UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

-Universal Periodic Review:

KENYA

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

Kenya is a State party to the *1951 Convention Relating to the Status of Refugees* and its*1967 protocol* as well as the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.* Kenya is not party to the following international Human Rights Instruments: the *1954 Convention relating to the Status of Stateless Persons*, the *1961 Convention on the Reduction of Statelessness* or October 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention"). The *2006 Refugees Act* and the *2009 Refugees Regulations* contain specific provisions on refugees and asylum seekers in national legislation.

Migrants, Refugees and Asylum Seekers: The Government of Kenya, in line with national and international law, has continued to generously provide asylum to over half a million refugees and asylum seekers (553,726 persons, as of April 2014). Noting the unprecedented threats posed by terrorism, there has been strong call amongst the Kenyan public for all legitimate efforts, guided by the rule of law, to safeguard the national security and safety of all people within Kenya. The Government of Kenya has maintained its encampment policy for refugees. Registration and documentation of asylum seekers and refugees in urban areas has been suspended since December 2012 which has led to thousands of asylum seekers and refugees being unregistered or undocumented. While Kenya Gazette Notice (2014) provides that refugee camps are the designated areas for refugees to reside, there is need for the exemption of certain categories of asylum seekers and refugees from relocation to the camps due to their individual protection risks and specific needs.

Role of the Government of Kenya in refugee management: The Department of Refugees is committed to play a lead role in refugee management on behalf of the Government of Kenya. Discussions are underway to handover gradually RSD and embark on joint registration and data sharing. However it critically needs to increase its capacity and expertise to be able to deal with the increasingly complex refugee program in Kenya. UNHCR continues to work closely and

collaborate with the Department of Refugee Affairs (DRA) and will provide all the available assistance to build up the capacity of the department.

Freedom of movement: The 2010 Constitution provides for the right to free movement and guarantees freedom to all to enter, remain and reside anywhere in the country. However, freedom of movement of urban refugees has been significantly restricted by a relocation directive in December 2012 and an encampment order issued in March 2014. Since April 2014, the Government has started to relocate refugees and asylum seekers from urban areas, including by forced relocations, to either Dadaab or Kakuma refugee camps (*see: Section 3 – encampment policy).*

Right to work and to just and favorable conditions of work: Kenya has shown general commitment in promoting work conditions. The Employment Act and the Decent Work Country Programme (DWCP-2013-2016) jointly prepared by the Government, employers and workers prioritizes the creation of decent jobs especially among the youth, social protection, elimination of child labour and enhancing social dialogue. The decent work agenda is designed to protect the rights of workers and maintain industrial harmony. It reaffirms the commitment to the elimination of child labour. However, it remains very challenging for refugees to obtain work permits.

Durable solutions: Resettlement is used to address in priority protection needs and vulnerabilities. It remains an important protection tool in the current context albeit its benefits a small number of refugees in the country. The arrests, forced relocation and the closure of registration have direct negative impacts on the resettlement processing.

As regards the voluntary repatriation of Somali refugees in Kenya, a tripartite agreement governing the voluntary return of Somali asylum seekers and refugees was concluded between the Government of Kenya, the Government of the Federal Republic of Somalia and the UNHCR in November 2013. Implementation of the agreement is on-going although in the recent past the Government of the Federal Republic of Somalia has raised concerns about the relocation to refugee camps and deportation to Somalia of Somali Asylum seekers and refugees thus endangering the full implementation of the tripartite agreement.

National Security Concerns: As part of its anti-terrorism measure, Kenya has rolled out the Operation 'Usalama Watch' which has been characterized by a series of massive swoops in Nairobi and other towns seeking out illegal immigrants and terrorists. The Government has simultaneously launched an online website through which the public will be able to report suspected or potential terror threats. Operation 'Usalama Watch' is criticized heavily for its negation of human rights and its dramatic physical and psychological impact on those affected by the arrests, detentions and subsequent removals from Nairobi and other places including separation of infants and children from their parents. This unfortunately has also impacted refugees and asylum seekers negatively. (*see: Section 3 – encampment policy)*

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Kenya continues to host a large number of refugees and asylum seekers from various countries of origin (553 726 persons as of April 2014); the majority being from Somalia. Among these are large numbers of protracted refugees and refugee children who have been born and raised in Kenya. The Government of Kenya registered a large number of newly arrived asylum seekers from Somalia in 2011, particularly in Dadaab, and since December 2013 South Sudanese asylum seekers in Kakuma camp. The Government of Kenya has not gazetted an official decision to recognize South Sudanese refugees on a *prima facie* basis, but has indicated verbally its intention and conducts registration of new arrivals from South Sudan in line with *prima facie* recognition.

