

UN Human Rights Council - Universal Periodic Review Kenya's Human Rights Balance Sheet

This Charter has been prepared by the Kenya Stakeholders Coalition for the Universal Periodic Review (UPR)¹ to highlight the key human rights concerns in Kenya for purposes of the UPR process. It uses information prepared by the stakeholders¹, the Kenyan State and international Treaty Bodies and Special Procedures mechanisms as a foundational basis upon which suggestions are made for ensuring, protecting and promoting the human rights of people in Kenya. This Charter may be used for advocacy purposes by Stakeholders. It may also be a reference point for States and other actors who wish to engage the Kenyan State on pertinent human rights issues. The Charter also includes proposals and recommendations which Stakeholders hope the Government of Kenya will commit to implement towards better realization of human rights in the country. Finally, this Charter may be a baseline for all concerned in their interaction with future cycles of the UPR.

In preparing this Charter, the Stakeholders have taken cognizance of the Government's initiatives under its Vision 2030 Plan (particularly the Medium Term Plan of 2008-2012) and other State reports which, if realized, would positively impact on human rights issues in the country. The Stakeholders will continue to closely monitor these initiatives and will give a report of the achievements and challenges during the next review cycle

Stakeholders' Submissions	State Report	UN Treaty Bodies and Special Procedures Recommendations	Suggested Questions	Suggested Recommendations
1. Justice for the victims of the post-elections violence				
It has been almost two and a half years since the 2007-2008 post-election violence yet none of the perpetrators of egregious human rights violations committed during that period have been effectively prosecuted.	The Government has agreed in principle to cooperate with The International Criminal Court as efforts to establish a local mechanism to try perpetrators continue.	The Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions urged the State to establish a Special Tribunal to prosecute perpetrators of Post – Election Violence.	<ul style="list-style-type: none"> - Given the State's failure to establish a special tribunal or any effective prosecutions for grave human rights violations, how does it intend to deal with perpetrators of these crimes? - In keeping with the principle of cooperation under the Rome Statute does the State commit to facilitate investigations and surrender suspects to the 	<ul style="list-style-type: none"> - The State should immediately set up the Special Tribunal to investigate and prosecute cases of crimes that occurred immediately before, during and after the 2007 general elections in adherence to the principles of the Rome Statute.

¹ The Charter is not a stand-alone document and relies on information provided in the Stakeholders' submissions namely: the Kenya Stakeholders' Coalition for the Universal Periodic Review; the Kenya National Commission on Human Rights; ARTICLE XIX; Legal Resources Foundation; Helpage Kenya and Helpage International; International Center for Transitional Justice; and the Office of the High Commissioner for Human Rights Summary of Stakeholders' submissions and compilation of information contained in reports of treaty bodies and special procedures.

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			International Criminal Court?	- The state should fully cooperate with the Prosecutor of the International Criminal Court in conducting investigations in Kenya.
2. Legal and credibility challenges to the Truth Justice and Reconciliation Commission (TJRC)				
<p>Flaws within the TJRC Act including provisions on amnesty and lack of a coherent reparation programme, as well as the existence of inhibitive laws such as the Official Secrets Act and the Indemnity Act pose a critical challenge to the effective operation of the TJRC. Moreover, the TJRC is currently faced with a serious credibility crisis following the emergence of reports alleging the chairperson's involvement in the illegal acquisition of public property and land, and false presentations to a commission of inquiry.</p>	<p>The TJRC has been established to address past human rights violation and injustices. It is not expected to handle perpetrators of Post-Elections Violence but will only deal with its mandate of correcting injustices.</p>		<ul style="list-style-type: none"> - What steps is the State taking to address the legitimate concerns over the TJRC chairperson's possible conflict of interest? - Can the State elaborate on the steps taken towards ensuring a sound legal framework within which the TJRC can effectively carry out its mandate, including, but not limited to, the amendment and nullification of relevant laws? 	<ul style="list-style-type: none"> - The State should immediately address the persistent controversies surrounding the TJRC's chairperson's office to safeguard the credibility of the truth seeking process. - The State should take immediate steps to repeal the Indemnity and Official Secrets Acts and address the flaws within the TJRC Act.
3. Insecurity				
<p>The police and security agents are heavily implicated in instances of extra-judicial killings and police brutality.</p>	<p>Security agencies stand accused of extra-judicial killings and torture but the government is prosecuting these officers.</p>	<p>The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions called for zero tolerance of unlawful killings by law</p>	<ul style="list-style-type: none"> - How does the State explain the possession of State ammunition by private citizens? And what decisive steps is the State taking in relation to credible reports that 	<ul style="list-style-type: none"> - The State should without any further delay investigate and prosecute security agents found culpable of committing extra-judicial killings and

