

REPUBLIC OF KENYA



**COMMON CORE DOCUMENT FORMING PART OF THE
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List of Abbreviations and Acronyms

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CAF	County Assemblies Forum
CAJ	Commission on Administrative Justice
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CBC	Competency Based Curriculum
CBK	Central Bank of Kenya
CEDAW	Convention on the Elimination of Discrimination against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
CPI	Consumer Price Indices
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CUC	Court Users Committee
FGM	Female Genital Mutilation
GDP	Gross Domestic Product
GOK	Government of Kenya
ICCPR	International Covenant on Civil & Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMF	International Monetary Fund
JTI	Judiciary Training Institute
KDHS	Kenya Demographic and Health Survey
KIHBS	Kenya Integrated Household Budget Survey
KNCHR	Kenya National Commission on Human Rights
NCCS	National Council for Children Services
NER	Net Enrolment Rate
NGEC	National Gender and Equality Commission
NHRIs	National Human Rights Institutions
SDGs	Sustainable Development Goals
SGBV	Sexual and Gender Based Violence

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1. GENERAL, FACTUAL AND STATISTICAL INFORMATION ABOUT KENYA

1. The Government of the Republic of Kenya has the honour and pleasure to submit her updated Common Core Document. The document was prepared in line with the harmonized guidelines on reporting issued by the Office of the High Commissioner on Human Rights. The Common Core Document provides information on the demographic, economic, social and cultural characteristics of Kenya, including updates on the constitutional, political and legal frameworks for the protection and promotion of human rights. The document has been prepared by the Office of the Attorney General and Department of Justice through a highly consultative and participatory process.

A. Demographic, Economic, Social and Cultural Characteristics of Kenya

2. Kenya is an East African country that lies astride the Equator covering a total area of 582,650 km² of which 560,250 km² constitutes dry land while water takes the rest of about 13,400 km². Approximately 80% of the land area is arid or semi-arid, and only 20% is arable.
3. Kenya is a multi-racial, multi-ethnic, multi-cultural and multi-religious society. The national language is Kiswahili¹ while the official languages are Kiswahili and English² (though numerous other local languages are spoken). People of African descent constitute about 90% of the population divided into 45 main ethnic groups. These groups belong to three linguistic families: Bantu, Cushitic, and Nilotic. The main groups comprise of: **Bantus** consist the Kikuyu (17.13%), Luhya (14.35%) Kamba (9.81%), Kisii (5.68%), the Mijikenda (5.26%), Meru (4.15%), Embu (0.85%) Taita (0.72%), Kuria (0.66%), Tharaka (0.46%), Mbeere (0.41%), Suba (0.33%), Pokomo (0.24 %), Bajuni (0.19%), Swahili (0.12%), Taveta (0.06%); Walwana/Wamakotee (0.05) Goshu (0.001%), Makonde (0.008%); **Nilotes** include the Kalenjin (13.37%), Luo (10.65%), Maasai (2.5%), Turkana (2.14%), Teso, (0.88%), Samburu (0.70%), and Ilchamus/Njemps (0.07%), Nubi(0.05%); and the **Cushites**, include the Kenyan Somali (5.85%), Orma (0.33%), Rendile (0.19%), Borana (0.58% Gabra (0.30%), Aweer/Waata (0.04%), Burji (0.07%), Sakuya(0.06%) Dahalo (0.001%), Dasenach (0.04%), Konso(0.003%) Elmolo (0.002%). Other recognized groups include Kenyan Arabs (0.12%), Kenyan Asians (0.1%), Kenyan Europeans (0.004%) and Kenyan Americans (0.001%). It should be noted that some of these major groups are further grouped into many smaller sub tribes. Most Kenyans are bilingual in English and Swahili.
4. According to the Kenya Population and Housing Census conducted in August 2019, the Republic of Kenya now has a population of approximately 47,564,296, comprising of 23,548,056 males and 24,014,716 females. The Census documented 1,524 Intersex persons. The average Household Size has declined to 3.9 in 2019 from 4.2 in 2009. The distribution of the population by sex and age group is as illustrated in table 1 below;

¹ Constitution of Kenya (2010) Article 7(1) available at <https://kenyalaw.org/kl/index.php?id=398>

² Constitution of Kenya (2010) Article 7(2) available at <https://kenyalaw.org/kl/index.php?id=398>

Table 1: Distribution of Population by Sex and Age Group³

Age Group (Years)	Male	Female	Intersex	Total
0-9	6,123,295	6,072,285	330	12,195,910
10-19	5,896,024	5,735,584	321	11,631,929
20-29	3,952,233	4,349,637	359	8,302,229
30-39	3,046,873	3,173,715	247	6,220,835
40-49	2,073,488	1,971,885	114	4,045,487
50-59	1,209,944	1,216,690	70	2,426,704
60-69	730,786	797,371	43	1,528,200
70+	515,028	694,242	35	1,209,305
Not stated	385	297	5	687
Overall Total	23,548,056	24,014,716	1,524	47,564,296

Source: KNBS 2019 Population & Housing Census

- The distribution of population is generally uneven and varies from 67.2 persons per km² in high potential areas to 3 persons per km² in arid areas. The most densely populated areas are found in the urban areas and around Lake Victoria, the highlands and the coastal strip, which have fertile soils and well-distributed and reliable rainfall. The sparsely populated areas are found in the arid and semi-arid regions, which have poor soils and an inhospitable climate.
- There are approximately 918,270 people aged 5 years and above who have a disability⁴. This is approximately 1.93% of the total population. Out of these 523,883 are female while 394,330 are male. The common types of disability are mobility (385,417), followed by visual (333,520) and 9,729 persons living with albinism.
- Kenya Vision 2030 was launched in 2008 as Kenya's development blueprint covering the period between 2008 to 2030. The objective of the Vision is to turn Kenya into newly industrializing, "middle income country providing high quality life for all its citizens by the year 2030".
- In the last 10 years, significant progress has been made in implementing Vision 2030, which has been undertaken through the First and Second Medium Term

³ Kenya National Bureau of Statistics (2019) Population and Housing Census Volume III, available at <https://www.knbs.or.ke/?wpdmpo=2019-kenya-population-and-housing-census-volume-iii-distribution-of-population-by-age-sex-and-administrative-units>.

⁴ Kenya National Bureau of Statistics (2019) Population and Housing Census Volume IV, available at <https://www.knbs.or.ke/?wpdmpo=2019-kenya-population-and-housing-census-volume-iv-distribution-of-population-by-socio-economic-characteristics>

Plans. The Government, the Private Sector and development partners continue to play a critical role in the actualization of the Vision.

9. The Medium Term Plan III (MTP) of the Vision 2030 runs from 2018-2022 under the theme *Transforming Lives: Advancing Socio-Economic Development through the Big Four*⁵. The MTP III outlines the main policies, legal and institutional reforms as well as programmes and projects that the Government plans to implement during the plan period. It gives priority to implementation of the “Big Four Agenda” initiatives as follows; Increase the manufacturing share in the economy from 9.2% to 15%; Provide affordable housing by building 500,000 affordable houses across the country in the five-year period; Enhance Food and Nutrition Security (FNS) through irrigation projects, construction of food storage facilities, implementation of high impact nutritional projects and Achieve 100% Universal Health Coverage.
10. Kenya's economy is market-based, with a few state-owned infrastructure enterprises, and maintains a liberalized external trade system. Tourism is Kenya’s largest foreign exchange earner, followed by the export of agricultural products of flowers, tea, and coffee. Agriculture is the second largest contributor to Kenya's gross domestic product (GDP), after the service sector. The production of major food staples such as maize is subject to sharp weather-related fluctuations. Production downturns periodically necessitate food aid. Industrial activity, which is concentrated around the three largest urban centers, Nairobi, Mombasa, and Kisumu, is dominated by food-processing industries such as grain milling, beer production, sugarcane processing, and the fabrication of consumer goods, such as the assembly of motor vehicles. The pattern of these economic activities has a great impact on access to employment.
11. While economic activity faltered following the 2008 global economic recession, growth resumed in 2014 reaching 5.7% in 2019 placing the country as one of the fastest growing economies in Sub-Saharan Africa. The recent economic expansion has been boosted by a stable macroeconomic environment, positive investor confidence and a resilient services sector⁵. Table 3 illustrates key macroeconomic indicators for the period 2014-2019