The 2010 Constitution and its progressive Bill of Rights provide a clear foundation in national legislation for the general rights enjoyed by UNHCR's persons of concern, including freedom to enter, remain and reside anywhere in the country.[1] It therefore builds on and complements the specific provisions of the 2006 Refugees Act that outline the treatment of and procedures related to refugees and asylum seekers in Kenya.

The documentation of refugees and asylum seekers has improved in recent years. Currently, approximately 85% of new born refugee children are issued with birth certificates in time, thanks to a close cooperation with the Department of Civil Registration. The Government has taken increasing responsibility in the registration of refugees and asylum seekers and prepares for a gradual handover of refugee status determination with the support of UNHCR.

Access to education, health and other services has improved for refugees and asylum seekers in camps and urban areas, with exceptions due to the recent Government Directives on the encampment policy. National service providers have increasingly extended and streamlined their services to refugees and asylum seekers.[2] The Children's Department has provided valuable support in improving child protection, despite persisting challenges. The enrolment of refugees and asylum seekers in education has increased particularly at primary-level but the retention of children, in particular in Kakuma camps remains challenging. A limited number of refugees have been granted work permits, while especially urban refugees have been in a position to develop sufficient livelihoods for self-reliance.

Kenya has suffered from insecurity and terrorist threats that have affected the whole country. Among refugee locations, the Dadaab camps have been particular vulnerable to threats with multiple security incidents witnessed during the last years. The Government of Kenya in collaboration with local Authorities has successfully improved the security situation in Dadaab during 2013. Ownership of the refugee communities has been strengthened through the initiative of community policing. The good experiences from Dadaab have also started to be applied in Kakuma camp.

Given that the majority of refugees and asylum-seekers residing in Kenya are of Somali origin, the Government has stressed the need to find durable solutions and called for effective burden sharing for this population in particular. On 10 November 2013, The Government of Kenya, The

[1] Article 39 Constitution of Kenya 2012

[2] For example, in the areas of health, as well as prevention and response to sexual and gender-based violence.

Federal Government of Somalia and UNHCR signed the "*Tripartite Agreement Governing the Voluntary Repatriation of Somali Refugees Living in Kenya"*, which sets the standards for safe, dignified and sustainable return with reference to international law[3] and outlines the responsibilities of each party to the Agreement to ensure compliance with its provisions. Implementation arrangements of the Agreement are under negotiations. The Government of Kenya has also provided necessary documentation to facilitate the exit formalities of refugees opting to return to their countries of origin (e.g. Burundi, Rwanda, and Democratic Republic of Congo) and for resettlement.

Kenya has made progress in facilitating the search for durable solutions for internally displaced persons since the last UPR review,[4] including an extensive resettlement program for the registered victims of the 2007/2008 post-election violence. In 2012, Kenya enacted the *Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act.* It supports many of the provisions outlined in the *Kampala Convention*[5] and allows for a broad definition of internal displacement and consecutive prevention and response measures. The Act is accompanied by a draft national IDP Policy (2012), which is pending finalization.

Kenya has recently renewed its national legislation, which allows better recognition of stateless persons or persons at risk of statelessness and subsequent response measures. In 2011, the Government enacted the *Kenya Citizenship and Immigration Act* that for the first time provides a definition of statelessness in national legislation, which is in accordance with the international definition of a stateless person, as set out in the 1954 Convention relating to the Status of Stateless Persons. The Act outlines a procedure for stateless persons to apply for Kenyan citizenship within a timeframe up to 2016. It also entails significant improvements for women to pass on their nationality to children, thereby mitigating gender discrimination due to nationality law.

