Kshs. 71,945,049,600 against an approved allocation of Kshs. 44,023,955,000 and as such, universities cannot offer quality teaching, training and research as per their mandates.⁷² Additionally, the delayed disbursement of funding to the Higher Education Loans Board (HELB) has affected access to education for beneficiaries of the HELB loan.⁷³

⁷¹ H.E President William Ruto State of Nation Address 9th November 2023 para 56.

⁷² Speech by the CS for Education during Universities Funding Conference available at <https://www.education.go.ke/sites/default/files/2023-02/CS%20Hon%20Ezekiel%20Machogu%20Speech%20during%20UFConference2023%20held%20on%20Feb%2023-2023.pdf> p.4

⁷³ See <https://www.the-star.co.ke/news/2023-03-23-kuso-calls-for-weekly-friday-demos-over-delayed-helb-loans/>

GROUP RIGHTS

RIGHTS OF THE CHILD AND JUVENILE JUSTICE

142.125: Prohibit corporal punishment in schools and public institutions	Implemented	Corporal punishment is prohibited under Section 25 (3)(c) of the Children’s Act, 2022. ⁷⁴ Alternative discipline guidelines have also been developed and adopted. Despite its express ban in law, corporal punishment and other forms of torture continue to be meted on pupils and adult learners in schools. ⁷⁵
142.261: Implement a comprehensive birth registration program in order to prevent minorities from having limitations on the right to nationality	Not implemented	Some members of the minority Nubian community continue to experience delays in the issuance of national identification cards, face discriminatory vetting procedures in obtaining identity documents and lack appellate mechanisms against the outcome of the vetting procedures.
142.27: Finalize the adoption processes of the draft bills on children, mental health, and persons with disabilities	Implemented	<p>The President assented to the Children’s Act, 2022 on 6th July 2022. The Act became operational on 26th July 2022.</p> <p>The President assented to the Mental Health (Amendment) Act, 2022⁷⁶ on 21st June 2022. The Act came into force on 11th July 2022. The Act clearly outlines the roles of both national and county governments towards the prevention, care and treatment of persons with mental illness.</p> <p>The Commission calls for more to be done by both the county and national government in-terms of mental health care, especially on eliminating stigma, improving access/infrastructure, human resource, addressing the cost of treatment as well as the setting up of county mental health councils. The</p>

⁷⁴ Children’s Act, 2022, available at <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2029%20of%202022>

⁷⁵ See <https://nation.africa/kenya/counties/mombasa/hospital-bill-worries-family-of-boy-beaten-over-chapatis-3778360> and <https://www.the-star.co.ke/news/2023-03-13-teacher-flees-school-as-two-pupils-nurse-injuries-from-caning-squeezed-testicles/>

⁷⁶ Mental Health (Amendment) Act, 2022, available at http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2022/TheMentalHealth_Amendment_Act_2022.pdf

		<p>Commission further calls for more support including funding of the Kenya Board on Mental Health to enable it effectively carry out its mandate under the Act.</p> <p>The Persons with Disabilities Bill, 2023⁷⁷ was read for the first time in the Senate on 22nd March 2023, and thereafter committed to the Senate Standing Committee on Labor and Social Welfare. There was a call for public participation on the Bill. The Bill was read the second time at Senate on 1st August 2023 and is now at the Committee of the Whole Stage.⁷⁸</p>
<p>142.229: Continue the fight against discrimination and violence against women and children, including trafficking, forced labour and domestic abuse as well as improve reporting and bringing to justice perpetrators of such acts</p> <p>Also covers: 142.250, 142.256</p>	<p>In the process of being implemented</p>	<p>The Government has taken steps to end gender-based violence by launching the Child Justice and Sexual and Gender-Based Violence strategies and the Convicted Sexual Offences Electronic Register; establishing specialized sexual and gender-based violence Courts at Kibera and Makadara Law Courts and launching the Training Handbook for the Investigation and Prosecution of Online Child Sexual Exploitation and Abuse.</p> <p>On 13th October 2021, the National Police Service launched its first ever policy for an integrated response to sexual and gender-based violence. The Policy is intended to steer the National Police Service in the establishment, management and operations of one-stop centers dubbed “Policare” to strengthen the capacity of the National Police Service to prevent and respond to sexual and gender-based violence cases. The Policare service providers include, among others, the police, forensic investigators, health providers, psychologists and gender experts. Two Policare centers have been established. However, they are not yet operational. Despite this progress, cases of intimate partner violence and femicide remain on the rise. In January 2024 alone, 16 women were victims of intimate partner violence.⁷⁹</p>

⁷⁷ Senate of Kenya (2023) Persons with Disabilities Bill, 2023 available at <http://www.parliament.go.ke/sites/default/files/2023-03/The%20Persons%20with%20Disabilities%20Bill%2C%202023.pdf>