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<p>The absence of an effective security presence, economic marginalization and the porousness of borders have led to the proliferation of arms, increased levels of insecurity and inter-communal and cross-border conflicts.</p> <p>Recently, over 130,000 rounds of State ammunition were found in the hands of a private citizen in Narok, one of the epicenters of the 2007-08 violence. There are fears of more ammunition being hidden in other parts of the country.</p>	<p>The government is faced with limited institutional capacity and a weak legal framework to effectively protect its citizens' human rights.</p>	<p>enforcement or security forces and the establishment of an independent civilian police oversight body with sufficient resources and power to investigate and institute prosecutions against police responsible for abuses.</p>	<p>communities are re-arming for potential recurrence of violence in the next general election?</p> <ul style="list-style-type: none"> - What measures, beyond disarmament, is the State taking to curb the increasing instances of cross border conflict and the proliferation of arms associated with it? - Can the State elaborate measures taken to address allegations of human rights violations associated with security operations such as those conducted in Mt. Elgon, Mandera and continued cases of extra-judicial killings? 	<p>torture.</p> <ul style="list-style-type: none"> - The government must commit to significantly increase the level of security presence on the borders while undertaking a comprehensive disarmament programme in a manner consistent with human rights standards.
4. Threats to Human Rights Defenders				
<p>Cases of extra-judicial killings, harassment and intimidation of human rights defenders have neither been investigated nor prosecuted. Presently, potential witnesses to the crimes committed during the post-elections violence are facing harassment and intimidation, with reported instances of killings and many others fleeing into</p>	<p>Kenya enacted a Witness Protection Act in 2006, being the second African country to have a witness protection programme. The Witness Protection Bill has been introduced to delink the Witness Protection Unit from the Attorney General's office.</p>	<p>The Special Rapporteur on Extra-judicial, Summary or Arbitrary Execution recommended the urgent establishment of a well funded witness protection programme, independent of the security forces and the Attorney General's office.</p>	<ul style="list-style-type: none"> - What steps has the State taken to investigate and prosecute cases of extrajudicial killings, harassment and or intimidation of human rights defenders? - What measures is the State taking to ensure that the amended Witness Protection Act is immediately responsive to the needs of potential witnesses of crimes committed during the Post-elections violence? 	<ul style="list-style-type: none"> - The State should institute immediate and genuine investigations and prosecution of all persons, including security agents found culpable of extra-judicial killings of human rights defenders. - The State should commit to immediately establish the Witness Protection Agency as prescribed by

