

KENYA FAITH-BASED STAKEHOLDERS' COALITION FOR UNIVERSAL PERIODIC REVIEW 35TH SESSION (THIRD CYCLE JANUARY 2020) HUMAN RIGHTS COUNCIL



Organizations submitting the report

This is a joint submission of the Kenya faith-based Stakeholders' Coalition for the UPR in co-operation with Edmund Rice International (ERI) and Dominicans for Justice and Peace (both ECOSOC Accredited).

Edmund Rice International (ERI) is an international non-governmental organization, founded in 2005 and with Special Consultative Status with ECOSOC since 2012. ERI is supported by two Catholic Religious Congregations, the Christian Brothers and the Presentation Brothers. It works with networks of like-minded organizations and in the countries where the two Congregations are present. ERI has a special interest in the rights of the child, the right to education and in eco-justice.

Dominicans for Justice and Peace Dominicans for Justice and Peace (Order of Preachers) is an association under Swiss law established in 1998 and granted consultative status with ECOSOC in 2002. The association represents the religious congregation of the Dominicans at the UN. It works with UN mechanisms to support the work of Dominicans around the world to protect and defend human rights and the environment.

The participating members of the coalition include:

Alabasta Afrika is a community-based organization founded to restore dignity to lives of women and children and offer them hope for a better future.

Edmund Rice Advocacy Network (ERAN) is a Faith-Based Organisation under the leadership of the Christian Brothers in the East Africa District with a vision to promote social justice and transformative change.

End Poverty with Justice Initiative (EPJI) A social justice and paralegal network based at Ongata Rongai and working in Kajiado County which focuses on promotion of access to justice & human rights advocacy.

Kenya Movement of Catholic Professionals (KMCP) is an organization of Catholic professionals who support the church in tackling social-economic matters. It is the Kenyan chapter of Pax Romana - International Catholic Movement for Intellectual and Cultural Affairs.

Embulbul Education and Counselling Centre is a Catholic institution offering education and counselling services to local communities.

Fahamu Africa is a network for social justice motivated by the desire to see a world where people emancipate themselves from all forms of social injustice whilst recognising their social responsibilities, respecting each other's differences and realising their full potential.

Jesuit Hakimani Centre is a Jesuit institution involved in research and education that addresses social justice issues in Kenya especially in marginalized communities.

Justice Peace and Integrity of Creation Franciscans Africa was established in 2007. Through coordination, communication, collaboration and formation, the office animates the Franciscans and the people they minister with in the Eastern African region to promote the values of justice, peace and integrity of creation.

Comboni Missionaries of the Heart of Jesus (MCCJ) a group established by the Comboni Missionary Congregation working for social justice and social transformation.

Kenya Christian Professionals Forum (KCPF) is an umbrella ecumenical organisation in Kenya. It is engaged in policy, legal and social advocacy on governance, religion, life and family.

Ordo Franciscanus Saecularis is a Franciscan secular order promoting pastoral work, social work, human rights for those living in abject poverty, environmental action and peace building.

Pearls & Treasures Trust is a pro-life organization in Kenya bring healing & restoration where there has been compromise and abuse. They support women in crisis pregnancy and return of affected girls to school.

Ruben FM is a community radio station in Mukuru, Nairobi using radio for advocacy.

I Executive summary

1. Kenya is due for review in the third cycle of the Universal Periodic Review (UPR) in 2020. The Kenya faith-based Coalition for the UPR (hereafter the “Coalition”) has monitored the period under review (2015-2019) and has identified the following gaps in the implementation of the recommendations made to Kenya in the 2nd cycle: the right to education of vulnerable children, (which includes children with special needs and disability; and children in need of mental health services); threats to security of housing tenure; threats to food security and sovereignty and lack of access to safe drinking water.
2. The Coalition makes recommendations in this Report for the adoption and implementation of relevant policy and institutional reforms to be undertaken by the Government of Kenya.
3. This Report has been prepared by the Kenya faith-based Coalition for the Universal Periodic Review (UPR) comprising faith-based institutions working at grass-roots level on issues that directly affect human rights and development. The Coalition was convened by the Edmund Rice Advocacy Network and held several meetings, the first of which was a capacity building workshop facilitated by the Africa Office of UPR-Info. Further meetings and cluster working groups identified issues that informed the final Report.