III. KEY PROTECTION ISSUES AND RECOMMENDATIONS

Issue 1: <u>Upholding the rights of refugees and asylum seekers</u>

Kenya's national legislation and adherence to the key international and regional Conventions on refugee law (*see: above*) provide an inclusive basis to implement a rights-based approach towards refugees and asylum seekers residing on Kenyan territory. Kenya has generously hosted a large refugee population for over 20 years on its territory. Simultaneously, Kenya has faced

[3] 1951 Refugee Convention and 1967 Protocol; 1969 OAU Convention: 1948 UDHR; 1966 ICCPR: 1950 UNGA Resolution 428(V); various UNHCR ExCom conclusions.
[4] See: recommendations 101.114 – 101.118 in the 8th Session of the Working Group on the Universal Periodic Review, Geneva, 3 – 14 May 2010, Kenya.
[5] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, October 2009.

significant challenges to national security and threats of terrorism since the last UPR review, which has prompted the Government to take necessary counter-action. While acknowledging the Government's prioritized need to guarantee the security and well-being of its citizens, UNHCR wishes to express the following concerns in ensuring the safety and dignity of refugees and asylum seekers residing in Kenya.

A. Implementation of encampment policy and growing xenophobia

In December 2012, following a series of security incidents in Nairobi, the Government of Kenya issued a Directive outlining an encampment policy[6], requesting refugees and asylum seekers to relocate from urban centers to the refugee camps in Dadaab and Kakuma. The Directive resulted in the immediate closure of reception, documentation and registration services by the Department of Refugee Affairs in Nairobi and other urban centers, with the exception of issuing movement passes to the camps. The Directive resulted in a large number of arrests and detention of refugees and asylum seekers in urban areas, including reports of abuse and extortion, as well as growing xenophobic attitudes in the public and the media. In July 2013, the High Court ruled that the Directive was unconstitutional,[7] but registration in urban areas did not resume until 10 March 2014. Following the Westgate attack in Nairobi, UNHCR recorded over 1,000 new arrests in September-December 2013, mainly in urban centers and along main transit corridors.

On 25 March 2014, The Government released a renewed Directive[8] on the encampment policy, resulting in the immediate cessation of resumed registration services. A subsequent gazette notice stipulated six camps in Dadaab and Kakuma as the only designated areas for refugees and asylum seekers to reside in Kenya. In early April, the Government launched a security operation called *"usalama watch"* targeting persons who may pose a security or terrorist threat after several deadly security incidents that had occurred in early 2014.

The impact of the two Directives has been significant on refugees and asylum seekers in Nairobi and other urban centers. Thousands of arrests have been reported since the end of March 2014 as part of large-scale police swoops. At least 2,500 individuals have been relocated to Dadaab or Kakuma, further to a screening process and an extended period of detention (in most cases exceeding the legal 24 hours period). The procedures for security screenings applied by law enforcement officials are not specified and seem not to be implemented in a consistent manner in all cases of arrest.

The right of freedom of movement of all persons, as outlined in the Constitution, has significantly decreased after the implementation of the Directives, one sign of which are several court charges against refugees and asylum seekers on grounds of residence outside the designated areas. The self-reliance of urban refugees, which has been the highest among refugees

[6] For further information, see: http://www.unhcr.org/50d2e9ec6.html and http://www.unhcr.org/510275a09.html
[7] For further details on the judgment, see: http://www.unhcr.org/51f79abd9.html
[8] Press statement on the Government's decision concerning the second Directive on 25 March 2014: http://www.hrw.org/sites/default/files/related_material/PRESS%20STATEMENT%20BY%20CABINET%20SECRETARY%20FOR%20INTERIOR%20%20COORDINATION%20OF%20NATI%20%20%20.pdf

in Kenya, is particularly affected and has resulted in increased vulnerability and dependency on external aid. Enrolment in education and access to basic services has equally decreased.

The display of xenophobic attitudes against refugees and asylum seekers increased in the media and in the public opinion, including a growing concern of the content in the social media channels. Xenophobia is encountered by camp-based and urban refugees alike and is particularly faced by refugees of Somali origin.