Table 2: Key Macroeconomic Indicators 2014-2019

DESCRIPTION	2014	2015	2016	2017	2018	2019
DP Growth Rate (Annual Variation in %)	5.4	5.7	5.9	4.8	6.3	5.4
Inflation Rate (CPI, Annual Variation in %)	6.9	6.6	6.3	8.0	4.7	5.2
CBK Interest Rates	8.5	11.5	10.0	10.0	9.0	8.5
Kshs/USD Exchange Rate	87.9	98.2	101.5	103.4	101.3	102.0
Current Account as a % of GDP	-10.3	-6.9	-5.8	-7.2	-5.8	-5.8

Source: Kenya Bureau of Statistics, Economic Survey Report 2020

⁵ The World Bank, World Bank in Kenya (2019), available at <https://www.worldbank.org/en/country/kenya/overview>

12. While there have been significant improvements in the economy, some challenges still exist. The country's heavy dependence on rain-fed agriculture and the tourism sector leaves it vulnerable to cycles of boom and bust.
13. **Poverty Estimates:** Poverty remains a major impediment to both the fulfilment of basic needs and the realization of the full potential of many Kenyans, particularly women and children.
14. Kenya Integrated Household Budget Survey (KIHBS) was a population-based survey designed to provide estimates for various indicators representative at the national level, each of the 47 counties, and place of residence (rural and urban areas). According to the derived poverty lines, households whose adult equivalent food consumption expenditure per person per month fell below Kshs. 1,954 (Approx. 20 USD) in rural areas and Kshs. 2,551 (Approx. 20 USD) in urban areas were deemed to be food poor. Similarly, households whose overall consumption expenditure fell below Kshs. 3,252 (Approx. 30 USD) and Kshs. 5,995 (Approx. 60 USD) in rural and urban areas, respectively, per person per month were considered to be overall poor. Further, all those households that could not afford to meet their basic food requirements with all their total expenditure (food and non-food) were deemed to be hard-core/ extreme poor⁶.
15. The overall national poverty headcount rate (proportion of poor individuals) dropped from 46.6 per cent in 2005/06 to 36.1 per cent in 2015/16. The findings also show that the total population of poor individuals declined from 16.6 million in 2005/06 to 16.4 Million in 2015/16 even though the country's entire population increased by approximately 10 million over the two periods. Analysis of poverty based on households at the national level shows a decline from 38.3 per cent in 2005/06 to 27.4 per cent of all households covered in 2015/16. Regarding rural and urban dichotomy, the overall rural poverty rate for individuals declined faster than that of core-urban from 49.7 percent in 2005/06 to 40.1 percent in 2015/16. Spatially, across the 47 counties, overall headcount poverty (proportion of poor individuals) widely ranges from a low of 16.7 per cent in Nairobi City County to a high of 79.4 per cent in Turkana County. In 2015/16, the poorest four counties were Turkana (79.4 %), Mandera (77.6%), Samburu (75.8%) and Busia (69.3%). Conversely, the four counties with least poverty include Nairobi (16.7%), Nyeri (19.3%), Meru (19.4%) and Kirinyaga (20.0%)⁷.
16. Fertility decreased from 4.9 births per woman in 2003 to 4.6 in 2008-09 and further to 3.9 in 2014, a one-child decline over the past 10 years and the lowest total fertility rate ever recorded in Kenya. This is corroborated by the marked increase in the contraceptive prevalence rate (CPR) from 46 percent in 2008-09 to 58 percent in the 2014. The decline in fertility accompanies a marked decline in infant and child mortality. All early childhood mortality rates have declined between the 2003 and 2014 Kenya Demographic and Health Survey (KDHS)

⁶ Kenya National Bureau of Statistics (2018) 'Basic Report on Well Being in Kenya, based on the 2015/16 Kenya Integrated Household Budget Survey (KIHBS)'

⁷ Ibid

surveys. Total under-5 mortality declined from 115 deaths per 1,000 live births in the 2003 KDHS to 52 deaths per 1,000 live births in the 2014 KDHS⁸.

17. The proportion of mothers who reported receiving antenatal care from a skilled health provider increased from 88 percent to 96 percent between 2003 and 2014. The percentage of births attended by a skilled provider and the percentage of births occurring in health facilities each increased by about 20 percentage points between 2003 and 2014. The percentage of children age 12-23 months who have received all basic vaccines increased slightly from the 77 percent observed in the 2008-09 KDHS to 79 percent in 2014. Six in ten households (59 percent) own at least one insecticide-treated net, and 48 percent of Kenyans have access to one. In malaria endemic areas, 39 percent of women received the recommended dosage of intermittent preventive treatment for malaria during pregnancy. Awareness of AIDS is universal in Kenya; however, only 56 percent of women and 66 percent of men have comprehensive knowledge about HIV and AIDS prevention and transmission⁹.
18. Kenya has made tremendous progress on access to education, since the introduction of Free Primary Education (FPE) in 2003. Net enrolment rate has increased exponentially. Participation rate in organized learning increased from 74.9 per cent in 2016 to 77.2 per cent in 2018. Early Childhood development education (ECDE) enrolment has recorded a 7% increase from 3.17 million (1.61 million boys and 1.56 million girls) in 2015 to 3.39 million (1.73 million boys and 1.66 million girls) in 2018. The sustained implementation of the Free Primary Education and Free Day Secondary Education has seen increased completion in primary education and subsequent transition, increased participation and completion of secondary education.
19. In 2017, the Government introduced the Competency Based Curriculum (CBC) to replace the 8-4-4 system. CBC is designed to comprise two years of pre-primary education, six years of primary education, three years of junior secondary education, three years of senior secondary education and three years of university education. The Kenyan CBC is designed with the objective that at the end of each learning cycle, every learner will be competent in the following seven core competency areas: communication and collaboration; critical thinking and problem-solving; imagination and creativity; citizenship; learning to learn; self-efficacy; and digital literacy.
20. Differences between females and males in the education sector increase as students progress upwards in the education system. Actual enrolment rates in primary, secondary and university education between 2012 and 2017 are provided in table 2 below.

⁸Kenya Demographic and Health Survey (2014) available at <https://dhsprogram.com/pubs/pdf/fr308/fr308.pdf>

⁹ See Note 6

Table 3: Enrolment Rates statistical data, disaggregated by sex (2012-2019)**A. Pre-primary Education**

Number ('000)

Enrolment	2012	2013	2014	2015	2016	2017	2018	2019
Boys	1346.2	1411.3	1476.3	1607.3	1634.1	1681.5	1730	1393.7
Girls	1364.5	1454.0	1543.4	1560.5	1565.6	1612.2	1660	1344.8
Total	2710.7	2865.3	3019.7	3167.8	3199.7	3293.7	3390	2738.5

Source: Ministry of Education and KNBS Economic Survey Report, 2020

B. Primary Education

Number ('000)

Class/ Grade	2012		2013		2014		2015		2016		2017	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
1	712.2	658.1	710.5	659.1	712.1	670.4	702.0	659.4	695.6	654.9	705.9	664.4
2	677.8	654.9	676.2	639.8	679.9	644.9	682.7	648.3	686.3	650.0	695.7	655.2
3	676.0	648.6	676.1	652.0	674.5	637.7	675.9	641.9	683.6	653.2	693.3	652.9
4	674.2	643.3	672.6	645.3	677.9	651.7	683.9	657.3	692.6	668.7	694.2	665.4
5	646.5	625.7	644.8	631.5	640.5	628.2	657.4	641.1	666.9	650.5	681.1	667.5
6	589.0	567.5	631.4	613.0	621.4	618.5	638.7	633.9	657.5	650.0	669.8	665.2
7	547.2	553.9	560.0	560.3	598.2	601.0	616.6	619.7	645.7	650.4	656.1	652.9
8	449.8	433.0	448.1	436.8	448.0	446.1	470.7	461.3	486.2	477.2	497.7	496.3
TOTAL	4972.7	4784.9	5019.7	4837.9	5052.5	4898.5	5127.9	4962.9	5214.5	5054.9	5293.9	5109.8

