



International Commission of
Jurists, Kenya (ICJ)



Centre for Minority Rights Development
(Cemiride)



World Organisation Against
Torture (OMCT)

**Statement by Centre for Minority Rights Development to the 41st Session of the
Committee on Economic, Social and Cultural Rights: Examination of State Party
Report on Kenya
3rd November 2008**

Based on the conviction that torture and cruel, inhuman and degrading treatment or punishment and other forms of violence are related in many ways to – and are often directly caused by – disrespect for economic, social and cultural rights, the Centre for Minority Rights Development, the International Commission of Jurists-Kenya Section, and the World Organization Against Torture came together to prepare an alternative report to support the Committee's consideration of the Kenyan State Report. The information for this alternative report was obtained through a series of community visits and meetings in both rural and urban areas. Our report seeks to highlight and emphasize the strong link between the denial or the violation of economic, social and cultural rights and various forms of violence, including torture and other forms of cruel, inhuman or degrading treatment or punishment that emanate from this denial. This report brings to the Committee the voices of poor and marginalised Kenyans, for many of whom violence or the threat of violence is a daily reality.

Upon visiting a range of urban and rural communities, including the Maasai, the Ogiek, the Endorois, the Ilchamus, and residents of Nairobi's informal settlements - it became clear that the denial of economic, social and cultural rights has created inequalities characterized by; exclusion from social benefits, exclusion from the distribution of resources, marginalization in the political arena, and situations whereby people are living on the margins of society with adverse effects caused by opinions and decisions of Kenya's economic and political establishment. Inadequate standards of living not only cut off poor people from decision-making platforms and work against them in the realization of their potential, they also inarguably perpetrate violence, including torture and other cruel, inhuman and degrading treatment. We wish to draw the Committee's attention to the fact that Kenya's poor, marginalized and minorities are vulnerable groups that are often the first and most numerous victims of violence.

This report gives particular emphasis to the fact that land is a critical and complex issue in the country. The ownership - or lack of ownership - of land has subjected many a population to violence, conflict, poverty or even to a life characterized by psychological torture and fear for their lives. The politicization of this resource has worked to the detriment of Kenya's population, especially women, children, the urban poor, and minority and indigenous communities. According to Article 1 (2) of the International Covenant on Economic, Social and Cultural Rights, all peoples may for their own ends freely dispose of their natural wealth

and resources. The abuse of this right has seen most communities in Kenya being excluded from the proceeds of the natural resources that are found within the territories they occupy. Many local communities face imminent eviction, frequently by violent means, from the land they occupy to pave way for mining or other economic development activities, without any adequate schemes for their resettlement or for benefit sharing.

Our report notes that the fulfilment of economic, social and cultural rights has to do with the establishment, not only of policies and other frameworks, but also of infrastructure that permits the implementation of these rights. The continued discrimination and marginalization suffered by certain regions in the country - especially the Northern frontier districts of Kenya - which are mainly inhabited by pastoralist communities subjects the population to the effects of poor or inexistent physical infrastructure, inadequate education and health facilities, lack of basic resources like water, and the underdevelopment of land. Competition for scarce resources has inevitably led to the escalation of cattle raids, tribal, inter-community, and other forms of conflicts in the region.

Insecurity and violence is also a frequent feature of life in informal settlements of Kenya's urban centres, where economic, social and cultural rights, including the rights to adequate housing, education and health are frequently compromised. A consistent message to emerge from our meetings from our community fora in Nairobi was that there is an alarming trend toward the criminalization of the urban poor, exacerbated by widespread police corruption. These same communities are frequently the victims of arbitrary police actions and violent evictions.

To echo the words of my colleague from OMCT who spoke earlier,
“We encourage the committee to develop practical recommendations that can be both implemented and monitored, certain in the knowledge that ensuring the enjoyment of economic, social and cultural rights is not only an end in itself but also a fundamental building block of violence-free societies.”

We as partners encourage the Committee to make recommendations that will not only promote the enjoyment of economic, social and cultural rights for all Kenyans, including the poorest and most marginalised, but also free them from the violence that is so often present in their lives (see appendix for recommendations from alternative report).

Despite the aforementioned conditions, not enough has been done by the Kenyan State to consider fully and systematically the causal links between the failure to respect economic, social and cultural rights, and the resulting poverty, inequality, discrimination and violence. We encourage the Committee to urge the Government of Kenya to take into consideration these important causal links when implementing the Committee's recommendations.

Appendix

Recommendations

The following recommendations are specific to the link between the denial of economic, social and cultural rights and violence. They have been developed to reflect the ideas and suggestions that emerged during the expert meetings and community fora held during the preparatory mission for this report.

Key legal and administrative measures:

- Draft and agree upon a new Kenyan Constitution that adequately addresses issues of property and land rights, takes a clear position on customary law consistent with international human rights standards, and recognises the rights of minority and indigenous populations;
- Establish a Truth, Justice and Reconciliation Committee that will not only address Kenya's post-electoral violence, but also consider earlier episodes and the displacement, loss of livelihood and physical and psychological injuries associated with these events;
- Finalise and adopt the National Policy on Peacebuilding and Conflict Management of 2005-6, which will provide a framework for addressing security issues such as those in Mount Elgon and elsewhere, and end the reactive and crisis-driven approach to conflict management and resolution;
- Take firm and decisive steps to address and end corruption and associated crimes, including the system of political patronage that sees land and other resources allocated to individuals and communities in exchange for political support.

