



# **International Convention on the Elimination of All Forms of Racial Discrimination**

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## **Committee on the Elimination of Racial Discrimination Seventy-ninth session**

### **Summary record of the 2100th meeting**

Held at the Palais Wilson, Geneva, on Monday, 15 August 2011, at 3 p.m.

*Chairperson:* Ms. Dah (Vice-Chairperson)

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*The meeting was called to order at 3.10 p.m.*

**Consideration of reports, comments and information submitted by States parties  
under article 9 of the Convention** (*continued*)

*Initial and second to fourth periodic reports of Kenya (CERD/C/KEN/1-4,  
CERD/C/KEN/Q/1-4)*

1. *At the invitation of the Chairperson, the delegation of Kenya took places at the Committee table.*
2. **Mr. Kilonzo** (Kenya) reaffirmed the importance his country attached to the dignity of every person and to the protection of everyone against discrimination. Referring to the general human rights situation in Kenya, he said that major efforts had been made since 2003 to ensure better respect for human rights and that the adoption by referendum of a new Constitution on 4 August 2010, which had received the approval of 77 per cent of voters, was one of the significant events of that period. The new Constitution embodied the promise of restoring the integrity of national governance institutions.
3. In Kenya, inequalities took different forms between regions, between men and women and even between different population groups. Certain inequalities were tantamount to discrimination, in particular when they prevented marginalized or vulnerable groups from taking part in decisions that concerned them. The situation was exacerbated by the fact that formal and informal legal structures were not sensitive to the situation of women, disabled persons and children. Kenya officially recognized the existence of inequalities, and tackling that reality had been at the heart of the Economic Recovery Strategy for 2003–2007, and subsequently of the Kenya Vision 2030 strategy, which was designed to ensure sustainable economic growth and to build a just and cohesive society and a democratic political system based on the rule of law and the protection of all human rights and freedoms.
4. The first medium-term plan for 2008–2012 of the Vision 2030 described the policies, reforms, projects and programmes that the Government had undertaken to implement during that period. The priorities set for the first year were, in particular, national reconciliation and economic reconstruction with a view to repairing the harm caused by post-electoral violence, with an emphasis on promoting equality. The medium-term plan also covered other important issues such as creating jobs, in particular for young people, and promoting gender equality in national programmes.
5. He explained that ethnicity or negative tribalism had been the greatest threat to national unity. The tendency to politicize cultural identity had led to serious inter-ethnic conflicts in many regions of the country. Such conflicts had been fuelled, inter alia, by historical differences arising from the “divide-and-rule” tactics policy by the former colonial authorities. For example, unequal access to education and employment and, hence, to modernization, had been used to pit communities against one another. That had generated certain attitudes, perceptions and cultural prejudices, as well as extreme feelings of marginalization in a number of communities and had largely precipitated the crisis and unprecedented violence which had followed the contested presidential elections of 2007, causing some 1,500 deaths and leading to the displacement of hundreds of thousands of persons. Since then, the Kenyan authorities had launched a public debate on diversity with the aim of allowing vulnerable persons, minorities and indigenous peoples to play a role and to be respected in society.
6. Although new laws were being drafted and others revised in order to bring them into conformity with the new Constitution, several legislative texts already guaranteed equality and equal protection under the law and prohibited both direct and indirect discrimination. Kenyan legislation also required the public authorities to promote equal opportunities and

to prevent and combat discrimination. Like other countries that had undertaken rapid reforms, Kenya encountered numerous obstacles to reducing poverty, the main cause of inequalities; however, it was determined to eliminate poverty on a sustainable basis, in particular through growth and redistribution policies which would help to reduce inequalities.

7. **Mr. Peter** (Country Rapporteur) recalled that the State party had ratified the Convention on 13 September 2001 without entering reservations, but that it had not made the declaration provided for under article 14 of the Convention, a situation that should be rectified. According to paragraph 24 of the periodic report under consideration, “[i]nternational treaties are not considered as part of the law of Kenya and cannot be directly applied by the courts, tribunals or administrative authorities in the absence of domestic legislation on the same (...)”, but “[t]his is set to change once the new Constitution is adopted”. Noting that the last phrase raised doubts as to the actual date of preparation of the report because the new Constitution had been adopted in 2010, he considered nevertheless that the paragraph in question gave the impression that Kenya was currently a dualist State. However, in its own report, the Kenya National Commission on Human Rights had stated that it was not necessary for Kenya to incorporate the provisions of the Convention into its domestic law because it had become a monistic State. Thorough clarification was therefore required on that issue.

8. With regard to minorities and indigenous groups, which were currently recognized by the Constitution of 2010, he enquired whether the State party believed that certain particularly vulnerable minorities or indigenous groups required special protection measures and whether it had given effect to the decision rendered by the African Commission on Human and Peoples’ Rights in the *Endorois* case. In his view, the National Cohesion and Integration Act (No. 12) of 2008, which criminalized discrimination on ethnic grounds, did not sufficiently comply with the requirements of the Convention, as incitement to hatred could also be based on such grounds as nationality, religion, sex, sexual orientation, etc. He asked the Kenyan delegation to indicate whether the law could be amended in order to broaden its scope of application.