Number ('000)

Class/ Grade	2018		2019	
	Boys	Girls	Boys	Girls
TOTAL	5364.3	5178.3	5105.8	4966.3

c. Secondary Education

Class	2012		2013		2014		2015		2016		2017	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
Form 1	282.5	249.6	327.7	289.7	342.3	331.0	380.4	352.2	382.7	375.1	405.5	396.1
Form 2	274.1	239.7	288.2	253.7	326.3	307.2	359.7	331.6	372.4	357.8	386.4	372.3
Form 3	239.1	218.2	267.2	228.8	294.2	263.6	331.1	296.3	345.0	324.3	356.0	335.7
Form 4	223.1	188.1	244.4	204.2	250.2	216.4	277.0	230.3	296.4	266.2	303.0	275.9
TOTAL	1019	895.7	1127.6	976.5	1213.0	1118.2	1348.2	1210.4	1396.5	1323.4	1450.9	1380

Source: KNBS Economic Survey Report, 2018

Class/ Grade	2018		2019	
	Boys	Girls	Boys	Girls
TOTAL	529,215	531,495	546,371	542,618

Source: KNBS Economic Survey Report, 2020

d. University Education

INSTITUTION	2013/14		2014/15		2015/16		2016/17		2017/18	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Public Universities	173,987	115,746	217,164	146,170	258,688	174,068	286,840	192,472	262,592	177,373
Private Universities	39,980	31,666	42,454	37,994	39,125	38,804	43,547	41,648	43,253	37,675
GRAND TOTAL	361,379	361,379	443,783	443,783	510,685	510,685	564,507	564,507	520,893	520,893

Source: Ministry of Education and KNBS Economic Survey Report, 2019

21. **Crime Statistics:** Security continues to be one of the main pillars that support economic activities and promote investor confidence in the country. The Government of Kenya continues to invest heavily in the security sector by recruiting more police officers, equipping them and improving their welfare.
22. In the year 2018 there were 88,268 reported cases of crime as compared to 77,992 in 2017 which was an increase of 10,276 cases or 13%. In 2016 there were 76,986 cases reported to the police which was also an increase from 72,496 cases reported in 2015. Incidences that have been on an upward trend include defilement, assault, general stealing, creating disturbance, possession of drugs for personal use (*Cannabis sativa*) and malicious damage. These crimes are mostly associated with alcohol, drug and substance abuse¹⁰.
23. In 2018 there were increase in cases under the categories of Offences against morality by 31.7%, Other Penal Code Offences by 17.4%, Criminal Damage by 12.2%, Other Offences against Persons by 11.3%, Economic crimes by 11%, Stealing by 10.2% and Robbery by 8.2%. Decreases were however noted in the following categories; Theft by Servant by 155 cases or 5.9%, Theft of Stock by 59 cases or 2.8%, Breakings by 2.6%, and Vehicle and Other thefts by 34 cases or 2.4%. Table 4 below provides the comparative crime figures for the period 2014-2018¹¹.

Table 4: Comparative Crime Figures for the Period 2014-2018

Category of Offences	2014	2015	2016	2017	2018
Homicide	2,649	2,648	2,751	2,774	2,856
Offences against Morality	5,184	6,164	6,228	5,492	7,233
Offences against persons	19,911	21,174	22,295	22,515	25,049
Breakings	5,656	5,591	5,621	6,131	5,970
Robbery	3,011	2,865	2,697	2,713	2,935
Theft of Stock	1,848	1,961	1,918	2,136	2,077
Stealing	10,042	9,528	10,361	11,656	12,845
Theft by Servant	2,279	2,184	2,440	2,632	2,477
Vehicle & Other Thefts	1,239	1,111	1,355	1,404	1,370
Dangerous Drugs	4,850	5,525	6,160	5,565	8,021
Serious Traffic Offences	100	120	139	69	213
Criminal Damage	3,708	3,983	4,307	4,262	4,783
Economic Crimes	3,037	3,244	3,503	3,695	4,100
Corruption	144	79	92	75	119
Offences Involving Police Officers	47	71	57	86	174
Offences involving Tourists	21	19	15	15	93
Other Penal Code Offences	5,650	6,223	7,047	6,772	7,953
TOTAL NO. OF REPORTED CRIMES	69,376	72,496	76,986	77,992	88,268

Source: National Police Service, Annual Crime Report, 2018, 2017 and 2016

¹⁰ National Police Service (2018) 'Annual Crime Report' available at <https://www.nationalpolice.go.ke/crime-statistics.html>

¹¹ Ibid

24. **Employment, Earnings and Consumer Prices:** The economy created 840,600 new jobs in 2018. The informal sector, which accounted for 83.6 per cent of the total employment created 762,100 new jobs in the period under review. The number of persons engaged, excluding those in rural small scale agriculture and pastoralist activities rose by 5.0 per cent to 17.8 million persons in 2018. Employment in the public sector went up from 833,100 persons in 2017 to 842,900 persons in 2018. The private sector which accounted for 69.5 per cent of the total employment grew by 3.0 per cent in 2018. Wage employment in the modern sector increased from 2,699,500 persons in 2017 to 2,765,100 persons in 2018. The total number of self-employed and unpaid family workers within the modern sector rose from 139,400 persons in 2017 to 152,200 persons in 2018. Overall nominal wage bill for public and private and sector rose from Kshs. 1,817.3 billion in 2017 to Kshs. 2,010.2 billion in 2018. Inflation as measured by Consumer Price Index decreased from 8.0 per cent in 2017 to 4.7 per cent in 2018.

B. Constitutional, Political and Legal structure

25. The Constitution establishes Kenya as a constitutional democracy based on the rule of law, respect for human rights and good governance. Chapter Four of the Constitution embraces a progressive and expansive Bill of Rights which applies to all law and binds all state organs and all persons. Every state organ is required to observe, respect, protect, promote and fulfil all the rights and fundamental freedoms in the Bill of Rights. The Bill of Rights provides for the progressive realization of socio-economic rights. The Constitution also specifically provides for the protection of the rights of women, children, the elderly, youth, the disabled, minority communities and other disadvantaged groups.

26. The Constitution provides for a devolved system of government wherein two of the three arms of government; namely the Legislature and the Executive are devolved to the 47 Political and Administrative Counties. The primary objective of devolution is to devolve power, resources and representation down to the local level. Revenue raised nationally is divided between the national government and the county government. Various laws have been enacted by Parliament to create strategies for the implementation framework and the adoption on which the objectives of devolution can be achieved. The laws include the County Government Act 2012, The Intergovernmental Relations Act 2012, County Assembly Service Act 2017, County Assembly Powers and Privileges 2017, Transition to Devolved Government Act 2013, Urban Areas and Cities Act 2011, Public Finance Management Act 2012, Public Service (Value and Principles) Act 2015. The County government became operational in 2013 following the elections of the governor of the county and county assemblies in the 2013 National Elections.

27. **Hierarchy of Laws:** Section 3 of the Judicature Act (Chapter 8 Laws of Kenya) enumerates the primary sources of Kenya laws and these include:

- i. *The Constitution as the Supreme law of the land;*

- ii. *Acts of Parliament which also include subsidiary legislation, Specific Acts of Parliament of the United Kingdom cited in the schedule to the Judicature Act;*
- iii. *The Transfer of Property Act, 1882 of India as the procedural law applicable where the Registration of Titles Act, the Land Titles Act and the Government Lands Act are applied;*
- iv. *English Statutes of General application in Force in England on 12th August 1897, applicable in Kenya in the form that they had at the reception date;*
- v. *The Substance of Common Law and Doctrines of Equity applicable to the Kenyan inhabitants in so far as the circumstances of Kenya permit;*
- vi. *African Customary law applicable only in civil cases where one or more of the parties is subject to or affected by it, in so far as it is not repugnant to justice and morality or inconsistent with any other law; and*
- vii. *Islamic Law applied in Kadhi's Courts, where all the parties profess the Islam religion, on questions of Islamic law relating to personal status, marriage, divorce and inheritance issues.*

28. **The Government:** There are three arms of the Government: The Legislature, Executive, and the Judiciary. The Constitution established two levels of government: the national and county governments. The governments at the national and county levels are distinct and inter-dependent and conduct their mutual relations on the basis of consultation and cooperation. The functions of the national government include: foreign affairs, foreign policy and international trade; the use of international water and water resources; immigration and citizenship; the relationship between religion and state; language policy; national defence; police services; courts; monetary policy; education policy, standards, curricula, examinations and the granting of university charters.