II Limited access to education for children with special needs and disability

4. Kenya has made considerable progress by enacting a number of policies that directly and indirectly address the difficulties and challenges facing children with special needs and disabilities. The Constitution of Kenya (2010) and the Basic Education Act (2013) guarantees access to free and compulsory basic quality education to every Kenyan child.¹ There are also a number of government institutions involved in the education and welfare of children with special needs and disabilities.² The government has established the Education Assessment and Resource Centres (EARCs) for this role and has also ratified a number of international instruments such as the Convention on the Rights of the Child and Convention on the Rights of Persons with Disability which provides for the universal access to education for children with special needs and disabilities.³
5. Despite these policy commitments, there are issues related to access to quality education for children with special needs and disabilities. There is no accurate data in Kenya on children with disabilities and special needs in or out of school, based on their respective forms of disability to allow targeted interventions. Available estimates give conflicting figures. A joint Ministry of Education/VSO survey (2016) estimates

¹ Examples of other national policies are: The Children’s Act of 2001, Disability Act (2003), Special Needs Education Policy framework (2009), Kenya Vision 2030, Education Act (2013) and Education and Training Sector Policy for Learners and Trainees with Disabilities (2018)

² These include: Directorate for Special Needs in the Ministry of Education, Quality Assurance Department in the Ministry of Education, Education Assessment and Resource Centres (EARCs), Kenya Institute of Special Education (KISE) and Kenya Institute for the Blind (KIB)

³ Kenya has also subscribed to the Sustainable Development Goals- Goal 4 calls for call for inclusive and equitable quality education and promotion of life-long learning opportunities for every child.

that there were only 22,000 learners with special needs and disabilities enrolled in special schools, units and integrated programs.⁴ Early identification, assessment and placement of children with special needs and disability remain serious issues in Kenya.

6. Children with special needs and disabilities are still legally segregated, confining them to special schools.⁵ There is only one segregated public special needs school called Dagoretti Special Needs School within Nairobi County. This school has problems with physical access⁶, poor sanitation and inadequate staffing. Where transition to include children with special needs and disabilities into mainstream schools has begun, infrastructural challenges abound. There is inadequate physical infrastructure (classrooms) and a lack of learning materials, trained teachers and facilities appropriate for special needs learners. This makes special needs education economically inaccessible to the majority of Kenyans since most special needs schools are private⁷ and expensive. In transiting school there is still partial segregation in which children with special needs attend the same schools but in segregated classrooms. For instance, Ruben Primary, an urban poor public school in Nairobi County has a special needs education department consisting of 49 children with mental and hearing disabilities managed by 3 trained teachers. Kilimani Primary, an urban middle-class public school has included children with special needs but is keeping them segregated.

7. With the government's roll-out of its Competency Based Curriculum (CBC), policy, many special needs schools as well as integrated schools serving both special needs and normal children do not have adequate adaptable facilities, medications, therapy and direct instructional inputs to support children with special needs and disabilities. A survey revealed that within schools, including special needs schools, there is poor maintenance of available facilities and assistive devices for children with special needs.⁸ An associated difficulty is that most teachers in Kenya lack prerequisite skills for dealing with children with special needs. Close to 7 out of 10 teachers have encountered learners with special needs and disabilities in their classes but none of them has been trained in how to support such learners. Class-room support for teachers by EARCS, Quality Assurance Support Offices (QASOs) and Curriculum Support Officers (CSOs) to deal with children with special needs and disabilities remains low.⁹ Arguably, teachers do not receive sufficient pre-service and continuous professional (in-service) support to respond to the dynamic challenges related to dealing with children with special needs and disabilities. Most schools lack qualified counselors to respond to the pressures that special needs children face.

8. Additionally, special needs education is physically inaccessible. Children with disability find it burdensome to access school buses, public service vehicles and the newly improved Standard Gauge Railways, all of which lack provision for special

⁴ MoEST and VSO Jitolee (2016), *Kenya National Special Needs Survey Report*, Technical report, Nairobi: MoEST.

⁵ Section 18 of Persons with Disabilities Act CAP 133 (as revised 2012).

⁶ Challenge of transporting the children to the school.