Recommendations:
UNHCR recommends that the Government of Kenya:

- Conducts security operations with respect to human rights, applies clear, transparent and consistent screening procedures, and provides unhindered access to refugees and asylum seekers in detention;
- Conforms with the High Court judgment of July 2013 that ascertains that refugees should enjoy freedom of movement and other basic rights;
- Reviews the necessity of the encampment policy with regard to national security imperatives;
- Applies appropriate exemption categories for persons with specific protection needs to allow their continued stay in urban centers and prevent forces relocation;
- Continues sensitizing the judiciary and law enforcement officials with high exposure to refugees and asylum seekers on national legislation and international refugee law; and
- Actively counters xenophobic attitudes in collaboration with UNHCR and partners.

B. Arbitrary arrest, detention and extortion

UNHCR has received several reports of arbitrary arrest of refugees and asylum seekers, including home and night-time arrests without indication of a specific reason. The number of persons of concern in detention has increased across the country in the aftermath of the Directives and security measures. UNHCR and partners have been granted limited access to detention facilities.[9] Several cases of abuse by law enforcement officials – including physical violence, sexual and gender-based violence, degrading treatment and extortion – have been recorded in conjunction with arrests and detention of refugees and asylum seekers. Women, children and persons with specific needs have frequently been reported to be among detainees.

Recommendations:
UNHCR recommends that the Government of Kenya:

- Effectively investigates and follows-up on reports of abuse and human right violations conducted by law enforcement officials with specific focus on grave allegations (SGBV, physical violence);
- Monitors the conditions of detention and respects the legal period of detention pending court proceedings; and
- Pays particular attention to persons with specific needs in detention and avoids arrests and detention of minors.

[9] For further information: see http://www.unhcr.org/5342b35d9.html and http://www.unhcr.org/534fa2c76.html

C. Risk of refoulement

The Government should strictly adhere to the principle of non-refoulement as the cornerstone of refugee protection and disregard any action or measure that leads to the profiling of refugees as terrorists or criminals. At least five registered refugees have been deported from Nairobi to Mogadishu since March 2014. The lack of access to UNHCR and its partners to Kasarani stadium and the very limited access at the airport police station did not enable UNHCR confirm their refugee status to the authorities. UNHCR has been raising serious concerns over the breach of the principle of non-refoulement and advocated in favor of the readmission.

Recommendations:
UNHCR recommends that the Government of Kenya:

- Abides to the principle of *non-refoulement* and takes steps to ensure that no more refugee/asylum-seeker is refouled to Mogadishu; and
- Approves the readmission of the refugees to Kenya in the most expeditious manner, as applicable.

D. Family separations

Since the launch of the second Directive on the encampment policy, approximately 300 children have been separated from their parents due to involuntary relocations of their parents or caretakers to the camps. Of the separated children, 13% are under 5 years old. A rapid reunification of families has proven to be problematic in most cases, while the absence of sustainable care arrangements increases the risk of abuse exploitation of the separated children.

Child protection also continues posing challenges in the refugee camps. Case management, monitoring and coordination mechanisms are overstretched considering the large number of unaccompanied and separated minors. This applies for example to newly arrived children from South Sudan to Kakuma who may be in need of foster parents or psychosocial support. Child-friendly spaces and schools suffer from lack of space, personnel and equipment to cater for the encountered needs.

Recommendations:
UNHCR recommends that the Government of Kenya:

- Prevents family separations among refugees and asylum-seekers and extends its full cooperation to family reunifications;
- Provides the Children Departments Services with adequate resources to address the most critical needs of the separated children and to facilitate coordination at camp-level; and
- Takes all necessary measures to facilitate the reunification of the separated families in the most dignified, individualized and expeditious manner.

E. Reception conditions and security in the camps

Kenya has witnessed and generously provided entry to a large number of asylum seekers during recent emergencies in Somalia and South Sudan. The recent influx from South Sudan has stretched the capacity of Kakuma where the lack of land risks affecting the reception and shelter conditions of refugees and asylum seekers. Despite recent improvements in Dadaab, insecurity due to crime and terrorist threats has limited the presence of law enforcement officials and aid agencies inside the camps, which increase the risks of violence and SGBV that refugees face. In all camp locations, sufficient land, security and streamlined administrative practices continue to be the foundations in ensuring access to services and assistance for refugees and asylum seekers.