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<p>exile.</p>				<p>the amended Witness Protection Act with sufficient technical and financial resources.</p> <ul style="list-style-type: none"> - The State should ratify the Convention for the Protection of All Persons from Enforced Disappearances and accept the request of the Special Representative of the Secretary General on Human Rights Defenders.
<p>5. Infringement on the Freedom of Expression and Access to Information</p>				
<p>The prolonged and unreasonable delay in the passage of a Freedom of Information law since 2005 has significantly contributed to lack of accountability, transparency and public participation in governance.</p> <p>Several cases of attack and harassment of journalists in the form of death threats, malicious prosecutions, ill-treatment and the Standard Group raid in March 2006 have neither been investigated nor prosecuted.</p>	<p>The State report is silent on the issue.</p>	<p>The Special Rapporteurs on the Right to Freedom of Opinion and Expression, and on the situation of Human Rights Defenders condemned the arrest of journalists and civil society activists participating in demonstrations.</p>	<ul style="list-style-type: none"> - Can the State commit to enact the Freedom of Information Bill by the end of 2010? - What measures has the State taken to investigate and redress attacks and harassment of journalists? 	<ul style="list-style-type: none"> - The State should enact and implement the Freedom of Information Bill by 2010. - The State should immediately institute investigations into cases of harassment and attacks against journalists and prosecute those found liable.

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6. Moratorium on the Death Penalty				
<p>Kenya has had a de facto moratorium on the death penalty since 1987 yet it is still entrenched in the Constitution and the Penal Code.</p>	<p>There is a presidential directive to all relevant Government Ministries and Departments to conduct empirical studies and engage all stakeholders urgently, to determine whether the continued existence of the death penalty in the laws of the land has any value or impact in the fight against crime.</p>	<p>The Committee Against Torture urged the State to take the necessary steps to establish an official and publicly known moratorium of the death penalty with a view of eventually abolishing the practice.</p>	<p>Considering the increasing number of convicts on death row when does the State intend to fully abolish the death penalty?</p>	<ul style="list-style-type: none"> - The State should amend laws that currently permit the death penalty and move to a de jure abolitionist State. - The State should ratify and implement the 2nd Optional Protocol to the International Covenant on Civil and Political Rights.
7. Discrimination on the basis of Sexual Orientation and Gender Identity				
<p>Lesbians, gays, bisexual transgender and intersex persons (LGBTIs) face systemic and societal discrimination and lack legal protection to safeguard their rights. This is often characterized by violent attacks against them.</p> <p>Criminalization of same-sex activities drives LGBs away from accessing HIV/AIDS prevention, treatment, and care. Furthermore, several transgender and inter-sex persons have been denied reassignment treatment in</p>	<p>The State report is silent on issue.</p>	<p>The matter has not been addressed at the UN level.</p>	<ul style="list-style-type: none"> - What measures is the State taking to ensure that the rights of LGBTIs are protected like all other Kenyans and has the State condemned the attacks against them? - Can the State commit to infuse measures to protect the health rights of LGBTIs within existing policies and programmes? 	<ul style="list-style-type: none"> - The State should enact a Comprehensive Anti-Discrimination Law affording protection to all individuals, irrespective of their sexual orientation or gender identity. The State should further respond appropriately to deal with any attacks on LGBTIs. - The State should develop appropriate health policies to protect the health rights of LGBTIs including enhancing their access to HIV/AIDS prevention, care and

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public hospitals.				<p>treatment.</p> <ul style="list-style-type: none"> - The State should develop appropriate and specific policies to deal with Transsexual and Intersex conditions.
8. Gaps in the protection of the rights of persons with disabilities				
<p>The State is yet to fully operationalise the Persons with Disabilities Act since its enactment in 2003. In particular no concerted measures have been put in place to secure 5% of employment positions in the public and private sector for persons with disabilities.</p>	<p>There are gaps in harmonization of various policies regarding persons with disabilities.</p>	<p>The United Nations Country Team noted that implementation of the Persons With Disabilities Act remains below par and employment of persons with disabilities, which is recommended at 5% by the Act, is yet to be realized.</p>	<ul style="list-style-type: none"> - Can the State give a commitment to fully operationalise and enforce the Persons with Disabilities Act particularly with regard to securing jobs and infrastructural accessibility for Persons with Disability within the next one year? - What steps is the State taking to domesticate the Convention on the Rights of Persons with Disabilities? 	<ul style="list-style-type: none"> - The State should implement the Persons with Disabilities Act towards ensuring that at least 5% of employment opportunities are secured for persons with disabilities. The State should immediately domesticate the Convention on the Rights of Persons with Disabilities and ratify its Optional Protocol.
9. Lack of legal recognition of Minority and Indigenous Peoples				
<p>Minorities and indigenous peoples lack legal recognition and avenues of participation with adverse effects on their land rights,</p>	<p>The State is in the process of implementing a development strategy of Arid and Semi-Arid Lands (ASALs) and has adopted a National Land</p>	<p>The Special Rapporteur on Indigenous Peoples' Rights recommended that there should be Constitutional and</p>	<ul style="list-style-type: none"> - What concrete measures has the State undertaken to enforce existing affirmative measures on representation in favour of minorities and indigenous 	<ul style="list-style-type: none"> - The State should ratify ILO 169 and adopt the United Nations Declaration on the Rights of Indigenous People.