⁷ <http://www.afromum.com/heres-a-list-of-schools-for-children-with-special-needs-in-kenya/>

⁸ Kenya National Examination Council (2017), Early Grade Mathematics Assessment (EGMA) studies for Class 2, Nairobi, Kenya

⁹ *ibid*

needs children. This is contrary to the national Persons with Disabilities Act CAP 133 of 2012.

Recommendations to the State

(i) Undertake a national audit to evaluate the extent and quality of inclusion of children with special needs and disabilities in public schools, and to determine the number of children with disabilities, in and out of school, and their level and form of disability.

(ii) Review the policies and effectiveness of the Education Assessment and Resource Centres (EARCs) and to fully implement the Competency Based Curriculum for children with special needs and disabilities.

(iii) Partner, collaborate and coordinate with other stakeholders including faith-based organisations to undertake campaigns to increase public awareness of the importance of education for children with special needs and disabilities.

(iv) Effectively implement the Persons with Disabilities Act CAP 133 of 2012 to address the issues of mobility for children with special needs and disability.

III Lack of mental health facilities and services for children

9. The Kenyan government has a policy to establish targeted, accessible and friendly services for vulnerable groups. The Mental Health Policy 2015-2030, provides for the government's commitment to establish targeted interventions for vulnerable groups such as children, with a focus on enhancing protective factors and mitigation of risk factors.¹⁰ The draft Mental Health (Amendment) Bill 2018 obliges County Governments to ensure that mental health interventions at the county level target persons at risk of developing mental illness including children.¹¹ The National Education Sector Plan (2013-2018) provides for a framework for guidance and counselling for children within schools.¹² Most schools have a counselling department which is run by the teachers. However, according to the counselling principles, this would be termed a dual relationship¹³ which undermines the counselling process. Further such teachers are not usually trained as mental health practitioners. Kenya has only 88 psychiatrists and 427 psychiatric nurses who are trained to deal with mental illness, and about 4,000 psychologists and counsellors who are competent in mental health issues¹⁴ but are not employed for that purpose.

10. The budgetary allocation for mental health is only 0.5% of the health budget, thus leaving the mental health service of the government completely overstretched and private health services are unaffordable to many. For example a minimum consultation fee for assessment in a private ward in government hospitals is Ksh. 30,000 (€260).

¹⁰ Mental Health Policy 2015-2030.

¹¹ Mental Health Amendment Bill 2018.

¹² Ministry of Education, Science and Technology; National Education Sector Plan 2013 -2018.

¹³ <https://www.goodtherapy.org/blog/psychpedia/dual-relationship-definition>

¹⁴ Dr. Kamau at the UON Research Week- Victimology and Support Conference)

11. Mathari National Teaching and Referral Hospital, the only mental health hospital in Nairobi, is very congested and has no children's wards. Kenya has no mental health disorder facility for children. The World Health Organization reports that mental health problems affect 10–20% of children and adolescents worldwide.¹⁵ It is also estimated that half of all mental illness begins by age 14, though most cases go undetected and untreated. At the last UPR the government accepted a recommendation from Mexico to provide psychological care with emphasis on victims of human trafficking and sexual exploitation, without specific reference to children of school-going age.

Recommendations to the State

(i) Review legislation and policies in health care to specifically include the protection for children with mental health issues.

(ii) Construct and equip mental health facilities and deploy trained mental health personnel in at least five Counties by 2030.

(iii) Carry out data audit of mental health professional practitioners in schools and employ at least one psychologist in every primary and secondary school in Kenya.

IV The right to security of tenure

12. The Government of Kenya has committed itself to ensuring the right to adequate housing through a number of policies, as well as through legislative and programmatic interventions.¹⁶ Other interventions include encouraging the private sector to invest in affordable quality housing through a variety of incentives, and the introduction of appropriate cost-effective building technologies.