Recommendations:
UNHCR recommends that the Government of Kenya:

- Continues to pursue negotiations to identify and allocate additional land in Kakuma;
- Continues to deploy adequate police presence in the camps, disseminate information on prevention and reporting procedures in case of crime and reinforce community policing;
- Informs of new arrivals to the reception centers, including transfers from urban locations; and
- Continues to facilitate refugees' access to education and other services.

F. Registration, RSD and issuance of documentation

The Government and UNHCR are working towards a joint registration process, including mitigation of double registration as refugees and Kenyan nationals, as well as fake documentation. In parallel, the Government is preparing to gradually take over refugee status determination. The Government has granted work permits to a small number of refugees, although the majority continues to rely on informal livelihood opportunities.

Large backlogs in registration and refugee status determination continue to prevail particularly in camp locations. In Dadaab, the Government ceased registration activities for most of the time in 2013 due to insecurity, but restarted in 2014. In urban locations, the recognition of UNHCR-issued documentation by law enforcement officials has recently decreased including reported cases of destruction and tearing of UNHCR-issued documentation.

Recommendations:
UNHCR recommends that the Government of Kenya:

- Upscales capacity for registration, RSD and related activities, including in emergencies;
- Takes steps to retain trained staff in order to build the development assistance for refugees (DAR) capacity in a sustainable fashion;
- Increases the awareness among law enforcement officials of valid refugee and asylum-seeker documentation issued by UNHCR or the Government; and
- Explores extended opportunities to issue work permits for refugees.

Issue 2: Internal displacement

As part of significant investments in finding durable solutions for internally displaced persons after the 2007/2008 post-election violence, Kenya drafted a national IDP policy in 2012 that would support the implementation of the *Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act* (2012). The policy continues pending final approval. Kenya's ratification of the Kampala Convention (*African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa*) would further reinforce the provisions in national legislation and set a positive example to other Member States.

Recommendations:
UNHCR recommends that the Government of Kenya:

- Finalizes and approves the national IDP policy and a framework for implementation;
- Takes concrete steps to secure durable solutions for all IDPs, including through reconstruction of individual houses and public services facilities;
- Accedes to the 2010 *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa*; and
- Carries out a profiling and verification survey of IDPs.

Issue 3: <u>Statelessness</u>

Kenya is not a State party to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. Accession to these Conventions would complement the recent changes in national legislation. Kenya has not outlined a comprehensive national strategy on statelessness, or streamlined administrative practices in order to ensure the implementation of the specific provisions relating to stateless persons included in the 2011 Kenya Citizenship and Immigration Act, such as the possibility of applying for Kenyan citizenship. The exact knowledge on the scope and nature of statelessness in Kenya remains limited due to lack of data.

The *1961 Convention* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties that address the right to a nationality. An increase in the number of State parties to the two Statelessness Conventions is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

The *1954 Convention relating to the Status of Stateless Persons* ensures minimum standards of treatment for stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to education, employment, housing and public relief. Importantly, the 1954 Convention also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

Recommendations:
UNHCR recommends that the Government of Kenya:

- Accedes to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*;
- Designs an action plan to ensure the effective implementation of the national legislative framework in view of preventing and reducing statelessness and examines how the implementation of legislative changes, including the reforms relating to nationality provision, has impacted affected populations up to date; and
- Carries out activities aiming at reducing the risk of statelessness vis-à-vis populations at risk of statelessness based on further identification of these populations.

Human Rights Liaison Unit
Division of International Protection
UNHCR
June 2014

ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports

- Universal Periodic Review:

KENYA

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Kenya.

I. Treaty Bodies

Committee on the Elimination of Racial Discrimination
CERD/C/KEN/CO/1-4, 79th Session
14 September 2011

Positive Aspects
6. The Committee welcomes the institutional and other measures taken by the State party to promote national reconciliation and unity subsequent to the violence following the 2007 elections, to establish a historical record of what happened, to prosecute perpetrators, and to provide victims with redress. The Committee notes in particular the establishment of the Commission of Inquiry into Post-Election Violence and of the Truth, Justice and Reconciliation Commission.

Refugees
16. The Committee notes with great concern reports that some persons displaced by the violence following the 2007 elections have neither been able to return to their homes nor been given compensation (art. 5).
Recalling its general recommendation No. 22 (1996) on article 5 and refugees and displaced persons, the Committee recommends that the State party give its fullest attention to the plight of internally displaced persons and ensure that they return to their land or are otherwise properly resettled and provided with adequate reparation.