⁷⁸ See <http://www.parliament.go.ke/sites/default/files/2023-09/BILLS%20TRACKER%20UPDATED%20AS%20AT%2022ND%20SEPTEMBER%2C%202023.pdf>

⁷⁹ See <https://nation.africa/kenya/news/protests-across-kenya-over-the-rise-of-femicide-4505576>

	<p>The Government has taken several positive measures to combat trafficking of persons in Kenya. These include the launch of a National Plan of Action to Combat Trafficking in Persons (2022-2027) which outlines strategies for comprehensive victim-centered support. The Action Plan focuses on the pillars of prevention, protection, prosecution and partnerships in order to address trafficking of persons. In addition, the Government has finalized the guidelines for the disbursement of funds for trafficking victims from the National Assistance Trust Fund for Assisting Victims of Trafficking and used the funds to support economic reintegration for trafficking survivors. Furthermore, an updated National Plan of Action Against Sexual Exploitation of Children (2022-2026) which includes activities to prevent online child sex trafficking has been launched. The Ministry of Interior and National Administration has also established 28 child protection units across the country.</p>
<p>142.131: Continue to improve Kenya’s juvenile justice system and place children at its core</p>	<p>In the process of being implemented</p> <p>The Office of the Director of Public Prosecutions has developed and launched a <i>Prosecutors’ Guide to Children in the Criminal Justice System</i> which aims to increase awareness and understanding of the rights of children in conflict with or in contact with the law and serve as a practical framework to guide prosecutors on how to handle cases involving children in the criminal justice system.</p> <p>The Children’s Act was enacted on 6th July 2022.⁸⁰ The Act enshrines the rights of children in conflict with the law. These rights include their right to a fair trial; their right, as far as is practically possible not to be detained pending trial and where detention is absolutely necessary, their right to be detained under conditions that take full account of their particular needs; their right to privacy during arrest, the investigation of the offence and at any other stage of the cause of the matter, among others.</p> <p>The Government has also launched the Child Justice and Sexual and Gender-Based Violence strategies and the Convicted Sexual Offences Electronic Register; established specialised sexual and gender-based violence Courts at Kibera and</p>

⁸⁰ Children’s Act, 2022, available at http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2029%20of%202022#part_XV

		<p>Makadara Law Courts and launched the Training Handbook for the Investigation and Prosecution of Online Child Sexual Exploitation and Abuse.</p> <p>In <i>JMR v Republic</i> the High Court ruled that Section 25(2) and (3) of the Penal Code which allowed the President to indefinitely detain minors found guilty of committing a crime was unconstitutional.⁸¹</p>
142.132: Raise the age of criminal responsibility	Implemented	The Children’s Act enacted in 2022 raised the age of criminal responsibility from 8 to 12 years. ⁸² Section 221 (1) of the Act states that “A person under the age of twelve years shall not be criminally responsible for any act or omission”.
RIGHTS OF PERSONS WITH DISABILITIES		
142.248: Establish a long-term strategy to raise awareness and combat discrimination against people with disabilities and to enable allegations of discrimination to be brought before court, ensuring appropriate remedy to the victims	In the process of being implemented	<p>There have been several attempts to amend or repeal the Persons with Disabilities Act, 2003 which was enacted way before the Convention on the Rights of Persons with Disabilities (CRPD), 2006, which now forms part of the laws of Kenya as provided for under Article 2(6) of the Constitution of Kenya, 2010. The new law seeks to be in conformity with the CRPD and the Constitution.</p> <p>At the Senate, the Persons with Disabilities Bill, 2023⁸³ was read for the first time on 22nd March 2023, and thereafter committed to the Senate Standing Committee on Labor and Social Welfare. There was a call for public participation on the Bill. The Bill was read the second time at Senate on 1st August 2023 and is now at the Committee of the Whole Stage.⁸⁴</p> <p>The Persons with Disabilities Bill, 2023⁸⁵ was introduced at the National Assembly on 26th June 2023. The Bill seeks to give effect to the rights of persons with</p>

⁸¹ AOO & 6 others v Attorney General & another (Petition 570 of 2015) [2017] KEHC 6022 (KLR) (Constitutional and Human Rights) (12 May 2017) (Judgment), available at <http://kenyalaw.org/caselaw/cases/view/135588/>

⁸² Children’s Act, available at <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2029%20of%202022> section 221

⁸³ Senate of Kenya (2023) Persons with Disabilities Bill, 2023 available at <http://www.parliament.go.ke/sites/default/files/2023-03/The%20Persons%20with%20Disabilities%20Bill%2C%202023.pdf>