29. The functions and powers of the County Government, include: agriculture, crop and animal husbandry; livestock sale yards; county abattoirs; plant and animal disease control; fisheries. county health services, control of air pollution, noise pollution, other public nuisances and outdoor advertising; cultural activities, public entertainment and public amenities.

30. **Composition of Parliament:** Chapter Eight of the Constitution establishes the Parliament of Kenya, which consists of the National Assembly and the Senate. Section 94 provides that the legislative power of the Republic, which is derived from the people of Kenya, shall vest in the Parliament.

31. The role of the National Assembly is to, *inter alia*: represent the people of the constituencies and special interests in the National Assembly; deliberate on and resolves issues of concern to the people; determine the allocation of national revenue between the levels of government; review the conduct in the Office of the President, the Deputy President and other State officers and initiates the process of removing them from office; and approve declarations of war and extensions of states of emergency.

32. The Senate serves to protect the interests of the counties and their governments. In this regard, the Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties; determines the allocation of national revenue among counties, and exercises oversight over national revenue allocated to the county governments.
33. **Executive:** The National Executive comprises of the President, the Deputy President and the rest of the Cabinet. The President is the Head of State and Government and exercises the executive authority of the Republic, with the assistance of the Deputy President and Cabinet Secretaries. The Cabinet consists of the President; the Deputy President; the Attorney General; and not fewer than fourteen and not more than twenty-two Cabinet Secretaries. The President nominates and, with the approval of the National Assembly, appoints Cabinet Secretaries. A Cabinet Secretary shall not be a Member of Parliament. The composition of the National Executive reflects the regional and ethnic diversity of the people of Kenya. **The County Government:** The County Executive is headed by a governor elected during the national elections. The County Assemblies make up the legislative arm of the county government. A County Assembly consists of members elected by the registered voters of the respective wards on the same day as Members of Parliament: this being on the second Tuesday in August of every fifth year.
34. **The Judiciary:** consists of the judges of the superior courts, magistrates, other judicial officers and staff. It provides that in the exercise of judicial authority, the Judiciary, shall be subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority. In addition, the office of a judge of a superior court shall not be abolished while there is a substantive holder of the office. A member of the Judiciary is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a judicial function.
35. The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts with the status of the High Court to hear and determine disputes relating to employment and labour relations; the environment and the use and occupation of, and title to, land. The subordinate courts are the Magistrates courts; the Kadhis' courts; the Courts Martial; and any other court or local tribunal as may be established by an Act of Parliament.
36. **E- Judiciary:** The Judiciary on July 2020 launched the first E-Filing system for courts in Nairobi in a digitization push for efficiency in the handling of court cases. The e-filing option will enhance speed, efficiency, and accountability in the Courts. The first phase of the project relates to all cases lodged in Nairobi at the Supreme Court, Court of Appeal, all High Court Divisions in Nairobi, Environment and Land Court (ELC), the Anti-Corruption Court, and the Employment and Labour Relations Court (ELRC). The second phase will see the system rolled out to other counties in Kenya as well as in all justice processes.

37. To build the capacity of Judges and Magistrates in Kenya, the Judiciary Training Institute (JTI) was established in 2008. The Judicial Service Commission is responsible for preparing and implementing programmes for continuing education and training for judges and other judicial officers. JTI exercises this delegated mandate, and is therefore responsible for meeting the training, research and capacity development needs of Judiciary staff. JTI performs this mandate in part through various training programs and seminars, public lectures, research, and other forms of discourses targeting all cadres of Judiciary staff, and where, appropriate, members of the academy and the public at large¹².
38. **The Electoral System:** The Constitution provides that every citizen is free to make political choices, which include the right to form, or participate in forming, a political party; to participate in the activities of, or recruit members for, a political party; or to campaign for a political party or cause. In addition, every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for any elective public body or office established under the Constitution; or any office of any political party of which the citizen is a member. Therefore, every adult citizen has the right, without unreasonable restrictions, to be registered as a voter; to vote by secret ballot in any election or referendum; and to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.
39. To give effect to these rights, the Constitution provides that, Kenya's electoral system, shall comply with the following principles: freedom of citizens to exercise their political rights; not more than two-thirds of the members of elective public bodies shall be of the same gender; fair representation of persons with disabilities; universal suffrage based on the aspiration for fair representation and equality of vote; and free and fair elections, which are by secret ballot; free from violence, intimidation, improper influence or corruption; conducted by an independent body (the Independent Electoral and Boundaries Commission); transparent; and administered in an impartial, neutral, efficient, accurate and accountable manner.
40. Kenyans in the diaspora: ***The Supreme Court of Kenya, in Petition No. 25 of 2014, Independent Electoral And Boundaries Commission (IEBC) Vs New Vision Kenya and Others*** affirmed the right of eligible Kenyans living in the diaspora to vote and ordered the progressive registration of Kenyans living abroad to enable them take part in local elections. IEBC conducted the registration of diaspora voters, in four countries: Tanzania, Uganda, Rwanda, Burundi and South Africa.

¹² Judiciary Training Institute overview available at <https://www.judiciary.go.ke/jti-overview/>

2. GENERAL FRAMEWORK FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

C. Acceptance of International Human Rights Norms

Ratification of International Human Rights Instruments:

41. Kenya is a state party to the following core human rights instruments:
 - i. The International Covenant on Civil and Political Rights (ICCPR);
 - ii. The International Covenant on Economic, Social and Cultural Rights (ICESCR);
 - iii. The International Convention on the Elimination of all forms of Racial Discrimination (CERD);
 - iv. The Convention on the Elimination of all forms of Discrimination against Women (CEDAW);
 - v. The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and
 - vi. The Convention on the Rights of the Child (CRC); and
 - vii. The Convention on the Rights of Persons with Disabilities (CRPD)
42. International instruments relating to International Humanitarian Law that Kenya is a state party to include:
 - i. Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949;
 - ii. Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 1949;
 - iii. Geneva Convention (III) relative to the Treatment of Prisoners of War 1949;
 - iv. Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva 1949;
 - v. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 1977;
 - vi. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 1977;
43. Other international instruments which Kenya is a state party to and which have implications for human rights include:
 - i. The United Nations Convention against Corruption;
 - ii. The Convention Relating to the Status of Refugees;
 - iii. Refugee Protocol, 1967
 - iv. The Optional Protocol to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
 - v. The Rome Statute of the International Criminal Court.
 - vi. Convention on Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 1968;
 - vii. Comprehensive Nuclear Test-Ban Treaty
 - viii. Chemical Weapons Convention, 1993;
 - ix. Ottawa Treaty, 1997;

- x. Convention Against the Taking of Hostages, 1979,
- xi. Convention for the Suppression of the Financing of Terrorism, 1999;
- xii. Convention for the Suppression of Terrorist Bombings, 1997

44. At the regional level, Kenya has ratified the following instruments:

- i. African Charter on Human and Peoples' Rights;
- ii. The African Charter on the Rights and Welfare of the Child;
- iii. The OAU Convention Governing Specific Aspects of Refugee Problems in Africa;
- iv. The OAU Convention Against Anti-Corruption; and
- v. The Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples Rights.
- vi. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).
- vii. African Nuclear Weapon Free Zone Treaty (The Treaty of Pelindaba)
- viii. OAU Convention on the Prevention and Combating of Terrorism.

Reservations and Declarations

45. Kenya has entered reservations to Article 10(2) of the ICESCR and Articles 10(3) and 14 (2) (c) of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol).

D. General legal framework within which human rights are protected at the national level

46. **Constitution:** Article 19 of the Constitution 2010 states that the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies. It also states that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.