9. He noted that Kenya had some of the continent’s largest slums, those in Nairobi even being, according to the United Nations Human Settlements Programme (UN-Habitat), the most densely populated, the most dangerous and the most unsanitary in the world. He invited the delegation to indicate what measures the Government intended to take, in addition to the Kenyan Slum Upgrading Programme, to prevent political parties from inciting ethnic conflict among slum-dwellers, who were normally peaceful, and to prevent inter-ethnic clashes leading to internal displacement.

10. He asked what measures had been taken to ensure the safety of approximately 350,000 people who had been displaced as a result of the post-electoral violence. According to paragraph 131 of the periodic report, the Government was making efforts to resettle internally displaced persons (IDPs) resulting from the 2008 post-election violence by ensuring their safe return, providing some financial assistance and conducting a range of reconciliation initiatives in the affected areas. He noted however that, although four years had elapsed since those events, many Kenyans continued to live in makeshift camps. What measures did the Kenyan Government plan to take to help displaced persons return to normal life?

11. Somalis, Nubians and Coastal Arabs living in Kenya were apparently victims of discrimination in the acquisition of Kenyan nationality and obtaining an identity card, as was indicated in Kenya’s report (para. 45). The delegation should provide information on the way those groups were treated. It would be useful for the State party to harmonize its laws and policies so that all citizens enjoyed equal treatment. He asked what stage had been reached in the implementation of the affirmative action programmes for disadvantaged

groups referred to in paragraphs 44 and 209 of the report. Referring to the Constituencies Development Fund Act of 2003, he asked how efficient that Fund had been. Citing example of the activists of Muslims for Human Rights (MUHURI) who had been attacked while trying to inform communities how to make the best use of the Fund, he asked what measures the Government was taking to protect activists against that type of violence.

12. He pointed to inconsistencies in the report on the issue of land rights and asked whether Kenya had adopted a land policy. The situation in the Dadaab refugee camp had changed radically owing to the famine in Somalia; given the scope of the catastrophe, the international community should help the State party to improve living conditions in the camp, in line with the principle of shared responsibility.

13. With regard to access to justice by vulnerable groups, he requested information on the remedies provided for by the new Constitution, in particular for vulnerable communities living in arid and semi-arid areas. He also wished to know whether a national legal aid system had been introduced for poor and marginalized groups in urban and rural areas, what the criteria for access to legal aid were, and whether it was planned to offer the services of paralegals in that context. He enquired about the way the Truth, Justice and Reconciliation Commission functioned and the results achieved. He asked whether justice would be provided for victims, whether an amnesty would be granted to certain perpetrators of violations, and whether the Government intended to extend the mandate of the Commission. Furthermore, the delegation should indicate whether the legislation had been amended with a view to reinforcing the witness protection programme (A/HRC/WG.6/8/KEN/1, para. 35) and whether measures had been taken to detach the witness protection unit from the Attorney General's office.

14. Given the differences among members of the Government on the issue of cooperation with the International Criminal Court, he asked the delegation to provide information on the position of the State party on that issue. Lastly, he took note of the fact that it was planned to replace the Kenya National Commission on Human Rights by the Kenya National Commission on Human Rights and Equality or by several commissions, and asked what the role of the new commissions would be and what strategy the Government planned to adopt in order to raise the population's awareness of their rights and strengthen respect for human rights in the country. The different commissions should function freely, benefit from financial security and be independent.

15. **Mr. Avtonomov** welcomed the renewed dialogue with the State party and the composition of the Kenyan delegation, which reflected in particular the interest accorded to equality between men and women. Kenya should consider accepting the amendment to article 8, which provided that States parties should defray the expenses of the Committee members. Referring to the issue of the Nubian community (paragraph 47 of the report), he noted that it was only since the 2000 census that they had been considered as a distinct group and that there was no specific information on whether their right to citizenship had been recognized. He asked whether any decisions had been handed down in relation to the constitutional application filed with the High Court in 2003 and the case brought before the African Commission on Human and Peoples' Rights in 2006 (para. 47), and whether measures had been taken to follow up on the 2011 decision of the African Committee of Experts on the Rights and Welfare of the Child.

16. The delegation should provide information on the 2009 population census and on the different types of courts that existed in Kenya, and indicate how human rights principles were invoked there. Lastly, the State party should provide a core document which would make it possible to clarify fundamental issues.

17. **Mr. Prosper**, referring to the case concerning the post-election violence of 2007, which was before the International Criminal Court (ICC), asked why Kenya did not have

the political will to deal with that case itself and to bring to justice the persons who had played a prominent role in the violence.

18. **Mr. Diaconu** said that it was his understanding that not all Kenyan citizens had a national identity card; he asked what measures had been taken to remedy that situation which affected the exercise of their rights. He asked whether the commission of inquiry on segregation had completed its work and had proposed measures aimed at combating racial segregation.