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<p>management of resources and visibility in policy making processes.</p> <p>Furthermore, the abuse of Constitutional and statutory provisions on trust land in addition to gazettement of forests and wildlife parks have led to the expulsion of pastoralists and hunter-gatherers from their ancestral land.</p>	<p>Policy which proposes to protect the land rights of minorities</p>	<p>statutory recognition of: land and resource rights; effective political participation; and distinct cultural identity of indigenous peoples with infusion of affirmative measures where necessary. To this end, the State was encouraged to ratify ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries and promote the adoption of the United Nations Declaration on the Rights of Indigenous Peoples with a view to incorporating them in national laws.</p>	<p>communities as stated in <u>Rangal Lemaiguran and others vs. Attorney General of the Republic of Kenya and Others (the <i>Il chamus</i> case)?</u></p> <ul style="list-style-type: none"> - Could the State elaborate on its Plan of Action on the implementation of the National Land Policy and can it commit to fully operationalise the Policy by 2012? - Following the decision by the African Commission on Human and Peoples' Rights (ACHPR) (<u>Communication 276/2003: Centre for Minority Rights Development and MRG on behalf of Endorois Community vs. the Republic of Kenya</u>) what steps has the State taken towards implementation of the decision? 	<ul style="list-style-type: none"> - The State should implement the <i>Il Chamus</i> case decision and more particularly ensure nomination of indigenous peoples to the next Parliament and take into account the special interests of minority and indigenous communities in the ongoing boundaries review process. - The State should fully operationalise the National Land Policy by 2012. - The Government should immediately begin consultations with the Endorois community with a view to implementing the Endorois case communication. - The State should accept the request for a field visit from the Independent Expert on Minority Issues.

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10. Lack of protection of children's rights in the criminal justice system				
<p>Progressive statutory provisions regarding bail for children charged with capital offences have been declared <i>ultra vires</i> by the Court of Appeal (The <i>Kazungu Kaziwa</i> case; <i>Mombasa Criminal Appeal No. 239 of 2004</i>). There are also numerous instances where children are imprisoned with their convicted mothers.</p>	<p>The State report makes no mention of the plight of children's rights within the criminal justice system.</p>	<p>The Committee on the Rights of Children was concerned that although the death penalty is outlawed for children, according to some reports children are still being sentenced to death.</p>	<p>Following the precedent set by the case of <i>Kazungu Kaziwa</i> how does the State intend to safeguard the rights of Children within the Criminal justice system, particularly with regard to bail, children imprisoned with their mothers and considering alternatives to the formal criminal justice system?</p>	<ul style="list-style-type: none"> - The State should establish a comprehensive legal framework that tackles the special needs of children within the criminal justice system. - The State should promote the use of alternative sanctions in the Judiciary with regard to children as an alternative to deprivation of liberty.
11. Violations by Non-State Actors.				
<p>The elderly in Kenya are subject to accusations of witchcraft and subsequent violence but older women are particularly vulnerable to these accusations. They have been subjected to brutal beatings and, in the worst cases, burnt alive.</p>	<p>The State report does not address the issue.</p>	<p>The UN bodies have also not address the issue.</p>	<p>Has the State investigated and prosecuted the vigilante groups responsible for the execution of older persons on allegations of witchcraft?</p>	<p>The State must treat killings of older persons on allegations of witchcraft as murder and promptly investigate and prosecute perpetrators.</p>
12. Statelessness				
<p>The ongoing Constitutional review process which seeks to reverse current gender discrimination in access to citizenship is commendable. However, undue application of</p>	<p>The State report does not discuss citizenship and citizenship rights.</p> <p>The total population of Kenya is estimated at 39,002,772 people (2009 estimates).</p>	<p>The Special Rapporteur on Indigenous Peoples' Rights recommended that the State reviews procedures for granting National Identity Cards to remove obstacles affecting indigenous communities.</p>	<ul style="list-style-type: none"> - What steps has the State undertaken to address the challenges that ethnic minorities and marginalized communities face in acquiring national identity documents? - Does the State have any data to demonstrate the utility of 	<ul style="list-style-type: none"> - The State should immediately abolish discriminatory policies, administrative procedures and other practices in the issuance of citizenship documents. - The National