⁸⁴ See <http://www.parliament.go.ke/sites/default/files/2023-09/BILLS%20TRACKER%20UPDATED%20AS%20AT%2022ND%20SEPTEMBER%2C%202023.pdf>

⁸⁵ Available at <http://www.parliament.go.ke/sites/default/files/2023-06/The%20Persons%20with%20Disabilities%20Bill%2C%202023%20%284%29.pdf>

Also covers: 142.249,
142.250, 142.251, 142.252,
142.253, 142.254, 142.255

disabilities under Article 54 of the Constitution of Kenya; to restructure the National Council for Persons with Disabilities and to provide for its functions and powers; and to provide for the institutional framework for protecting, promoting and monitoring the rights of persons with disabilities.

The Ministry of Labour and Social Protection, together with relevant Ministries, Departments and Agencies and organizations of and for persons with disabilities is currently developing a National Policy for Persons with Disabilities to replace the 2006 National Disability Policy. The review of the 2006 Policy was informed by a number of developments including the promulgation of the 2010 Constitution of Kenya and the ratification of the Convention on the Rights of Persons with Disabilities in 2008. The Policy aims to inform and provide guidelines for planning, budgeting, implementation, monitoring and evaluation of policies, legislations, programmes and special measures for mainstreaming disability and empowering persons with disabilities.

There is in place the Judiciary Disability Mainstreaming Policy launched in 2016. The policy seeks to enhance the rights and working environment of employees with disability in the Judiciary. It also seeks to address clients of the Judiciary with disability, who seek services from the institution. The policy identifies the governing principles, lays out the framework for which it is to be implemented. It is wide ranging in its application and envisages the formation of a disability advisory committee as well as having a disability advisory.

The disability mainstreaming department of the National Council for Persons with Disabilities conducts disability mainstreaming training to institutions upon request. The content of the training can be tailor-made to offer practicability within the organization. Discrimination forms part of the training topics but unfortunately the context of litigation and adjudication has not yet been incorporated in the training.

<p>142.254: Review the Special Needs Education Policy (2009) and ensure that children with disability are integrated in the education system</p>	<p>In the process of being implemented</p>	<p>Progress has included making available resources for building accessible learning institutions, review of the curriculum⁸⁶ to accommodate the new Competency-Based 2-6-3-3-3 education system,⁸⁷ provision of assistive devices and technology to learners, assessment of learners to establish their learning needs and others. The proposed Learners with Disabilities Bill, 2023 seeks to put integration at the center of learning in Kenya. Challenges remain, including inadequate funds, inadequate tutors, delays in developing a comprehensive policy, insecurity in parts of Kenya including the North Rift and concerns about the burden and ‘rush’ of the new system on the parents, learners and teachers.</p>
<p>142.200: Take additional measures to address lack of access to high-quality healthcare for women, including women with disabilities</p>	<p>In the process of being implemented</p>	<p>There is notable progress across health centers countrywide with information provided in accessible formats including sign language interpretation, large format print posters but reduced accessibility for patients with visual impairment, who often rely on their personal assistants and not in braille. Negative attitudes in society against persons with disabilities, illiteracy still remain challenges to accessible health services in all formats for persons with disabilities.</p>
<p>Also covers: 142.255</p>		
<p>RIGHTS OF INDIGENOUS PERSONS</p>		
<p>142.257: Consider further measures to enhance the meaningful participation of indigenous peoples in all matters affecting them</p>	<p>In the process of being implemented</p>	<p>A National Action Plan on Business and Human Rights was finalized and launched on 12th May 2023. The Action Plan obligates the Government to require businesses to conduct comprehensive and credible human rights impact assessments before they commence their operations and continuously review the assessment to ensure that they prevent, address and redress any human</p>

⁸⁶ Ministry of Education (2022) Implementation Guidelines Sector Policy for Learners and Trainees with Disabilities available at

<https://www.education.go.ke/sites/default/files/2022-05/Implementation-guidelines-sector-policy-for-learners-and-trainees-with-disabilities.pdf>

⁸⁷ Wanjala, E. (2017) New 2-6-3-3-3 curriculum different is it from the 8-4-4 system? Available at <https://www.the-star.co.ke/news/2017-12-25-new-2-6-3-3-3-curriculum-how-different-is-it-from-the-8-4-4-system/>

Also covers: 142.41

rights violations. These assessments should involve **meaningful consultation with potentially affected groups**.⁸⁸

Furthermore, in a judgment dated 23rd June 2022, the African Court on Human and Peoples' Rights asked the Government to, among others, take all necessary measures to **recognize, respect and protect the right of the Ogiek to be effectively consulted**, in accordance with their tradition/customs in respect of all development, conservation or investment projects on Ogiek ancestral land. This judgment is however yet to be implemented. The Cabinet Secretary for the Ministry of Interior and National Administration has appointed an interagency working group to implement the decisions of the African Court.