47. **Application of the Bill of Rights:** The Constitution provides that the Bill of Rights applies to all and binds all State organs and all persons. Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom. Therefore, it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. The State is obliged to take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the social and economic rights guaranteed under Article 43 of the Constitution.

48. All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities. In this respect, the state is obliged to enact and implement

legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.

49. Further, various pieces of legislation have been enacted to protect human rights. These include; **The Access to information Act No. 31 of 2016** which gives effect to the right of access to information as provided under Article 35 of the Constitution; **The Basic Education Act No. 14 of 2013** safeguards the right to free and compulsory education and provides *inter alia* for equitable access for the youth to basic, quality and relevant education with equal access to education or institutions; accountability and democratic decision making with institutions of basic education; protection and advancement of every child in public schools to equal standards of education; **The Births and Deaths Registration Act CAP. 149 (revised edition 2012)** provides for means by which one can register the birth of a child who is a citizen of Kenya thereby protecting the right to nationality; **The Children’s Act No. 8 of 2001** protects the rights of the child as provided under Article 53 of the Constitution; The **Community Land Act No. 27 of 2016** safeguards the right to own property alone as well as in association with others; The **Computer Misuse and Cyber Crimes Act No. 5 of 2018** aims to *inter alia*, protect rights to privacy, freedom of expression and access to information as guaranteed under the Constitution; The **Consumer protection Act No. 46 of 2012** seeks to safeguard consumer rights as provided for under Article 46 of the Constitution; **The Counter Trafficking In Persons Act, 2010** came into force to implement Kenya’s obligations under the United Nations Convention Against Transnational Organised Crime and in particular its Protocol to Prevent, suppress and Punish Trafficking in persons, Especially Women and Children and the **Persons Deprived of Liberty Act, 2014** provides for the rights of persons deprived of liberty by being arrested, held in lawful custody, detained, or imprisoned in execution of a lawful sentence.
50. **Enforcement of the Bill of Rights:** The Constitution recognises all the generations of human rights including the social, cultural and economic rights. In addition, the Constitution provides that any treaty or convention ratified by Kenya and the general rules of international law shall form part of the law of Kenya under the Constitution. Due to this, the provisions of the various human rights instruments can be, and have been, invoked before, or directly enforced by, the courts, other tribunals or administrative authorities, and need not be incorporated into domestic laws or administrative regulations in order to be enforced.
51. Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. In addition to a person acting in their own interest, court proceedings may be instituted by: a person acting on behalf of another person who cannot act in their own name; a person acting as a member of, or in the interest of, a group or class of persons; a person acting in the public interest; or an association acting in the interest of one or more of its members.
52. **Judicial Protection:** Section 23 of the Constitution provides that the High Court has jurisdiction to hear and determine applications for redress of a denial,

violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights. In addition, the Constitution gives power to Parliament to enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

53. **Remedies for violations:** Where an individual claims that a right has been violated, a court may grant appropriate relief, including: a declaration of rights; an injunction; a conservatory order; a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under the limitations recognized under the Constitution; an order for compensation; and an order of judicial review. Where the State has been found liable for a human rights violation, a system of compensation exists.
54. The Judiciary has also published the Litigants' Charter, which is designed to promote understanding by the litigating public of the processes of the court and their rights and obligation in the courses of litigation. The Charter disseminates information on the court, its processes and methods of approaching it all in a simple language.
55. The Judiciary has been promoting Alternative Dispute Resolution (ADR) mechanisms with an aim of enhancing access to justice in line with the provisions of Article 159 of the Constitution. The Court Annexed Mediation (CAM) project commenced in 2015 with a framework to roll out of the pilot project to all counties in a few years. The pilot phase was in the Commercial and Family Division of the High Court in Nairobi. As at July 2019, Mediation has now expanded to 12 other Counties - Kakamega, Nyeri, Kisii, Kisumu, Mombasa, Nakuru, Eldoret, Garissa, Machakos, Embu, Kilifi and Nyamira.
56. Court User Committees are the optimal site for citizen service delivery and justice sector institutional transformation. Section 35 of the Judicial Service Act No.1 of 2011 institutionalizes Court Users Committees (CUCs) by providing for the establishment of the National Council on the Administration of Justice (NCAJ) to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and the transformation of the justice system.
57. **Rights of Accused persons and persons in detention:** The preference for incarceration of pre-trial suspects and accused persons as the proper form of punishment plays a big role in overcrowding of prisons. The Bail and Bond Policy Guidelines, developed by the Judiciary in 2015 provided an opportunity to resolve the problem of overcrowding in prisons. The Guidelines streamline and address disparities in bail and bond decision-making, with a view to enabling fair administration of bail and bond measures. They further facilitate effective inter-agency cooperation and coordination in bail and bond administration and importantly, enhance conformity with the internationally agreed minimum standards for arrested persons and persons held in detention.
58. To further decongest prisons the following measures have been put in place;

- a) Development of a Diversion Policy in 2019 to enable prosecutors to divert cases from the court process and allow matters to be settled out of court, on merit and through agreed structures;
- b) Issuance of Community Service Orders for those sentenced to three years and below and those with a balance of three years and below left to serve;
- c) Development of the Criminal Procedure (Plea Bargaining) Rules, 2018;
- d) Development of a draft alternative justice systems policy to enhance the use of traditional and alternative dispute resolution mechanisms;
- e) Engagement of the court users' committees so that cases are reviewed regularly and brought to a speedy conclusion;
- f) The award of remission of sentences as provided by the law; and
- g) Development of the Sentencing Policy Guidelines (2016), which provide that where the option of a non-custodial sentence is available, a custodial sentence should be reserved for a case in which the objectives of sentencing cannot be met through a non-custodial sentence.

59. To ensure the safety of those in custody, the prison authorities take steps to categorize offenders so that dangerous criminals are not placed in the same cells with petty offenders. Also the government has invested in surveillance equipment to ensure that those in custody do not walk into the cells with any concealed weapon that might endanger the lives of other cellmates. Moreover, the prison authorities have undergone continuous training on conducting search before the inmates are locked in their cells.

E. General framework within which human rights are promoted at the national level

60. **National Human Rights Institutions (NHRI) activities:** National Human Right Institutions (NHRIs) constitute national focal points for promotion and protection of human rights. NHRIs perform a wide range of functions such as monitoring and reporting, advising the government on human rights issues, cooperating with national, regional and international bodies, complaints handling and promoting human rights education. Kenya has three NHRIs namely the Kenya National Commission on Human Rights, the National Gender and Equality Commission and the Commission on Administrative Justice. Since the promulgation of the 2010 Constitution, the NHRIs have significantly contributed to the promotion and protection of human rights in Kenya.

61. **Promotion and Protection of Human Rights:** The Kenya National Commission on Human Rights (KNCHR) is a Constitutional Commission established under Article 59(4) of the Constitution and the Kenya National Commission on Human Rights Act, 2011. The mandate of KNCHR is to enhance the promotion and protection of human rights in Kenya. The Commission monitors Government institutions, carries out investigations on alleged human rights violations, and in appropriate cases provides redress to those whose rights have been violated.

62. **Protection of Rights of Special Interest Groups and Freedom from Discrimination:** The National Gender and Equality Commission (NGEC) is a Constitutional Commission established under Article 59(4) of the Constitution

and the National Gender and Equality Commission Act 2011. The Commission is established to amongst other roles promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution; Monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions; and act as the principal organ of the State in ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalized persons, women, persons with disabilities, and children.