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<p>various policies and administrative procedures continue to entrench discrimination against ethnic minorities notably the Kenyan Nubians, Somalis and the Coastal Arabs, thereby putting them at the risk of statelessness.</p>			<p>vetting as a justified means of maintaining security at the Kenyan borders? Have other less discriminatory means been pursued?</p> <ul style="list-style-type: none"> - When does the government intend to release the results of the 2009 census? Does the State have accurate data on the number of Kenyan Somalis, Nubians and Coastal Arabs? 	<p>Registration Bureau should immediately develop and legalize a uniform registration process for all Kenyans.</p> <ul style="list-style-type: none"> - The State should safeguard the milestones achieved in the Constitutional Review process towards eliminating citizenship-based gender discrimination
<p>13. Corruption in the education sector</p>				
<p>Funds allocated for free primary education have been grossly misappropriated and embezzled.</p>	<p>The State report is silent on the issue.</p>	<p>The UN treaty bodies have also not addressed this issue.</p>	<p>What steps has the State taken to ensure administration of education donor funds and bursaries are free from corruption and that they are optimally utilized?</p>	<p>The State should make a firm commitment to rein in corruption in the administration of educational funds.</p>
<p>14. Challenges in HIV/AIDS management and treatment</p>				
<p>Factors including misappropriation of funds, and legal challenges in relation to tendering processes have led to an acute shortage in the availability of ARVs. Furthermore, even with the ongoing HIV/AIDS programmes, prison inmates, widows and orphans, persons with disabilities and</p>	<p>HIV-AIDS has been declared a national disaster allowing for coordinated efforts against the pandemic</p>	<p>The Committee on the Rights of the Child & the Committee on Elimination of all Forms of Discrimination Against Women recommend that the State sustains efforts to address the impact of HIV/AIDS on women and girls and expand assistance to orphaned children made vulnerable by HIV AIDS, while the Committee</p>	<ul style="list-style-type: none"> - What measures has the State undertaken to address the current shortage and ensure adequate availability of ARVs? - What measures has the State undertaken to ensure the inclusion of vulnerable groups such as widows, orphans, prison inmates, persons with disabilities and sexual minorities in ongoing HIV/AIDS programmes? 	<p>The State should streamline the tendering process so as to ensure the sustainability of the supply of ARVs and adopt inclusive policies in the management of HIV/AIDS to ensure that vulnerable groups are catered for.</p>