13. Housing demand and supply in Kenya is driven by both the construction costs of the physical structure and the cost of the land upon which the dwelling is based. For these reasons the quality of housing in Kenya correlates highly with the income level of the household owners. This means that income growth is an important factor in meeting the objectives contained in the consolidated policies for housing in Kenya.¹⁷ The National Treasury has established a liquidity facility (Kenya Mortgage Refinance Company) in order to increase access to liquidity and longer-term funds for Banks and Savings and Credit Co-operative Organisations (SACCOs) to lend for residential mortgages in Kenya.¹⁸ Kenya continues to improve the situation of

¹⁵ World Health Organization <https://citizentv.co.ke/news/kenya-secures-ksh-10-7b-loan-world-bank-248411/>

¹⁶ The Big Four Agenda, Vision 2030 and the National Housing Policy Session paper no. 3 of 2004

¹⁷ IEA, Housing policy as an agenda for Election 2017

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¹⁸ The National Treasury - <http://www.treasury.go.ke/media-centre/news-updates/589-kenya-mortgage-refinance-company-workshop-on-the-master-refinance-agreement-feb-5-2019-hotel-intercontinental-2.html>

security of tenure by the issuance of title deeds, the waiver of title processing fees¹⁹, digitization of the land registry²⁰ and resolutions of land disputes.

14. Most of the titles that have been issued have served their purpose in rural communities but not in urban communities. Security of tenure in the urban informal settlements remains precarious. The majority of the people living in the informal settlements are unable to enjoy their right to adequate, affordable and secure housing. Mukuru settlement for example, being one of the largest informal settlements in Nairobi, is situated along Nairobi industrial zone. Its population lives in inhumane structures with an uncertain land holding regime. Constant tensions exist between the absentee landowners who hold the titles, the structure owners who occupy the land and the tenants who rent and occupy the structures.²¹ Family expenditure on rent takes up more than a third of household incomes. Kenya, through the Big Four Agenda has pledged construction of 500,000 new affordable homes for Kenyan families.²²

15. The absentee landowners were issued 99 year leases in the 1980s and the 1990s on conditions: that they were to develop the land within two years; not sell the land before it was developed and were not to use the land as collateral before development. The special conditions also gave the State power to cancel the grants if the grantees failed to meet these conditions.²³ Many landowners have failed to meet all these conditions and the allocated parcels were subsequently occupied by structure owners in an unplanned manner. Due to its unique development potential and challenges faced, the Nairobi City County, gazetted the Mukuru informal settlements as a Special Planning Area under the Physical Planning Act²⁴ with the aim of upgrading its 138,000 households. Progress on this initiative is hampered by the Government's reluctance to rescind the land grants that it made in the 1980s and 1990s to landowners who are in breach of the conditions. The lack of security of tenure denies both structure owners and the tenants an opportunity to invest in affordable houses or get credit facilities for economic advancement. Other problems associated with inadequate housing are exposure of residents to regular risks of fire, floods, unhygienic conditions, evictions and demolitions of the temporary structures in informal settlements.²⁵

16. In rural communities, security of community land is threatened by the growing extractive sector. Under the Constitution, community land may be held by communities that are identified on the basis of ethnicity, culture or similar community interest,²⁶ and includes land "lawfully held, managed or used by specific communities as community forests, grazing areas or shrines,"²⁷ ancestral lands and lands traditionally occupied by hunter-gatherer communities,²⁸ and lands held in trust for

¹⁹ The Big Four - <https://www.delivery.go.ke/flagship/deeds>

²⁰ The Big Four - <https://www.delivery.go.ke/flagship/registrydigitization>

²¹ Participatory research by Muungano wa Wanavijiji, Akiba Mashinani Trust and Partners <https://www.muungano.net/mukuru-spa>

²² <https://www.theeastafrican.co.ke/business/Big-Four-Agenda-at-core-of-Kenya-spending/2560-4616020-jxd2fa/index.html>.

²³ <https://www.muungano.net/mukuru-spa>

²⁴ Section 23 of the Physical Planning Act, CAP 286.

²⁵ Social workers reports: Ruben centre and Karibu Group Youth Kibera.

²⁶ 2010 Kenya Constitution, Art. 63(1)

²⁷ 2010 Kenya Constitution, Art. 63(2)(d)(i)

²⁸ 2010 Kenya Constitution, Art. 63(2)(d)(ii)

the community by the county government.²⁹ Community land has been affected by the extractive sector and despite the Community Land Act 2016, abuses with regard to compensation still abound. The Institute for Business and Human Rights has found that there are fringe enterprises to extractive industries that increase the number of employment opportunities available, however the compensation therefrom is usually far less than that offered for work in the mining company. Engagement with communities during prospecting and through the process of establishing installations is either manipulated or lacks the necessary transparency. State security forces have been employed in the Turkana area to protect huge extractive installations that have displaced people without adequate compensation. This increases mistrust in the ability of the State to protect and enable the rights of the communities affected.