25. The Committee notes with concern the grave conditions at the Dadaab refugee camp, created by overcrowding and the lack of basic necessities faced by refugees (art. 5 (b) and (e)).
The Committee commends the State party for the efforts it is making to alleviate this humanitarian catastrophe at the Dadaab camp and encourages it to invite the international community to discharge its responsibility towards refugees under the principle of burden sharing.

Xenophobia
30. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Hate Speech
12. While noting that the National Cohesion and Integration Act of 2008 and the Penal Code prohibit hate speech and incitement to hatred, the Committee is concerned that the State party's legislation is narrow and does not cover all punishable offences as prescribed by article 4 of the Convention and that relevant provisions condemn hate speech on only a limited number of grounds (art. 4).

The Committee recommends that the State party undertake the necessary legislative amendments in order to widen the scope of the existing legislation so as to give full effect to article 4 of the Convention. In this regard, it refers the State party to its general recommendations No. 1 (1972) on States party's obligations, No. 7 (1985) on legislation to eradicate racial discrimination, and No. 15 (1993) on organized violence based on ethnic origin.

Committee on the Elimination of Discrimination against Women
CEDAW/C/KEN/CO/7,48th Session
5 April 2011

Refugee women, internally displaced women and women living in urban slums
43. While welcoming the enactment of the 2006 Refugee Act which specifically recognizes that women and children require special care, the Committee reiterates its concern about the lack of information provided by the State party about refugee women in camps in Kenya and internally displaced persons, many of whom are women. The Committee is further concerned at information that many women who were internally displaced following the post-electoral violence of December 2007 to March 2008 are yet to be resettled and that they fear for their safety and continue to experience sexual and gender-based violence and abuse within these camps. The Committee is also concerned at the situation of women and girls living in urban slums and informal settlements and who are under threat of sexual violence and lack access to adequate to sanitation facilities, which exacerbate their risks of being victims of sexual violence and impact negatively on their health.

44. The Committee reiterates its request to urgently address the situation of refugee and internally displaced women in Kenya, in particular in respect to the means used to protect these women from all forms of violence and the mechanisms available for redress and rehabilitation. It

further urges the State party to take steps to investigate, prosecute and punish all perpetrators of violence against refugees and internally displaced women. It also encourages the State party to continue to collaborate with the international community, especially the Office of the United Nations High Commissioner for Refugees (UNHCR), in these efforts. The Committee urges the State party to ensure effective policing in the slums and informal settlements and to address the issue of gender-based and other forms of violence, inter alia by urgently providing sanitation facilities in the immediate vicinity of each household.

Trafficking

27. While welcoming the new Trafficking in Persons Act and the efforts of the State party aimed at raising awareness about sex tourism and at combating it through the establishment, inter alia of a tourism police unit and work with hotels and tour operators to increase their awareness of child prostitution and its links to sex tourism, the Committee reiterates its concern at the persistence of trafficking and sexual exploitation of women and girls and the role of sex tourism in this regard.. The Committee also remains concerned that women and girls are entering prostitution to support themselves and their families as a result of poverty and that the law criminalizes only prostitutes, while the demand side is not sanctioned. The Committee regrets the absence of data in respect of both trafficking and prostitution, as well as the lack of a national plan of action to address both trafficking and sexual exploitation.

Harmful Practices

17. While noting some efforts made by the State party, the Committee reiterates its concern at the persistence of adverse cultural norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life. The Committee is concerned that such customs and practices perpetuate discrimination against women, and are reflected in women's disadvantageous and unequal status in many areas, including in public life and decision-making and in marriage and family relations. The Committee notes that such stereotypes also contribute to the persistence of violence against women as well as harmful practices, including female genital mutilation (FGM), polygamy, bride price and wife inheritance; and expresses its concern that despite such negative impacts on women, the State party has not taken sustained and systematic action to modify or eliminate stereotypes and negative cultural values and harmful practices.