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marginalized communities continue to face challenges in accessing treatment and care.		Against Torture urged the State to ensure the availability of adequate health services in all prisons.		
15. Lapses in Environmental Protection				
<p>The National Environmental Authority (NEMA) lacks capacity to fulfill its mandate as a result of inadequate funding.</p> <p>Essential ecosystems have continued to be adversely affected by human instigated practices resulting in environmental degradation such as in the Mau complex and more recently Lake Naivasha.</p>	<p>The State has commenced the development of an Environmental Policy Framework Paper and is undertaking a programme for reclamation of water towers.</p>	<p>The matter has not been addressed by UN mechanisms.</p>	<ul style="list-style-type: none"> - When will the Environmental Policy Framework take effect? - How is the State ensuring the effective inclusion and participation of contiguous communities in its environmental restoration processes particularly in the Mau Forest? - How does the State intend to deal with the adverse effects of economic activities on the environment such as Lake Naivasha? 	<ul style="list-style-type: none"> - The environmental management policy and legislation reforms associated with the policy framework should be undertaken as a matter of immediate priority. - The government should commit to increase funding for NEMA over the next 4 years and effectively enforce environmental management regulations. - The government should immediately within its environmental restoration processes ensure the active participation of contiguous communities.

¹ Members include: Kenya National Commission on Human Rights (KNCHR), International Center for Transitional Justice - Kenya, The CRADLE – The Children Foundation, Centre for Minority Rights Development (CEMIRIDE), ARTICLE 19, Kenya Human Rights Commission, The Kenyan Section of the International Commission of Jurists, Caucus for Women Political Leadership , The League of Pastoralist Women of Kenya, MPIDO, MAA Civil Society Forum, Indigenous Fisher People’s Network, Ogiek People’s Development Programme, Isiolo Human Rights Network, NCKK Lower Eastern, Migori Human Rights Network, GALCK, Minority Women in Action, Ishtar MSM, Centre for

Legal Information and Communication in Kenya (CLICK), Transgender Education and Advocacy, Gay House, Bar Hostess Program, Gay & Lesbian Coalition of Kenya, KAACR ,ANNPPCAN Kenya, Young Muslims Association, Zabibu Special Needs Centre, CLAN, ICS Africa, Undugu Society, Legal Resources Foundation, Girl Child Network, Tomorrow's Child Initiative(TCI), HelpAge Kenya , HelpAge International, Lavington United Church, FIDA Kenya , Coalition of Violence Against Women, League of Kenya Women Voters, Centre for Rights Education and Awareness(CREAW), Women in Law and Development (WILDAF), African Women & Child Features(AWC), Development Through Media (DTM), Young Women Leadership Institute (YWLI), Bar Hostess Empowerment Programme, National Council of Women in Kenya (NCWK), Maendeleo ya Wanawake (MYWO), KNDWOPNET, Coast Women Right, Kenya Female Advisory Organisation (KEFEADO), The League of Kenya Women Voters, EACOR, SALAR, Social Reform Centre(SOREC), Mount Kenta HURINET, OXFAM IYP/CWF/GYCA, HENNET, Network of African National Human Rights Institutions, Samia Environmental Management, CLARION, Eastern Africa Collaboration for Economic, Social & Cultural Rights (EACOR), URAIA , Goal Kenya, Elimu Yetu Coalition, Seed Institutue, GCAP Kenya, KYCEP, Kutoka, Daraja Civic Education Institute, Youth Agenda, Youth Alive Kenya, Young People's Forum, Kenya Youth Education and Community Development Program, Seed Institute, Bunge la Wananchi, UDEK, UDPK, Kenya Society for the Blind, Zabibu Special Needs Centre, Kenya Association for the Intellectually Handicapped, Global Deaf Connection , Kenya National Deaf Women Peace Network, Joint Epilepsy Foundation, Kenya Sign Language Interpreters Association, Federation of and for people with disability, Kenya Sign Language Interpreters Association, Transparency International , AFRICA HOUSE, Legal Resources Foundation Trust, Muslim Consultative Committee, IMLU, Kituo Cha Sheria, IMLU/Bunge La Mwananchi, CEDGG, DTM, ICT Consumers, Open Society Initiative of East Africa (OSIEA).

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