Regarding the land situation:

- Recognize that land issues are often at the root cause of community violence in Kenya and take concerted steps to reach fair and just resolutions to land disputes across the country, independent of political and ethnic interests;
- Properly implement section 75 of the Constitution dealing with land rights and, in particular, ensure that the notion of "public benefit" is not manipulated to serve personal and political interests;
- Initiate a process of land reform aimed at resolving the land issue in Kenya such as that contained in the National Land Policy drawn up by the Ministry of Lands in 2007. The process should address the highly fragmented pattern of land use, and involve consultation with representatives of all groups concerned and

- affected by land conflict. This reform should also foresee the possibility of establishing an independent inspectorate to monitor land use under the provisions included in the reform;
- Implement without delay the recommendations included in the Report issued by the Ndungu Commission, set up in 2003 to investigate the irregular allocation of public land and the measures included in the 2007 National Land Policy; in particular, implement the recommendations highlighting the urgent need for a National Land Commission and a Land Titles Tribunal that deals with the rectification of the illegal allocation of lands on a case by case basis, the development of a comprehensive land policy, and the establishment of an inventory of public land;
 - Implement the recommendations to secure access to land and land-based resources for vulnerable groups enumerated in the National Land Policy document of 2007, specifically to: develop mechanisms for identifying, monitoring and assessing the vulnerable groups; put in place mechanisms for redistribution of land and resettlement; facilitate their participation in decision making over land and land based resources; and protect their land rights from unjust and illegal expropriation;
 - Likewise implement the recommendations to protect and sustain the land rights of minority communities enumerated in the National Land Policy document of 2007, specifically to: undertake an inventory of the existing minority communities to obtain a clear assessment of their status and land rights; develop a legislative framework to secure their rights to individually or collectively access and use land and land based resources; provide legal and institutional frameworks for restitution in lieu of destroyed property and loss of cultural habitation; and facilitate their resource management systems to ensure sustainability of land and land base resources;
 - Establish a transparent and clear system of registration of land titles in order to avoid further episodes of conflict deriving from uncertainty over land allocation.

Regarding forced evictions in both rural and urban areas:

- Include a provision in the Kenyan Constitution to ensure that evictions are only used as a last resort, and that they are carried out according to international human rights standards;
- Establish and implement clear and transparent guidelines to ensure that eviction processes respect human rights and human dignity (including full and meaningful participation in the process for

those affected) and introduce a moratorium on evictions until such guidelines have been established;

- Ensure that all Kenyan citizens, including the poorest and most marginalised, have *de jure* and *de facto* access to remedial measures for illegal evictions.

For rural communities:

- Implement the recommendations to secure pastoralist livelihoods and tenure of land enumerated in the National Land Policy document of 2007.
- Provide forthwith adequate security to protect vulnerable communities and to deter attacks from militia, armed communities and cattle rustlers;
- Ensure disarmament of communities, including through carefully coordinated and managed livestock for guns initiatives;
- Review the provision of basic services such as schools and health services to guarantee that minority and indigenous communities are not excluded from these services;
- Encourage recruitment of local administrators and police from minority and indigenous communities;
- Provide common services and facilities for neighbouring communities, including schools and clinics (where language allows) as a means to defuse tensions;
- Encourage the development of alternative income sources, such as cash for work programmes. Also promote access to livestock markets for pastoralist communities.

In urban areas:

- Recognise the rights of residents of Kenya's informal settlements and take all possible steps to ensure that they have access to basic services, including water and sanitation, electricity and adequate health and education services;
- Introduce an independent watchdog mechanism, accessible to the public, to address the issue of corruption and violence within the police force. Ensure that full and appropriate disciplinary and legal measures are taken against police officers and other officials found guilty of abusing their position;
- Ensure that slum upgrading projects include a well-articulated social protection dimension, and that residents of these areas are fully consulted and informed. Develop registries of residents to ensure that new housing is allocated in a fair and transparent manner.

As regards the situation of women and children:

- Ensure that the principle of non-discrimination on the basis of gender, enshrined under Section 82 of the current Kenyan Constitution is applied without exception, and that no form of personal or customary law compromises this principle in any way;
- Act upon the recommendation of the Committee on Elimination of Discrimination Against Women that the State should promote without delay the passage of the Family Protection Bill, the Matrimonial Property Bill and the Equal Opportunities Bill, which have been under preparation in different forms since 1999,¹ in addition to the Trafficking in Persons Bill and the Reproductive Health and Rights Bill;
- Raise awareness of women and children's human rights among the public at large, and in specific groups, including the police and judiciary. Advocate that violence against women and children is unacceptable;
- Work with communities to reinforce the positive dimensions of customary law, including as regards the care of children and, at the same time, to address violations of women and children's human rights inherent in customary law;
- Identify and address specific cultural values that compromise the human rights of women and children, including their rights to protection from all forms of violence and to own property, through community awareness raising and discussion;
- Promote creative measures to keep children - especially girls - in school, including school feeding programmes. Ensure that resources assigned to education are assigned equitably;
- Ensure that all births and marriages, including customary marriages, are registered. Further ensure that the minimum age of marriage under Kenyan law is respected in customary marriages;
- Introduce legislation to criminalise marital rape;
- Promote the recruitment of female police officers, and ensure the establishment of a Gender Desk in all police stations.

¹ Concluding comments of the Committee on the Elimination of Discrimination against Women: Kenya CEDAW/C/KEN/CO/6, §17.

<http://daccessdds.un.org/doc/UNDOC/GEN/N07/459/89/PDF/N0745989.pdf?OpenElement>