The Government continues to evict indigenous peoples from their ancestral lands in unlawful ways, despite the African Court judgments recognizing their rights.⁸⁹ On 2nd November 2023, the Kenyan government began demolishing houses and evicting Indigenous Ogiek from the Maasai Mau Forest.⁹⁰ The Kenya National Commission on Human Rights obtained conservatory orders against the evictions.

RIGHTS OF REFUGEES

142.259: Ensure the protection of asylum seekers and refugees in its territory, provide adequate food and health services in reception facilities with the

In the process of being implemented

The Government has established police stations and posts in refugee camps and host communities, as follows:

1. Garissa County, Fafi Sub-County
 - Hagadera Police station within the refugee complex
 - Borehole V Police Post
 - Kambioss Police Post

⁸⁸ National Action Plan on Business and Human Rights for the Implementation of the United Nations Guiding Principles on Business and Human Rights (June 2019), available at https://www.ohchr.org/sites/default/files/Documents/Issues/Business/NationalPlans/2019_FINAL_BHR_NAP.PDF

⁸⁹ See <https://www.the-star.co.ke/news/realtime/2023-10-27-ogiek-protest-evictions-from-mau-forest-warn-of-humanitarian-crisis/>

⁹⁰ See <https://news.mongabay.com/2023/11/kenyan-government-again-evicts-ogiek-communities-from-mau-forest/#:~:text=On%20Nov.,traditional%20role%20in%20preserving%20it.>

help of the international community

Also covers: 142.260

- UNHCHR Police Post
- 2. Dadaab Sub-County
 - Ifo Police station within Dadaab Camp
 - Ifo Two police post
 - New Base Police post
 - Dagahaley Police Station within Dadaab Camp
 - Dertu Police Station within Dadaab Camp
- 3. Turkana County, Turkana West Sub-County
 - Kakuma Police Station
 - Kakuma one police post
 - Kakuma two police post
 - Kakuma three police post
 - Kakuma four police post
 - Hong-Kong police post
 - Gambela police post
 - Kaloboyei police post
 - NEW site police post
 - Village two police post
 - Village three police post
 - Oropoi police post

The Government plans to embark on a shift in refugee policy from aid-dependency to refugee self-reliance and development, through a five-year transition Plan dubbed the Shirika Plan. The Shirika Plan's main objectives are to facilitate the gradual transition from the refugee camp management model to integrated settlements, ease the pressure on the country as a refugee host, facilitate the transition of refugee basic service delivery from a humanitarian-led approach to government-led systems, and promote refugee and host community socio-economic inclusion for enhanced self-reliance and resilience.

To achieve these objectives, the Shirika Plan calls for greater international support to Kenya as a refugee host country. The Plan emphasizes capacity

building for the government of Kenya to handle refugee influxes and protracted refugee cases, in the spirit of burden-sharing. The Plan also seeks to support durable solutions for refugees and asylum seekers.

The key stakeholders in the Shirika Plan shall include the national government through several ministries and departments, UNHCR and other UN agencies/programs, development partners, the private sector, INGOs, NGOs, refugees, and host communities. The Ministry of Interior and National Administration through the State Department of Immigration and Citizen Services will lead the national government's efforts, while the other Ministries will also be involved in providing the required specialized support.

The Government has also taken steps to enhance access to justice for marginalized communities in the refugee town of Kakuma in Turkana County by institutionalizing alternative justice systems models and rolling out e-filing of cases.

Under the "*Haki na Ushirikiano*" Programme launched in 2023, the KNCHR together with Partners is working towards the promotion and protection of rights of refugees, asylum seekers and host communities. The Project seeks to contribute to a conducive asylum and human rights environment for both refugees and host communities in Kenya.⁹¹

142.29: Take immediate steps to enact the Refugee Bill (2019), gazetted through Gazette supplement No 126 endorsing amendments that lead to enhancing freedom

Implemented

The Refugees Act, 2021⁹² was enacted on 17th November 2021. Some provisions of the Act are however incoherent. For instance, the Act provides that refugees and asylum seekers are entitled to the rights under the UN Convention and Protocol Relating to the Status of Refugees and the OAU Convention of Refugees. However, the right to freedom of movement of refugees under the Act is restricted. Under the Act, refugees and asylum seekers are required to live in

⁹¹ More information about the project is available at <https://ushirikiano.knchr.org/>

⁹² Refugees Act, 2021, available at http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2021/TheRefugeesAct_No10of2021.pdf

of movement and refugee inclusion

designated areas. The Commissioner in charge of refugee affairs may exempt refugees and asylum seekers from residing in designated areas where there are compelling reasons to do so. In addition, refugees and asylum seekers have to apply for movement passes if they wish to travel outside the designated areas and within Kenya. Furthermore, refugees and asylum seekers residing outside designated areas have to notify the Commissioner of their situation. Resultantly, refugees and asylum seekers have been arrested and charged for the offence of residing outside designated areas. For instance, the Refugee Consortium of Kenya reported that between 1st January and 9th May 2023, 23 refugees were arrested and charged with the offence of residing outside designated areas.