63. **Protection against official maladministration:** The Commission on Administrative Justice (CAJ) also referred to as the Office of the Ombudsman is a constitutional commission established under Article 59(4) of the Constitution and the Commission on Administrative Justice Act, 2011. The CAJ is empowered to, investigate complaints of delay, abuse of power, unfair treatment, manifest injustice or discourtesy. The Commission also has the mandate of overseeing and enforcing the implementation of the Access to Information Act, 2016.
64. **Protection of Children's Rights:** The National Council for Children Services (NCCS) is a semi-autonomous Government agency established under the Children Act 2001. It has the mandate to plan, regulate and coordinate children rights and welfare activities in Kenya.
65. **Protection of Women's Rights:** The Anti Female Genital Mutilation (FGM) Board is a semi autonomous government agency that was established in December 2013 following the enactment of the Prohibition of Female Genital Mutilation Act, 2011. It is under the Ministry of Public Service and Gender. The mission of the Board is to uphold the dignity and empowerment of girls and women in Kenya through the coordination of initiatives, awareness creation, and advocacy against FGM.
66. **Protection of the rights of persons with disabilities:** The National Council for Persons with Disabilities has the mandate to reserve five percent of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disabilities. The Council also has the following mandate to enforce the following: in education, learning institutions are obliged to take into account the special needs of persons with disabilities in a number of aspects of education including admission requirements and curriculum. In sports and recreation, all persons with disabilities are entitled, free of charge, to the use of recreational or sports facilities owned or operated by the Government during social, sporting or recreational activities.

67. Other obligations that the Council has to enforce relate to the duty to provide reasonable accommodation in respect of access to public buildings and public service vehicles. In addition to enforcement activities, the National Council for Persons with Disabilities is also charged with promotional, educational and policy responsibilities and has the mandate to formulate and develop “measures and policies designed to achieve equal opportunities for persons with disabilities”.
68. **The National Cohesion and Integration Commission**, established by an Act of Parliament, has the mandate to facilitate and promote equal opportunities, good relations, harmony and peaceful co-existence between different ethnic and racial communities of Kenya. Any aggrieved person can lodge a complaint regarding violations under the Act to the Commission. The Commission has powers to investigate complaints of ethnic or racial discrimination and make recommendations to the Attorney General, the Kenya National Commission on Human Rights or any other relevant authority on the remedial measures to be taken where such complaints are found to have merit. Moreover, the Commission also has the mandate to promote and monitor public awareness on ethnic and racial harmony and make regular reports to the National Assembly.
69. **Protection of the Freedom and Independence of the Media:** The Media Council of Kenya is an independent national institution established by the Media Council Act, 2013 for purposes of setting of media standards and ensuring compliance with those standards as set out in Article 34(5) of the Constitution. The Council adopted a co-regulation media regulation approach, where board members and the Secretariat, while receiving government funds to support some of its activities, remain very independent in their operations and are not subject to any form of control. The main functions of the Council are to promote and protect the freedom and independence of the media; Prescribe standards of journalists, media practitioners and media enterprises; Ensure the protection of the rights and privileges of journalists in the performance of their duties; Promote and enhance ethical and professional standards amongst journalists and media enterprises and Advise the government or the relevant regulatory authority on matters relating to professional, education and the training of journalists and other media practitioners
70. **Human Rights Education:** To strengthen the capacity of the public sector to effectively deliver on its human rights obligations, the Government of Kenya in collaboration with the KNCHR continues to provide and mainstream human rights education and training in the public sector. The Commission has entered into a memorandum of understanding with the Kenya School of Government, to offer human rights training to civil servants, both at county and national levels.

71. KNCHR has contributed in promoting understanding and the gradual specialization of human rights into the public service in Kenya. The Commission has conducted many human rights education trainings to promote understanding and awareness of human rights among public officers. The Commission has targeted officers in the Judiciary, Police and Prisons departments, Government schools and institutions, the Ministries of Information, Planning, Health, Water, labour, Agriculture, Public Works and Roads. These were identified as institutions that have a great impact on the protection and enjoyment of human rights. Using the rights based approach to programming, the National Commission is empowering duty bearers within government and the civil society to mainstream human rights principles in the delivery of services to the public.
72. The Commission has also worked with Government to infuse human rights into curriculum and training manuals of government training institutions, including the Police and Prisons Training Colleges. With other actors, the Commission has contributed in raising public awareness and understanding of human rights by the public through agricultural shows forums, human rights clinics and public accountability forums, especially in marginal areas of the country.
73. The Legal Aid Act 2016 establishes the National Legal Aid Service whose objective is to promote the access to justice by: providing affordable, accessible, sustainable, credible and accountable legal aid services to indigent persons in Kenya in accordance with the Constitution; providing a legal aid scheme to assist indigent persons to access legal aid; promoting legal awareness; supporting community legal services by funding justice advisory centres, education and research; and promoting alternative dispute resolution methods that enhance access to justice in accordance with the Constitution.

F. Role of the reporting process in promoting human rights at the national level

74. **National Mechanism for Reporting:** Kenya has a dedicated national mechanism for Implementation, reporting and follow up known as the National Committee on International and Regional Human Rights Obligations. This Committee¹³ was established vide Gazette Notice No. 2925 of 29th March 2019. The key mandate of this committee is to advise the government on measures necessary to comply with its international and regional human rights obligations

¹³ The Committee is made up of officers from various Ministries, Departments and Agencies namely the Office of Attorney-General and Department of Justice, Ministry of Labour and Social Protection, Ministry of Public Service, Gender and Youth Affairs, Ministry of Foreign Affairs, Ministry of Health, Ministry of Lands and Physical Planning, Ministry of Transport, Infrastructure, Housing and Urban Development, Ministry of Education, Ministry of Interior and Co-ordination of National Government, Judiciary, Kenya National Bureau of Statistics, Office of the Director of Public Prosecutions, Independent Policing Oversight Authority, Kenya Prison Service, National Police Service, Kenya National Commission on Human Rights, National Gender and Equality Commission and the Council of Governors. The Office of the Attorney General & Department of Justice coordinates reporting under the ICCPR, ICESCR, CERD, CAT, UPR process and the ACHPR. The Ministry of Labour and Social Protection is in charge of reporting under the CRC, CRPD and ACRWC. The Ministry of Public Service and Gender is in charge of reporting under CEDAW and the Maputo Protocol.

and specifically to coordinate and prepare reports to and engage with international and regional human rights mechanisms (including treaty bodies, the universal periodic review and special procedures). Kenya has been compliant with most of the treaty body reporting obligations. Table 6 illustrates the reporting status for international human rights instruments

Table 5: Reporting Status for International Human Rights Instruments

No.	Name of Treaty	Date of Ratification/Accession	Reporting Cycle	Report Submission Date
1.	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	21 st Feb 1997	III	3 rd Aug, 2018
			II	28 th Sept, 2012
			I	6 th June, 2007
2.	International Covenant on Civil & Political Rights (ICCPR)	1 st May, 1972	IV	28 th Dec, 2018
			III	22 nd Aug, 2010
			II	27 th Sept, 2004
			I	15 th Aug, 1979
3.	International Covenant on Economic, Social and Cultural Rights (ICESCR)	1 st May, 1972	II-V	1 st July 2013
			I	7 th Sep, 2006
4.	Convention on the Elimination of Discrimination against Women (CEDAW)	9 th March 1984	VIII	3 rd Mar 2016
			VII	12 th May 2009
			V-VI	2 nd Nov, 2006
			III-IV	14 th Feb 2000
			I-II	4 th Dec 1990
5.	Convention on the Elimination of all forms of Racial Discrimination (CERD)	13 th Sept, 2001	V-VII	3 rd Dec 2015
			I-IV	27 th Oct 2010
6.	Convention on the Rights of the Child (CRC)	30 th July 1990	III-V	19 th Mar 2013
			II	20 th Sept 2005
			I	13 th Jan 2000
7.	Convention on the Rights of Persons with Disabilities	19 th May 2008	I	3 rd April 2012

Source: Office of the High Commissioner for Human Rights; UN Treaty Body Database

G. Other related human rights information

75. Kenya has experienced a number of historical and political challenges which have significantly hampered the realization of human rights for the people of Kenya. These challenges, which include inequality, poverty, diseases and corruption, require significant political, social and economic commitment to realize a useful societal transformation based on respect for human rights, democracy, equality and rule of law. Further, the Constitution 2010 espouses a human-rights based approach to development by encapsulating important

national values and principles of governance, which must inform all aspects of government development planning.