Recommendations to the State

(i) Take measures to support the efforts of Nairobi City County in upgrading informal settlements.

(ii) Review the land parcel grants made in the informal settlements and the land processing fees to allow for planning and eventual upgrading and security of tenure.

(iii) Fulfil its pledge to construct 500,000 new affordable homes for Kenyan families.

(iv) Fully implement the Community Land Act 2016 ensuring human rights are protected and adequate compensation is provided.

V Food security and sovereignty

17. The government through the Big Four Agenda announced by the president as his priorities to be addressed in his last presidential term, promises to undertake measures to ensure that Kenya attains 100% food and nutrition security through the following indicators: a 34% increase in the average daily income of farmers, a 27% reduction in the malnutrition among children under age of 5 years, creation of 1000 agricultural processing small to medium enterprises and 600,000 new jobs, a 50% reduction in the number of food insecure families, a 48% increase in Agricultural Sector contribution to GDP and 47% reduction in the cost of food as percentage of income.³⁰ The Environment Management and Co-ordination Amendment Act 2015 also recognizes food production and processing on large scale farming.³¹ There also exists a draft organic agriculture policy 2017 that has still not been adopted.

18. According to the 2017 Economic Survey of the Kenyan National Bureau of Statistics, agriculture, forestry and fishing contributed 32.6% of GDP in 2016, while crop growing which is commonly done through subsistence farming contributed

²⁹ 2010 Kenya Constitution, Art. 63(2)(d)(iii)

³⁰ The Big our agenda: <https://big4.president.go.ke/>

³¹ The Kenya environment management and co-ordination amendment Act 2015
<http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2015/EnvironmentalManagementandCo-ordinationAmendmentAct2015No5of2015.pdf>

25.9% to GDP. Consequently, while ensuring respect for human rights and a commitment to addressing climate change, priorities need to be given to these two areas as key contributors to GDP. Dependency on conventional seed and fertilizer has not succeeded in protecting small holder farmers from the shocks of climate change. For example Marsabit, Isiolo, Kajiado, Taita Taveta and Tana River are among the counties that have been experiencing acute drought, forcing the Government to carry out ad hoc food distribution every year. The existing Agriculture Policy 2015, Fertilizer and Animal Feedstuff Act CAP 345, and Crops Act no 16 of 2015 do not adequately provide solutions to the challenges faced by the organic agriculture sub-sector.

19. The focus on food security that emphasizes large scale commercial agricultural production, agricultural mechanical equipment, agricultural production inputs and agricultural support services³² leaves out small-scale farmers and undermines food sovereignty. An increase in food production to meet future needs, while necessary, is not sufficient. If increased food production is not combined with higher incomes and improved livelihoods, it fails to combat hunger and malnutrition.³³ Large scale commercialized farming has a tendency to be highly mechanized which undermines organic and agro-ecological practices.

20. Despite the acknowledged contribution of organic agriculture in sustaining the health of soil ecosystems, the organic agriculture sub-sector in Kenya remains relatively small.³⁴ There is limited investment by Government in organic agriculture in regard to research and development, training and extension, inputs, production, marketing and trade and above all legal and institutional frameworks. The national seed production requirements have made it difficult to have certified organic seed, while phyto-sanitary regulations require that imported seed be dressed with agro-chemicals which undermine the integrity of organic seed.³⁵

Recommendations to the State

(i) Adopt the Organic Agriculture Policy and mainstream organic and ecological practices in all government policies relating to food and nutrition.

(ii) Develop and promote an effective system for the production and bulking of high-quality organic seeds and propagation materials.

(iii) Prioritise organic agriculture in all aspects of agricultural policy.

VI Lack of access to safe drinking water

21. The Government of Kenya has a number of policy frameworks that are meant to provide for the availability and accessibility of water and appropriate climate change mitigation. This, in addition to other legal and policy frameworks such as the

³² The Big Four agenda: <https://big4.president.go.ke/>

³³ Human Rights Council Sixteenth Session Report submitted by Special rapporteur on the right to food, Olivier De Schutter – A/HRC/16/49.