Under the Act, refugees in Kenya have a right to participate in income-generating activities. However, they encounter various obstacles in obtaining the necessary work permits and therefore decreasing the enjoyment of this right. The challenges include lack of awareness of their economic rights, protracted refugee status determination procedures, difficulty in obtaining refugee certificates, and the need to present a job offer letter from a potential employer to acquire a work permit.

Through Gazette Notice No. 143 of 19th September 2023, the Government declared the following documents as Refugee Identification Documents for purposes of acquiring services provided by the Government of Kenya:

- Asylum seeker pass
- Proof of Registration
- Movement Pass
- Letter of Recognition
- Refugee Identity Card
- Conventional Travel Document

However, some banks are yet to accept these documents despite their official recognition as documents to be used in acquiring Government services.

<p>142.218: Pursue efforts in order to ensure that all Kenyans and residents receive quality education without discrimination</p> <p>Also covers: 142.219</p>	<p>In the process of being implemented</p>	<p>The Ministry of Education, in collaboration with development partners and other stakeholders, has developed a draft policy for inclusion of refugees and asylum seekers into the national education and training system. All camp-based schools follow the Kenyan curriculum and sit for Kenyan National Exams. In addition, primary and secondary schools in the camps are headed by Principals registered by the Teachers Service Commission and all camp-based teaching personnel have been trained on the Competency Based Curriculum. Refugee learners also participate in co-curricular activities and have been included in national scholarship programmes.</p>
<p>142.235: Increase efforts to prevent and combat sexual and gender-based violence, including in camps for internally displaced persons and refugees</p>	<p>In the process of being implemented</p>	<p>Organizations working on refugee rights conduct continuous programmes aimed at preventing and responding to sexual and gender-based violence towards refugees and asylum seekers. Such programmes focus on:</p> <ul style="list-style-type: none"> • Providing free legal counselling and representation for SGBV survivors • Partnerships with stakeholders in the campaign to end SGBV • Coordination and collaboration with gender-based violence recovery centers to ensure holistic support for survivors • Sensitization on prevention and response to gender-based violence • Social assistance and economic empowerment support for survivors
<p>RIGHTS OF PERSONS WITH ALBINISM</p>		
<p>142.118: Redouble efforts to promote and protect the rights of people with albinism by creating support centers dedicated to this cause</p>	<p>In the process of being implemented</p>	<p>For the period January 2021 to May 2023, the KNCHR, under its albinism project, has sensitized over 350 stakeholders both in person and virtually, including persons with albinism themselves, on the rights of persons with albinism in Kenya.</p> <p>The National Council for Persons with Disabilities lends financial support to the awareness and advocacy programs of grass root disability organizations. These programmes aim at educating communities on various issues faced by persons with albinism. The Council has so far supported three such forums.</p>

<p>Also covers: 142.119, 142.120, 142.121, 142.122, 142.123, 142.124</p>	<p>The albinism programme of the National Council for Persons with Albinism provides medical services that are specific to cancer screening and education for students with albinism. Unfortunately, the programme scope of operation does not extend its support to psychosocial or socio-economic or medical support to victims of attack.</p>
<p>Through several forums with persons with albinism in Mombasa, Kilifi, Nakuru and Nairobi, the KNCHR and NCPWD partnered with persons with albinism themselves and their representative organizations to develop the Kenya National Action Plan on Albinism 2023-2028. As at 10th May 2023, the Hon. Attorney General had agreed to the draft and was sending an advisory to the Ministry of Labor and Social Protection to coordinate its adoption and implementation.</p>	
<p>EQUALITY AND NON-DISCRIMINATION</p>	
<p>142.62: Develop and adopt appropriate legislative and administrative measures to combat discrimination against women as well as discrimination and violence against LGBTI people</p>	<p>Partially implemented</p> <p>The Intersex Persons Bill, 2023 is in the process of legislation. The purpose of the Bill is to provide recognition, protection and safeguarding of intersex persons human rights in Kenya, to provide for equalization of opportunities, to ensure affirmative action of intersex persons. The Intersex Persons Implementation Coordination Committee, through the Kenya National Commission on Human Rights is receiving contributions from members of the public regarding the Bill. The Children’s Act⁹³ enacted in 2022 recognizes intersex children. Section 7 (4) of the Act amends the Births and Deaths Registration Act to provide for the registration of an intersex child.</p> <p>The National Policy on Gender and Development has also been developed. The Policy aims to achieve gender equality in national development to enhance participation of vulnerable and marginalized groups for the attainment of sustainable development.</p> <p>The Commission has also closely monitored and investigated waves of incitement and violence targeted at persons of diverse sexual orientation and gender</p>