The Committee recalls its general recommendations No. 14 (1990) on female circumcision and No. 19 (1992) on violence against women and calls on the State party to:(a) Ensure the effective implementation of the 2001 Children's Act which outlaws FGM for girls under 18 years, as well as prosecution and punishment of perpetrators of this practice; (b) Take all necessary measures to expedite the enactment of the Prohibition of Female Genital Mutilation Bill (2010) which will, inter alia, outlaw the practice for all women; (c) Continue and increase its awareness-raising and education efforts targeting families, practitioners and medical personnel, with the support of civil society organizations and religious authorities, in order to completely eliminate female genital mutilation and its underlying cultural justifications; and (d) Establish support services to meet the health and psychosocial needs of women and girls who are victims of this practice.

Violence against Women

21. While welcoming the enactment of the 2006 Sexual Offences Act, the Committee reiterates its concern at the high prevalence of violence against women and girls and widespread incidents of sexual violence, including rape, in both the private and public spheres. The Committee is also concerned that such violence appears to be socially legitimized and accompanied by a culture of silence and impunity and that cases of violence are thus underreported, such underreporting being further encouraged by section 38 in the Sexual Offences Act which exposes the victims to prosecution in certain circumstances. The Committee notes with concern that marital rape is not recognized as a criminal offence in either the Sexual Offences Act or in the Family Protection Bill 2007.

The Committee urges the State party to give attention, as a priority, to combating violence against women and girls and adopting comprehensive measures to address such violence, in accordance with its general recommendation No. 19. The Committee calls upon the State party to expeditiously: (a) Repeal section 38 of the Sexual Offences Act under which women face the risk of being victimized for initiating prosecutions against their abusers; (b) Adopt the regulations for implementation of the Sexual Offences Act; (c) Enact the Family Protection Bill; (d) Criminalize marital rape; and (e) Develop a coherent and multisectoral action plan to combat all forms of violence against women.

Committee on Economic, Social and Cultural Rights

E/C.12/KEN/CO/1, 41st Session
1 December, 2008

Positive Aspects

5. The Committee notes with appreciation that the State party adopted legislation to eliminate discrimination against disadvantaged and marginalized individuals and groups such as the Refugees Act (2006), which prohibits discrimination against refugees and asylum-seekers, and the Persons with Disabilities Act (2003), which establishes a National Development Fund for Persons with Disabilities.

Refugees, Internally Displaced Persons and Asylum-Seekers

13. The Committee is concerned about reports that refugees are de facto excluded from employment in the formal sector and often receive wages below the minimum wage in the informal sector. It is also concerned that refugees and asylum-seekers are frequently confined for years to camps which are located in isolated, semi-arid regions, and charged higher fees than nationals in public hospitals. (art. 2, para. 2)

The Committee recommends that the State party issue work permits to all refugees, in accordance with the Refugees Act (2006) and monitor unfair labour practices and exploitation of refugees in the informal sector. It also recommends that the State party relax its reported policy of requiring refugees to live in camps for prolonged periods of time, and provide hospital services at the same rate to them as to nationals.

16. The Committee is concerned that only 1.8 million workers are employed in the formal sector, despite the fact that 2.4 million new jobs were created between 2004 and 2007 in the State party. It is also concerned that 6.4 million workers in the informal economy are not sufficiently covered by labour regulations and social security schemes, including pension rights and maternity

protection, and that many persons in the State party are still unemployed, in particular women, persons with disabilities, refugees and internally displaced persons (IDPs). (art. 6)

The Committee recommends that the State party intensify its efforts, especially in rural and deprived urban areas, to (a) achieve higher levels of employment, e.g. through vocational training and infrastructural measures; (b) regularize the situation of informal sector workers by progressively improving their working conditions and including them in social security schemes; (c) take special measures to increase employment opportunities for women, persons with disabilities, refugees and internally displaced persons and other disadvantaged and marginalized groups; (d) ensure that labour inspectors act as an independent and effective instrument to combat violations of basic labour rights; and (e) establish a data collection system to monitor unemployment and informal sector employment.