³⁴ Government of Kenya- Ministry of Agriculture, Livestock and Fisheries: Organic Agriculture policy 2017.

³⁵ Organic Agriculture Policy 2017.

Climate Change Act 2016, National Climate Change Action Plan (2015-2030), the Water Act of 2016 and the amended Environmental Management and Coordination Act of 2015 are essential to improve water governance in the country. Specifically, section 18 and 19 of the Climate Change Act provides for mainstreaming of climate change considerations in county development plans through the National Climate Change Council (NCCC) oversight. These policies are not yet fully implemented.

22. According to the Kenya Water Tower Agency (KWTA), conservation efforts are needed to protect the five key water towers that form 75% of renewable water sources. It is further argued that forest cover is related to water conservation. Currently Kenya is experiencing deforestation which has an impact on the flow of water.³⁶ Poor environmental conservation and unsustainable human activities including encroachment on forests have aggravated the depletion of water towers.

23. On 20th May 2019, both the National and County Governments of Mombasa, Kwale and three other counties signed a Ksh.10.7 billion (€92 million) contract with the World Bank. The project is aimed at providing water to the residents in these five counties which have been facing water scarcity for decades.³⁷

24. There are water sources/bodies in Kenya but the water is not safe for human consumption, either because it is ocean water or contaminated dam water/pan water.³⁸ Access to water is uneven in Garissa, Mombasa and Kilifi among other counties. For instance, in Mombasa water supply only meets 65% of the county water demand. In addition, most residents rely on borehole water that contains a high percentage of faecal contamination and is not safe for domestic use. In total, 73.9% of the total population has access to safe water.³⁹ In Garissa a paltry 23.3% of the population is guaranteed access, while in Kilifi only 33.7% are guaranteed a water supply. Makueni County has nine water points to serve the entire county.⁴⁰ In Kilifi 48.1% of population access piped water and 63% potable water. The County Integrated Development Plan 2018-2022 acknowledges the need for developing systems for water harvesting for crop production.⁴¹

25. If climate smart measures are not adopted and scaled up, the number of poor communities who do not get water is likely to go beyond the current rates of 63.3% (Kilifi) and 76.7% (Garissa). This acute shortage of water largely in Arid and Semi-Arid Lands (ASAL) areas has led to stiff competition for this dwindling resource. The stiff competition inevitably leads to ethnic and inter-clan conflicts resulting in violent confrontations, deaths, loss of property and forced migration (internally displaced communities especially within the pastoral communities). Women and children are

³⁶ Kenya Water Tower Status Report. <http://www.kenyaforestservice.org/index.php/2016-04-25-20-08-29/news/501-kenya-water-towers-status-report>

³⁷ World Bank <https://citizentv.co.ke/news/kenya-secures-ksh-10-7b-loan-world-bank-248411/>

³⁸ www.the-star.co.ke/counties/north-eastern/2019-02-13-residents-serve-filthy-water-to-leaders-send-message/

³⁹ <http://www.mombasaassembly.go.ke/wp-content/uploads/2018/06/Mombasa-County-Draft-CIDP-2018-22.pdf>

⁴⁰ <https://makueni.go.ke/water-sanitation-environment-and-climate-change/>

⁴¹ Kilifi County Integrated Development Plan 2018-2022:
www.kilifi.go.ke/lib.php?com=6&res_id=646

most likely to find themselves in vulnerable positions in the aftermath of the inter-ethnic clashes over water resources.

Recommendations to the State

(i) Fully implement: the policy on Education for Sustainable Development (2013), the Water Act 2016, Climate Change Act (2016), National Climate Change Action Plan (2015-2030) and the revised Environmental Management and Coordination Act of 2015.

(ii) Work closely with County Governments through County development plans to improve the infrastructure for water storage and to encourage the adoption of people-centred initiatives by communities such as the harvesting of rain water and run off water.

(iii) Improve the 5 main water towers i.e. Aberdare's, Mau forest complex, Mount Kenya, Mount Elgon and Cherangani hills through afforestation and to place a total ban on logging and encroachment within these water towers.