⁹³ Children’s Act, available at <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2029%20of%202022>

		<p>identity. The Commission has recorded 98 cases of harassment, death threats and physical attacks; 57 cases of forced temporary relocations of persons suspected to be of diverse sexual orientation and gender identity for fear of lives; and 8 cases of threatened evictions from houses. Others numerous attacks in the form of cyber bullying, blackmail and extortions were also reported.</p> <p>Of major concern is a Family Protection Bill that was introduced in Parliament in April 2023. The Bill aims to criminalize the promotion, recruitment and funding of homosexuality and LGBTQ activities in Kenya. It further seeks to limit the rights to assembly, demonstration, association, expression, belief, marriage, privacy and employment in childcare institutions of homosexuals. It proposes penalties ranging from imprisonment of at least ten years to the death penalty for individuals convicted of homosexuality.⁹⁴</p>
<p>142.61: Continue collecting and analyzing disaggregated data on women with the aim to combat discrimination based on religion, ethnic background, age, health, disability and sexual orientation</p>	<p>Not implemented</p>	<p>Most County Integrated Development Plans, policies and legislation at the county level are gender-blind, limiting the scope for performance monitoring on gender-related goals.</p>
<p>142.64: Amend discriminatory laws against women and eliminate harmful practices and gender-based violence against women and girls</p>	<p>Partially implemented</p>	<p>The Law of Succession Act has been amended. Previously it provided that only a widow would lose the life interest of her deceased husband estate in the event that her husband died. As it stands now both man and woman lose their life interest over their deceased spouses property in the event that they remarry. In addition, both parents of a deceased child have an interest in the property of their child in the event that their child dies with no surviving spouse or child.</p>

⁹⁴ See <https://www.the-star.co.ke/news/2023-04-08-details-of-kalumas-bill-on-criminalising-lgbtq/>

<p>Also covers: 142.59</p>		<p>Before, the mother of the child could only inherit when the father of the child had died.</p> <p>The Matrimonial Property Act recognizes the contribution of women to matrimonial property. The Act defines contribution as both monetary and non-monetary contribution. It states that ownership of matrimonial property vests in the spouses according to their contribution in the acquisition and shall be divided between them if they divorce or their marriage is dissolved.</p> <p>State Agencies such as the Anti-FGM Board train gender mainstreaming committees in Ministries, Departments and Agencies in order to eliminate gender-based violence in the workplace.</p>
<p>142.179: Take additional measures to eliminate discrimination and harassment in the workplace, including on the basis of sex and sexual orientation and gender identity</p> <p>Also covers:142.178</p>	<p>Partially implemented</p>	<p>The Employment Act only provides that an employer is responsible for taking disciplinary action that he or she deems appropriate against any person under the employer’s direction who subjects any employee to sexual harassment.</p> <p>The Gender Mainstreaming Policy has provided a framework for addressing gender issues in the work place. It recognizes that it is the right of men, women, boys and girls to participate in and benefit from development and other initiatives. The policy advocates for new strategies aimed at ensuring greater participation of women and equal access to development resources and distribution of benefits. It has not only improved the economic and social welfare of the women in Kenya but has also improved governance as women are now part and parcel of decision making process.</p> <p>A report by the Ministry of Health stated that only 3 state institutions, 14 NGOs and 50 corporate organizations have complied with the provision 71 and 72 to provide breastfeeding facilities.</p> <p>Audits have not been conducted. However, a number of organizations, universities included have complied with the requirement to have a policy governing sexual harassment in the work place.</p>