19. He asked whether the Kenya National Commission on Human Rights had appointed a mediator to consider individual complaints. It would be useful to know whether the 42 main ethnic groups were represented in Parliament and in other State bodies. Noting that the Constitution provided for the possibility of withdrawing certain diplomatic privileges for reasons of public safety, he pointed out that Kenya could declare someone *persona non grata* but could not unilaterally withdraw his or her privileges. He asked how many internally displaced persons there were in Kenya and what measures the Government had taken to enable them to return to their homes. He requested more information on the definition of indigenous persons adopted by Kenya and on the number of indigenous people in the country. Lastly, he asked whether the reports of the existence of hotels in the country that were reserved for foreigners were true and if so, why that was the case.

20. **Mr. de Gouttes** asked why the State party had not incorporated the Convention into its domestic legislation by means of a specific law. He wished to know whether the National Cohesion and Integration Act (No. 12) of 2008 included the definition of racial discrimination contained in article 1 of the Convention. He asked how the Constitution of Kenya Review Act would help to ensure greater respect for ethnic diversity and collective community rights (paragraph 35 of the report).

21. He asked whether the Marriage Bill would serve to eliminate remaining discriminatory provisions, in particular those relating to the British, Asians and Muslims (paragraphs 48 and 51 of the report). He enquired why the number of inter-ethnic and mixed marriages was likely to decrease, as indicated in paragraph 78. He pointed out that legislation against racism did not seem to cover all of the provisions of article 4 of the Convention, and asked whether the Government planned to draft a law against racial discrimination which would be fully in line with the Convention. He asked whether the High Court was the only body with jurisdiction over acts of racism or if lower criminal or civil courts were empowered to deal with such cases. He requested information on the number of complaints, prosecutions and convictions relating to acts of racial discrimination in Kenya. Lastly, he asked whether the planned reform of the National Commission on Human Rights aimed in particular at bringing the Commission fully into line with the Paris Principles.

22. **Mr. Ewomsan** asked what measures Kenya was planning to take in order to put an end to the inter-ethnic conflicts which regularly shook the country and to help marginalized and disadvantaged groups with a view to enabling them to exercise their rights. He observed that ethnic divisions were partly the result of discrimination against certain groups and emphasized the importance in that regard of implementing the provisions of the Convention.

23. **Mr. Saidou** recalled that the Kenya National Commission on Human Rights had hosted the 9th International Conference for National Human Rights Institutions in Nairobi in 2008 and that it had taken the initiative in establishing the Network of African National Human Rights Institutions. He pointed out that the Commission had to be restructured efficiently but that it should above all be strengthened, as opposed to creating parallel institutions that risked duplicating work.

24. **Mr. Lahiri**, regretting that the report contained few statistical data, asked the State party to remedy that deficiency in its next periodic report. In fact, it was essential to have detailed statistics broken down by ethnic group, in particular in relation to income, education, health (including maternal and infant mortality), as well as on the representation of different ethnic groups in the armed forces, police, judiciary and political institutions of the State, as such data were the only means of measuring discrimination in a country with a very diverse population, such as Kenya.

25. **Mr. Amir**, recalling that Kenya had set ambitious development objectives for the period up to 2030, asked how the country intended to achieve those objectives in such areas as education, training, social rights, free movement of persons or environmental protection, thereby maintaining its leading role in promoting development and human rights in Africa. He also wished to know whether the 2010 Constitution perpetuated the will of Jomo Kenyatta, the father of the independent Kenyan nation, to build national unity and reduce ethnic disputes.

26. **Ms. Crickley** asked how the State party intended to implement the obligation to promote diversity, which was defined in the Kenyan Constitution, and specifically, how it planned to implement affirmative action programmes, in particular for women, and to evaluate their effectiveness. She enquired how the State party ensured the independence of the Kenya National Commission on Human Rights and other national institutions working in that field.

27. **Mr. Murillo Martínez** requested information on the situation of albinos in Kenya, in particular in the area of access to education.

28. **Mr. Lindgren Alves** asked the delegation to describe the State party's policy for dealing with the large number of displaced persons. Referring to paragraph 75 of the report, according to which there had never been any form of apartheid in Kenya, while racial segregation had existed during the colonial period, he invited the delegation to provide more detailed information on the situation in 2011 and on the laws governing marriage or Kenyan nationality in particular. Lastly, he wondered whether it was appropriate to include questions about ethnicity in population censuses and whether it would not be preferable to promote national unity by avoiding making any distinctions between Kenyan citizens.

29. **Mr. Huang Yong'an** asked for information on the issue of inter-ethnic violence mentioned by the Country Rapporteur in his statement. In particular, he asked what was being done to improve the living conditions of slum dwellers who had been especially affected by that violence. Lastly, he enquired whether the State party had taken measures, in accordance with article 4 of the Convention, in order to condemn incitement to racial hatred on the part of certain political figures.

30. **The Chairperson** said that the Committee would continue its consideration of the initial and second to fourth periodic reports of Kenya at the following meeting.

*The meeting rose at 5.50 p.m.*