76. **Policies on Human Rights:** The Government developed a National Policy and Action Plan on Human Rights, in recognition of its primary responsibility to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in accordance with the Constitution. The purpose of the policy and action plan is to give effect to Chapter four of the Constitution by providing a comprehensive and coherent framework that elaborates broad human rights principles to guide government and other actors in carrying out their work in a way that will enhance the enjoyment of rights by the people of Kenya. Parliament adopted the National Policy and Action Plan on Human Rights on 2nd December 2015.
77. The National Action Plan on Business and Human Rights, outlines a comprehensive strategy for protecting against human rights abuses by businesses, whether private or owned by Government. The Action Plan details policy priority areas that the Government will focus on in the next five years in a bid to ensure that all businesses including State Owned Enterprises respect human rights. The Action Plan consolidates the existing efforts in the protection and fulfilment of human rights by the State and non-state actors.
78. The Diversity Policy for the Public Service, 2016, provides strategies for ensuring that the recruitment process for the public service reflects the diverse Kenyan communities. The policy is strictly followed in any recruitment or appointment in the Public Service. County Governments, have explicitly targeted specific minority communities for recruitment.
79. The Judiciary has formulated an Alternative Justice Systems (AJS) Baseline Policy (2020) to mainstream into the formal justice system traditional, informal justice systems and other informal mechanisms used to access to justice in Kenya. The development of the Policy marks an important milestone in Kenya's efforts to ensure the full fulfilment, respect, observance, promotion and protection of the right to Access to Justice.
80. **Right to Housing:** The Constitution under Article 43(1) (b) provides that every person has the right to accessible and adequate housing and to reasonable standards of sanitation. Vision 2030 and the revamped National Housing Policy 2016 establish the need for decent and affordable housing for all Kenyans. The GOK has defined the delivery of 500,000 affordable housing units to the lower and middle income communities as one of the prioritized areas under the 'Big Four Agenda 3'.

3. IMPLEMENTATION OF SUBSTANTIVE HUMAN RIGHTS PROVISIONS COMMON TO ALL OR SEVERAL TREATIES

H. Non-discrimination and equality

81. Article 27(1) of the Constitution espouses the principle that "every person is equal before the law and has the right to equal protection and equal benefit of

the law”. To fully ensure the meaningful protection of the law, for all, without discrimination, the judiciary continues to develop transformative strategies to promote effectiveness and efficiency in the administration of justice, access to justice and judicial performance.

82. The Constitution of Kenya highlights equality as an important national value and principle of governance. The Government has put in measures to implement these constitutional provisions: The National Policy on National Values and Principles of Governance provides broad guidelines to government, non-state actors and citizens to develop action plans to mainstream National Values and Principles of Governance (which includes the principle of equality), as provided for in Article 10 of the Constitution, into their day-to-day programmes and activities, and ultimately ensure that the shared values become a way of life for the people of Kenya.
83. There are a number of legislation in place that contain anti-discrimination clauses. The Constitution¹⁴ provides for the right to equality and freedom from discrimination. Other pieces of legislation addressing anti-discrimination include;
 - i. The Persons with Disabilities Act which prohibits direct discrimination in employment, admission to learning institutions, and access to premises, services and amenities for Persons with Disabilities;
 - ii. The National Cohesion and Integration Act, seeks to prohibit racial and religious discrimination by state and non-state actors. In general, it provides protection across a range of areas of life such as in employment, provision of services by public authorities licensing or planning authorities, application for membership into organizations;
 - iii. Children’s Act, 2001¹⁵ states that no child “shall be subjected to discrimination on grounds of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or local connection. This Act is currently undergoing a review to conform it to the Constitution;
 - iv. Kenya Citizenship and Immigration Act, 2011 provides for legal equality between the sexes in respect of acquisition of citizenship through marriage and through birth;
 - v. Refugees Act, 2006 provides protection from discrimination for asylum seekers, refugees and the families of refugees upon entering Kenya;
 - vi. Law of Succession Act guarantees equal inheritance rights for male and female children. This Act is undergoing a review for certain sections to conform to the Constitution;
 - vii. Political Parties Act, 2011 contains a number of provisions which seek to ensure that parties reflect Kenya’s diversity. Among the conditions for registration of a political party are that the membership of the party must reflect regional and ethnic diversity, gender balance, and must include representatives of minorities and marginalized groups.

¹⁴ Article 27 (4) of the Constitution provides that the state shall not discriminate directly or indirectly against any person on any ground including race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth

¹⁵ Children’s Act, (2001) Section 5.

84. With regard to the equal opportunities of all persons in all spheres, the Constitution is clear that *“Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres”*. Most importantly, it is a constitutional imperative that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender¹⁶. Additionally, Article 97(1) outlines that there should be 47 women who represent each of the 47 counties and 12 nominated members representing special interest groups including women, youth and persons with disabilities. Article 98 also outlines the composition of the Senate which ensures that 16 women are nominated by political parties. The Political Parties (Amendment) Act 2016: compels political parties to comply with the two-thirds gender principle in their governance structures. Public funding of political parties is incumbent upon compliance. As a result, the women constitute 40% of office bearers of political parties in Kenya.

85. Other interventions in place to promote equality in political sphere include;
- a) **The Election Laws (Amendment) Act 2016** which facilitates women’s participation in the electoral process
 - b) Various counties have prepared County Participation Acts to facilitate public participation in county Government policy processes and service delivery. These consultative forums have witnessed an increase in the number of rural women participating and contributing in public fora convened by county Governments to discuss the County Integrated Development Plans (CIDPs), county annual budgets and county sector plans, among other county activities. The Kenya Policy on Public Participation is currently before Parliament awaiting enactment. The policy sets out standards for the exercise of public participation in Kenya in line with constitutional human rights principles.
 - c) **The County Assemblies Forum (CAF)**, the coordinating body of the 47 County Assemblies of the Republic of Kenya is mandated to support the County Assemblies in performing their three core functions; law making, oversight, and representation, by providing an avenue for coordination, capacity development and networking amongst the 47 Assemblies, the Executive arm, and the National Government. The Forum has developed a National Curriculum on Leadership for female Members of the County Assemblies (MCAs), aimed at strengthening capacity of MCAs to influence on matters of gender equality.
 - d) **The Trailblazers Programme**, an initiative of the State Department for Gender, is a programme aimed at recognizing women trailblazers that have excelled in different fields including shaping the women’s movement. The Trailblazers are recognized annually and the platform is used to mentor other women across generations on various aspects of leadership and other development concerns.
 - e) **The Democracy Trust Fund**, formed through collaboration between the Government of Kenya and Non-State Actors and launched in 2018, targets women over the age of 18 years who are interested in seeking political office by providing financial support especially during campaigns. It is hoped that these efforts will encourage more women to

¹⁶ Constitution of Kenya (2010) Article 81

seek political office. In *National Gender and Equality Commission v Majority Leader, County Assembly of Nakuru & 4 others; Jubilee Party & another (Interested Parties) [2019] eKLR* NGEC successfully challenged the decision of the Nakuru County Assembly to de-whip nominated members of the assembly as chairpersons and vice-chairpersons in different committees in the house.

- f) Training interventions have been made to build the capacity of women to pursue representative positions. A national training curriculum for women aspirants in political leadership has been developed by the Kenya School of Government to build the capacity of the women leaders vying for various political positions in the 2022 general elections. Similarly, the implementation of Transformative Leadership Program for County Women Executives is underway at Kenya School of Government.
- g) In collaboration with the County Assemblies Forum (CAF), the National Gender and Equality Commission developed a training curriculum for women members of County Assemblies to enhance their representation role, oversight, budgeting and legislative functions. The curriculum was disseminated in all the 47 counties.

86. In 2018, the National Gender and Equality Commission (NGEC) developed a Legislative Handbook on Principles of Equality and Non- Discrimination which guides legislators at the National and County Levels in the review of policy and legislation and in overseeing the formulation and implementation by state and non-state agencies of appropriate programmes, plans and actions towards full realization of gender equality and inclusion of special interest groups in the society.