PROTECTION FROM HARMFUL CULTURAL PRACTICES		
<p>142.33: Finalize and implement, in 2020, the Draft National Action Plan to Ending Child Marriage in Kenya</p> <p>Also covers: 142.34, 142.35</p>	<p>Not implemented</p>	<p>The Government has not taken any steps to finalize and implement the Draft National Action Plan.</p>
<p>142.54: Redouble efforts to provide training to medical, security and justice professionals on the application of its criminal law punishing harmful practices such as child, early and forced marriage; female genital mutilation; and girl “beading”</p>	<p>In the process of being implemented</p>	<p>Efforts have been made to sensitize relevant stakeholders on the legal and policy framework on harmful cultural practices. From 2021-2022, for instance, the Anti-Female Genital Mutilation Board sensitized close to 24,000 duty bearers and resource persons on the negative effects of female genital mutilation and on the Prohibition of Female Genital Mutilation Act 2011. The duty bearers sensitized include 300 medical practitioners, 60 judicial officers, 700 police officers, 4,400 National Government Administration Officers, and 18,540 community members and other resource persons.</p>
<p>142.96: Make an effort to implement existing legislation to end female genital mutilation</p> <p>Also covers: 142.95, 142.97, 142.98, 142.99,</p>	<p>In the process of being implemented</p>	<p>The number of cases of female genital mutilation reported, prosecuted and convicted increased from 2020 to 2023. During the 2020/2021 financial year, 580 cases were reported, prosecuted and convicted by the Office of the Director of Public Prosecutions, compared with 515 cases and 741 cases during the 2021/2022 and 2022/2023 financial years. Complete eradication of female genital mutilation is however hampered by its increased medicalization.⁹⁵</p>

⁹⁵ See <https://www.theguardian.com/society/2022/dec/15/every-chemist-has-a-backroom-how-medicalised-fgm-risks-gains-made-in-kenya>

142.100, 142.101, 142.102 142.103, 142.104, 142.105 142.106, 142.107, 142.108 142.109, 142.110, 142.111 142.112, 142.114, 142.115 142.116, 142.117, 142.133 142.115, 142.117, 142.133 142.64	<p>The Prohibition of Female Genital Mutilation Act, 2011 has been challenged in Court. In <i>Tatu Kamau v Attorney General & 2 others (2021)</i>⁹⁶ the petitioner argued that the prohibition of female genital mutilation under the Act violates the right to culture. The High Court held that due to the harmful consequences of the cultural practice, its limitation was reasonable in an open and democratic society based on the dignity of women. The Court ordered the Attorney General to forward proposals to the National Assembly to consider amendments to section 19⁹⁷ of the Prohibition of Female Genital Mutilation Act with a view to prohibiting all harmful practices of FGM.</p> <p>A number of steps have been taken to implement the ruling. In October 2021, the Anti-FGM Board convened a meeting to develop an outline and plan for the process of amendment of the Prohibition of FGM Act in line with the judgment of the Court in the Dr. Tatu Kamau case. The meeting convened the Board of Directors of the Anti-FGM Board and representatives of the Office of the Attorney General, Equality Now, Kenya Law Reform Commission and Directorate of Public Prosecutions.</p>
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WOMEN'S RIGHTS: PARTICIPATION OF WOMEN IN DECISION-MAKING

142.60: Strengthen gender equality by implementing the two-thirds gender principle in all elective or appointive bodies in a timely manner	Not implemented	<p>Members of the newly elected Parliament, a Parliament that saw election of the highest number of women in parliament since independence, promised to take a bi-partisan approach in order to realize the two-thirds gender principle. The Parliament now has 102 women in both the National Assembly and Senate while the total number of members in both houses is 416.</p> <p>The Judiciary has however made significant strides in the implementation of the two-thirds gender principle. Looking at the gender composition of all levels Court, the Judiciary has complied with the two-thirds gender principle with 332</p>
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⁹⁶ Kamau v Attorney General & 2 others; Equality Now & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae) (Constitutional Petition 244 of 2019) [2021] KEHC 450 (KLR) (Constitutional and Human Rights) (17 March 2021), available at <http://kenyalaw.org/caselaw/cases/view/209223/>

⁹⁷ Under Section 19, a person who performs a surgical operation on another person for their physical or mental health, or during any stage of labour or after giving birth (if it is connected with the labour or birth), does not commit an offence. This provision could be misused to justify female genital mutilation.

		<p>women sitting on the Courts which is equivalent to 47%. With regard to the Cabinet only 7 women were named in a Cabinet of 22. Out of 51 Permanent Secretaries, only 11 are women.</p> <p>A Multi-Sectoral Working Group on the two-third gender rule comprising 23 members has been established. The Working Group’s objective is to:</p> <ol style="list-style-type: none"> 1. Review and analyze previous proposals for the implementation of the two-thirds gender principle 2. Conduct comparative studies on best practices, engage experts and stakeholders undertake public participation and develop and recommend a framework for the implementation of the two-thirds gender principle. 3. Mobilize resources towards the achievement of its objectives.
<p>142.166: Establish mechanisms to increase the participation of women in political and public life, in decision-making positions</p> <p>Also covers: 142.63, 142.165</p>	<p>Partially implemented</p>	<p>The Constitution of Kenya 2010 contains robust provisions on gender equity and equality in the country’s political and governance structures and requires not more than two thirds of either gender form elective and appointive posts.</p> <p><i>The National Policy on Gender and Development</i> has been adopted (<i>Sessional Paper No 2 of 2019</i>). The implementation of the Policy involves the collaboration of various entities; government ministries, civil society organizations and other stakeholders. These entities work together to develop and implement programs, initiatives that advance gender equality, address gender-based violence, promote the empowerment of women and improve access to education, healthcare and economic opportunities for women and girls.</p> <p>Moreover, the Political Parties (Amendment) Act (No. 2 of 2022) which came into force on 11th February 2022, enhances measures to ensure that political parties enhance gender balance in political participation including in party leadership. For instance, a political party which fails to ensure that no more than two-thirds of its registered office bearers are of the same gender or that the party has, in its governing body, representation of special interest groups is not entitled to the Political Parties Fund under Part III of the Political Parties Act.</p>