27. The Committee notes with concern that more than half of the population of the State party lives in extreme poverty, i.e. on less than US$ 1 a day, in particular persons living in rural and deprived urban areas, landless persons, women, children, female-headed households, families affected by HIV/AIDS, persons with disabilities, refugees and internally displaced persons. (art. 11)

The Committee recommends that the State party allocate sufficient funds for the effective implementation of its National Poverty Eradication Plan and poverty reduction strategy, ensure the full integration of economic, social and cultural rights, and specifically address the needs of persons living in rural and deprived urban areas, the landless, women, children, female-headed households, families affected by HIV/AIDS, persons with disabilities, refugees, internally displaced persons and other disadvantaged and marginalized groups in that plan and strategy. In this regard, the State party is referred to the Committee's Statement on "Poverty and the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2001/10).

29. While noting that many of the hundreds of thousands persons who were internally displaced by the post-election violence in early 2008 have been resettled or returned to their homes, the Committee is concerned that the financial assistance provided to internally displaced persons under the National Resettlement Fund is inadequate. (art. 11)

The Committee recommends that the State party provide adequate financial assistance for the resettlement of internally displaced persons and for their reintegration into society, and ensure that those IDPs who have not been resettled or returned to their homes following the post-election violence in 2008 have adequate access to housing and employment.

34. The Committee notes with concern that children from poor families, pregnant girls, children living in remote rural areas and in informal settlements, nomadic children, children with disabilities, refugee children and internally displaced children have limited access to education. (art. 13)

The Committee recommends that the State party (a) increase the funds allocated to bursaries and textbook subsidies for children from poor families, as well as to school transportation and mid-day meals in remote rural and deprived urban areas; (b) facilitate the readmission of girls who dropped out of school due to pregnancy by supporting them in

finding adequate arrangements for the care of their babies; (c) ensure adequate access for nomadic children to mobile schools, including in the
North Eastern Province; and (d) cater for the special needs of children with disabilities and integrate refugee children and internally displaced children in the regular school system.

Trafficking
24. The Committee notes with concern the absence of statistical data on the reported number of persons, in particular women and children, trafficked to, from and within the State party for purposes of sexual exploitation and forced labour, as well as reports that provisions criminalizing trafficking of persons for the purpose of sexual exploitation and trafficking of children are rarely enforced and that, if they are enforced, sentences imposed on traffickers are frequently lenient. (art. 10)
The Committee recommends that the State party (a) enact the Anti-Trafficking Bill (2007); (b) train police officers, prosecutors judges and health and social workers, on the strict application of the provisions of the Sexual Offences Act (2006) and the
Children Act (2001) criminalizing trafficking of persons for the purpose of sexual exploitation and trafficking of children; (c) review its sentencing policy for trafficking-related offences; and (d) provide in its second periodic report updated data on the number and nature of reported cases of trafficking, convictions and on the sanctions imposed on traffickers.

II. Special Procedures

Report of the Special Rapporteur on the Mission to Kenya and extrajudicial, summary or arbitrary executions
Addendum: Mission to Kenya
Human Rights Council, 11th Session
A/HRC/11/2/Add.6, 26 May 2009

Detention
53. I received detailed and credible reports from witnesses and victims that abuses by the security forces happened throughout the various stages of the operation. A significant number of detained persons were beaten at the time of first contact with authorities - when they were detained either in the village cordoning process, or individually targeted for detention. At this point, they were beaten in a comparatively unstructured or sporadic fashion. They would be repeatedly kicked or hit with implements by security forces. At Kapkota, witness testimony indicates that they were tortured in a significantly more planned and controlled manner. They were frequently stripped naked, kicked, beaten on the genitals, forced to repeatedly jump up and down, forced to lie in the sun for long periods, and detainees were forced to beat each other.

Intimidation of Human Rights Defenders

111. The Government of Kenya should immediately issue instructions to the police, the military, and district and provincial officials to cease and desist from acts of intimidation and harassment of human rights defenders. The text of these instructions should be made public.

112. The Government should ensure that independent investigations take place to determine who was responsible for carrying out and ordering the intimidation.

113. The Government should accept international offers to provide criminal investigation assistance to identify those responsible for the 5 March 2009 killings of two prominent human rights defenders from the Oscar Foundation Free Legal Aid Clinic.

114. The Government should report, publicly and to the UN High Commissioner for Human Rights, within 3 months following the publication of this report, on the steps it is taking to prevent and prosecute intimidation of human rights defenders.