87. **Public and Political Life:** The percentage of women in the Parliament, the Judiciary and senior civil service positions in 2019 is illustrated in Table 7 below;

Table 6: Percentage of Women in Parliament, Judiciary and Senior Civil Service as at June 2019

INSTITUTION	Female	Male	Total	% of females
PARLIAMENT (Elected and Nominated Members)				
National Assembly	76	273	349	21.78
Senate	21	46	67	31.34
COUNTY GOVERNMENTS				
Members of county assemblies	747	1450	2197	34.00
Governors	3	44	47	6.38
Deputy governors	7	40	47	14.89
County Assembly Speaker	5	42	47	10.63
County Commissioners	5	42	47	10.63
Regional Commissioners	1	7	8	12.5
EXECUTIVE APPOINTMENTS				
Cabinet Secretaries –(as appointed on 26 th January 2018)	6	15	21	28.57

Chief Administrative Secretaries	2	10	12	16.67
Principal Secretaries	10	21	31	32.26
Chair of Constitutional bodies (Period between 2011-2017)	4	6	10	40.00
Superior Courts (ranked from the highest)		Female	Male	Total
Supreme Court		2	5	7
Court of Appeal		7	12	19
High Court		35	46	81
Employment & Labour Relations Court		5	8	13
Environment & Land Court		13	21	34
Sub-Total				
Grand Total				

88. **Rights of Intersex Persons:** Prior to 2014, intersex persons suffered great stigma and discrimination since they were not recognized either in law or in fact. The Persons Deprived of Liberty Act, enacted in 2014 provided a framework for the recognition of intersex persons and for their humane and dignified treatment while in custody.
89. The Kenyan courts have also recognized and protected the rights of intersex children. In the judgment delivered on 5th December 2015 in *Petition No.266 of 2013, Baby A Vs Attorney General and others, eKLR*, the judge declared that it is the duty of the government to protect the rights of intersex babies and persons by providing a legal framework to address issues relating to them, including registration under the Registration of Births and Deaths Act, medical examination and tests, and corrective surgeries. The Court directed the Government to work towards an appropriate legal framework governing issues related to intersex children based on internationally acceptable guidelines. Most revolutionary, in 2019 the Kenya National Population census included a ‘intersex’ gender marker. Following the recommendations of a Task force set up by the Attorney General to implement the judgment in *Petition No.266 of 2013, Baby A Vs Attorney General and others*. The Attorney General has already established the Intersex Persons Implementation Coordination Committee to ensure that all the recommendations of the Intersex Taskforce are implemented including the review of legislation and policies to address the plight of intersex people in Kenya.
90. **Rights of Elderly Persons:** The Older Persons Bill 2015 was renamed the Care and Protection of Older Members of Society Bill, 2018. The bill is currently before the Senate and has undergone two readings. This bill seeks to give effect to Article 57 of the Constitution, to provide a framework for the care of older members of society and to establish a framework for the empowerment and protection of the elderly and the maintenance of their well-being, safety and security.
91. Further, Kenya has commenced the ratification process for the Protocol to the African Charter on Human and People’s Rights on the Rights of Older Persons in Africa. The National Policy on Older Persons and Ageing, 2014 provides a comprehensive framework to address the unique challenges that older persons in

Kenya face, and recognition of their rights, as distinct right holders and participants as per Article 57 of the Constitution.

92. The policy is being implementing under the Government's flagship National Safety Net Program popularly known as '*Inua Jamii*' Cash Programme. The '*Inua Jamii*' program incorporates the Cash Transfers for Orphans and Vulnerable Children, Older Persons Cash Transfer, Persons with Severe Disabilities Cash Transfer and the Hunger Safety Net Programme. The objective of Inua Jamii is to uplift the lives of poor and vulnerable citizens of Kenya through regular and reliable bi-monthly Budget allocation dictates the number of persons to be included in the cash transfer program.
93. **Conclusion:** The Government remains committed to its duty to promote and protect the human rights of its citizens. To address challenges faced in the implementation of these fundamental rights and freedoms the Government will continue to collaborate with development partners and international and regional bodies.

ANNEXURE
ILO Conventions that Kenya has ratified

Convention	Ratification date	Status
C2 Unemployment Convention, 1919	13:01:1964	Ratified
C5 Minimum Age (Industry) Convention, 1919	13:01:1964	Denounced on 09:04:1979
C11 Right of Association (Agriculture) Convention, 1921	13:01:1964	Ratified
C12 Workmen's Compensation (Agriculture) Convention, 1921	13:01:1964	Ratified
C14 Weekly Rest (Industry) Convention, 1921	13:01:1964	Ratified
C15 Minimum Age (Trimmers and Stokers) Convention, 1921	13:01:1964	Denounced on 09:04:1979
C16 Medical Examination of Young Persons (Sea) Convention, 1921	09:02:1971	Ratified
C17 Workmen's Compensation (Accidents) Convention, 1925	13:01:1964	Ratified
C19 Equality of Treatment (Accident Compensation) Convention, 1925	13:01:1964	Ratified
C26 Minimum Wage-Fixing Machinery Convention, 1928	13:01:1964	Ratified
C27 Marking of Weight (Packages Transported by Vessels) Convention, 1929	09:02:1971	Ratified
C29 Forced Labour Convention, 1930	13:01:1964	Ratified
C32 Protection against Accidents (Dockers) Convention (Revised), 1932	13:01:1964	Ratified
C45 Underground Work (Women) Convention, 1935	13:01:1964	Ratified
C50 Recruiting of Indigenous Workers Convention, 1936	13:01:1964	Ratified
C58 Minimum Age (Sea) Convention (Revised), 1936	13:01:1964	Denounced on 09:04:1979
C59 Minimum Age (Industry) Convention (Revised), 1937	13:01:1964	Denounced on 09:04:1979
C63 Convention concerning Statistics of Wages and Hours of Work, 1938	13:01:1964	Ratified
C64 Contracts of Employment (Indigenous Workers) Convention, 1939	13:01:1964	Ratified

C65 Penal Sanctions (Indigenous Workers) Convention, 1939	13:01:1964	Ratified
C81 Labour Inspection Convention, 1947	13:01:1964	Ratified
C86 Contracts of Employment (Indigenous Workers) Convention, 1947	13:01:1964	Ratified
C88 Employment Service Convention, 1948	13:01:1964	Ratified
C89 Night Work (Women) Convention, (Revised), 1948	30:11:1965	Ratified
C94 Labour Clauses (Public Contracts) Convention, 1949	13:01:1964	Ratified
C97 Migration for Employment Convention (Revised), 1949	30:11:1965	Ratified
C98 Right to Organise and Collective Bargaining Convention, 1949	13:01:1964	Ratified
C99 Minimum Wage Fixing Machinery (Agriculture) Convention, 1951	09:02:1971	Ratified
C100 Equal Remuneration Convention, 1951	07:05:2001	Ratified
C105 Abolition of Forced Labour Convention, 1957	13:01:1964	Ratified
C111 Discrimination (Employment and Occupation) Convention, 1958	07:05:2001	Ratified
C112 Minimum Age (Fishermen) Convention, 1959	09:02:1971	Denounced on 09:04:1979
C118 Equality of Treatment (Social Security) Convention, 1962	09:02:1971	Ratified
C123 Minimum Age (Underground Work) Convention, 1965	20:06:1968	Denounced on 09:04:1979
C129 Labour Inspection (Agriculture) Convention, 1969	09:04:1979	Ratified
C131 Minimum Wage Fixing Convention, 1970	09:04:1979	Ratified
C132 Holidays with Pay Convention (Revised), 1970	09:04:1979	Ratified
C134 Prevention of Accidents (Seafarers) Convention, 1970	06:06:1990	Ratified
C135 Workers' Representatives Convention, 1971	09:04:1979	Ratified
C137 Dock Work Convention, 1973	09:04:1979	Ratified

C138 Minimum Age Convention, 1973	09:04:1979	Ratified
C140 Paid Educational Leave Convention, 1974	09:04:1979	Ratified
C141 Rural Workers' Organisations Convention, 1975	09:04:1979	Ratified
C142 Human Resources Development Convention, 1975	09:04:1979	Ratified
C143 Migrant Workers (Supplementary Provisions) Convention, 1975	09:04:1979	Ratified
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	06:06:1990	Ratified
C146 Seafarers' Annual Leave with Pay Convention, 1976	14:09:1990	Ratified
C149 Nursing Personnel Convention, 1977	06:06:1990	Ratified
C182 Worst Forms of Child Labour Convention, 1999	07:05:2001	Ratified

(Source: ILOLEX 2011)