Whilst there is some progress over the years and despite the progressive legal and policy framework, more still needs to be done to overcome the political, social economic and cultural barriers that hinder women’s participation in political and public life on an equal basis.

In an earlier case of *Katiba Institute v IEBC [2017] eKLR*, the High Court found that political parties were obligated to adhere to the 2/3 gender rule including in nominations and that it was the role of the electoral body to reject nomination lists that did not comply with this rule. Though implementation of the rule was deferred to 2022 General Elections, it was suspended further in the cases of *Adrian Kamotho v IEBC (JR 071 of 2022)* and *Cliff Ombeta & Another v IEBC (Constitutional Petition E211 of 2022 (consolidated))*.

On a positive note, the 2022 General Elections witnessed an increase in the number of elected women at both county and national levels compared to previous electoral cycles. For example, seven women were elected as governors compared to 3 women elected in the 2017 General elections; while 29 women were declared as elected across 18 counties compared to 23 the previous Elections.⁹⁸ In General, women now hold 201 of the 1882 elective seats in Kenya, representing 10.6% of elected leaders, up from 172 (9.1%) seats after the 2017 election and 145 (7.7%) after the 2013 election.⁹⁹

WOMEN, PEACE AND SECURITY

142.226: Implement United Nations Security Council Resolution 1325 and related

In the process of being implemented

There is in place the **Kenya National Action Plan for the Advancement of United Nations Security Council Resolution 1325 on Women, Peace and Security 2020-2024**. As part of the implementation of the KNAP’s commitments, the following achievements have been made:

⁹⁸ Echo Network Africa, A Gender Audit and Analysis of Kenya’s 2022 General Elections (2023).

⁹⁹ UN Women Africa, A summary Analysis of Women’s Performance in Kenya’s 2022 Election available [here](#).

resolutions on women,
peace and security

- Increased women's representation: The proportion of women in the Parliament increased from 20.78 per cent in 2016 to 23.3 per cent in 2018. Similarly, the share of female representation as cabinet secretaries increased from 25 per cent in 2016 to 27.3 per cent in 2018. Women have headed key ministries in the country, namely: Defense; Foreign Affairs; Health; Lands; Public Service and Gender; and Water. From the 2022 general elections, a record 7 women were elected as Governors.¹⁰⁰
- The Ministry of Defense developed and implemented their first Gender Policy, which articulates the importance of gender mainstreaming within the armed forces and provides strategic direction and tools to institutionalize gender and increase women's leadership. This led to the promotion in 2018 of Kenya's first female Major General, Ms. Fatumah Ahmed,¹⁰¹ and a pool of senior female officers who are now well placed to influence decision-making processes within the disciplined service.
- Improved women's participation in the justice sector: The Constitution of Kenya requires that the Deputy Chief Justice and the Chief Registrar of the Judiciary are women. As of 2023, women constitute 42.8 per cent of the Supreme Court judges. In terms of overall staff, Kenya's judiciary has almost attained gender parity, with women comprising 48.4 per cent of overall staff.¹⁰²

****END****

¹⁰⁰ Immaculate Akello and Eromo Egbejule (2022) Kenya gets historic number of female governors from August 9 vote available at <https://www.aljazeera.com/news/2022/8/13/women-blaze-the-trail-in-governorship-elections-in-kenya>

¹⁰¹ Ministry of Defence (2023) Her Say | Maj. Gen. Fatuma Ahmed, Highest Ranking Woman in Military available at <https://mod.go.ke/news-releases/her-say-maj-gen-fatuma-ahmed-highest-ranking-woman-in-military/>

¹⁰² State Department for Gender (2023) Kenya National Action Plan for the Advancement of United Nations Security Council Resolution 1325 on Women, Peace and Security 2020-2024 available at <https://gender.go.ke/wp-content/uploads/2020/09/KNAP-II-digital-30-Apr-2.pdf>