

49TH SESSION OF THE UNIVERSAL PERIODIC REVIEW (UPR) FOURTH CYCLE
UNIVERSAL PERIODIC REVIEW OF KENYA



ECONOMIC AND SOCIAL RIGHTS THEMATIC CLUSTER

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1. Economic and Social Rights Centre (Hakijamii) is a national human rights organization in Kenya that supports marginalized communities to claim and realize their economic and social rights and improve their livelihoods.
2. Part of the report was jointly developed in consultation with the Housing Coalition and Pamoja Trust, who are prominent members of the Universal Periodic Review (UPR) Kenya. The Housing Coalition is an integral part of UPR Stakeholders in Kenya, which is a collaborative network of civil society organizations (CSOs) unified in their commitment to advancing access to adequate housing and basic services for marginalized communities and urban and peri-urban settlements. Through this report, we aim to provide a comprehensive overview of the current state of housing rights and related issues, reflecting the collective expertise and concerns of our coalition members.

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ISSUES AND RECOMMENDATIONS

WASH rights.

Issue 1: Inequality in access to water and sanitation in rural areas and informal settlements.

3. According to KDHS 2022, Nationally, 68% of the population has access to at least basic drinking water service; 91% of the population has access in urban areas and 56% does in rural areas. The county with the lowest percent of the population with at least basic service for drinking water is Kitui (21%), and the highest is Nairobi City (99%). Sixty-five percent of the population has sufficient quantities of drinking water when needed. Over half (54%) do not have drinking water on the premises and must travel to collect it. Sixty-nine percent of those who collect the drinking water are women age 15 or older.
4. Forty-one percent of the population has at least basic sanitation service. This number is slightly higher in urban areas (47%) than in rural areas (38%). Two thirds (66%) of the population are connected to a sewer system or safely disposes of excreta on-site or removes it for treatment off-site. The urban-rural inequality for water deprivation stands at 28 percentage points higher in rural areas. Despite improved access to WASH in urban areas, there are significant inequalities affecting informal settlements, particularly in terms of availability of public water supply and affordability. An OHCHR assessment of the right to water in informal settlements found that a majority (35%) of surveyed households spent between 3-10% of household income on water – which is above the international standard for affordability (3%) – while a significant proportion (17%) spent over 20% of household income.
5. Poor sanitation also contributes to significant and omnipresent diarrhea morbidity, with 58% of diarrhea cases associated with poor WASH. Residents frequently lack household access to toilets and regularly use poor quality, pay-per-use communal toilets. The lack of clean water and sanitation contributes to frequent cholera and other diarrheal-borne disease outbreaks. It is a leading contributor to Kenya’s slow decline in child mortality through diarrheal disease, malnutrition, and acute respiratory infections. Urban informal settlements WASH challenges will persist, as Urban population is growing at the highest rate of any city in Sub-Saharan Africa, thanks to rural-to-urban economic migration. The growth is straining Cities’ existing water and sewer infrastructure and efforts to improve it. Besides, the Kenyan government policy prohibits developing infrastructure in informal settlements, preventing improvements and investment.
6. WASH investments to total budget decreased from 2.17% in 2019 to 1.84% in 2022/23. During the same period, WASH allocations as a share of GDP decreased

from 0.60% to 0.48%. This level of investment is low given that the country loses an equivalent of 0.9% of GDP due to poor water and sanitation services. The current allocation of 1.84% is below the Sanitation and Water for All (SWA) commitment to allocate at least 7% of the total budget to the WASH sector. As a share of GDP, 0.48% is below the Africa Infrastructure Country Diagnostic (2008) proposal, which required Sub-Saharan African countries to allocate 0.9% of GDP to achieve improved WASH outcomes for all citizens. However, the current investments almost meet the Ngor Declaration target of allocating 0.5% of GDP to WASH.

7. To handle the gap, Kenya recently amended the Water Act 2016, while the amendments will make it possible for private investors to develop upstream bulk-water PPP projects in collaboration with national government agencies, the ultimate off-takers will mostly be WSPs. WSPs have over many years suffered from under-investment and governance challenges.

National legal and policy framework

8. The Constitution of Kenya (CoK) 2010, article 43 places a Human right obligation to ensure every person in Kenya has the right to access clean water in adequate quantities and to reasonable standards of sanitation.
9. Access to safe drinking water and sanitation are internationally recognized human rights, derived from the right to an adequate standard of living under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights.

Progress made in Kenya since the last review

During the 3rd Cycle in 2020, Kenya accepted the following 2 recommendations:

10. 142.182 by Viet Nam calling for the country to accelerate the development of the national public waterworks for water resources storage to better ensure the right to water and sanitation of its people.
11. 142.190 by Sudan calling the country to continue efforts to eradicate poverty and provide drinking water and sanitation to the population; this has not been fully implemented with water scarcity and poverty still rampant across the country.
12. The government has amended the Water Act 2016, mandating the Water Service providers (WSPs) to (i) operate national public water works, and (ii) to provide water services by entering into bulk water purchasing agreements structured as PPPs. The act also allows the NWSA to enter into bulk water purchasing agreements.
13. The context for these amendments is that water and sanitation services are a devolved function with the national government responsible for ownership and

management of water resources, and counties, communities, and the private sector responsible for service provision. County-owned WSPs enjoy exclusivity in their area of supply and are therefore the purse-holders of the sector.

Recommendation

14. The Government should Operationalize the Water amendment Act 2023 in all the rural counties in Kenya, speed up national water policy adoption, enhance the water purchase agreement and have the PPP framework on provision basis and Gazettement of the six basin areas.

Issue 2: Poor WASH preparedness and response to disease outbreaks and climate driven disasters.

15. According to UNICEF Significantly more Kenyans have access to safe drinking water (59 per cent) than to basic sanitation (29 per cent In Kenya, 9.9 million people drink directly from contaminated surface water sources and an estimated five million people practice open defecation. Only 25 per cent have hand-washing facilities with soap and water at home. According to KDHS 2022, in Kenya, 51% of the population has a basic handwashing facility with soap and water on the premises.
16. Safe drinking water, basic sanitation and good hygiene practices are essential for the survival of children Global evidence shows that better water, sanitation, and hygiene could prevent the deaths of 297,000 children aged under five each year globally. Achieving universal access to drinking water and sanitation by 2030 will be challenging given current levels of investment, projected population growth and climate change.
17. Handwashing is also a key tool to achieve Sustainable Development Goal 3 to ensure health and well-being for all which includes commitment to end epidemics of communicable diseases by 2030.
18. According to WHO, infection prevention and control (IPC) is a scientific approach and practical solution designed to prevent harm caused by infection to patients and health workers. It is grounded in infectious diseases, epidemiology, social science and health system strengthening.
19. IPC occupies a unique position in the field of patient safety and quality universal health coverage since it is relevant to health workers and patients at every single health-care encounter. Poor WASH and IPC lead to health acquired infections, transmission of diseases from health facilities to communities and increased use of antibiotics and exacerbate outbreak and spread of infections- for example- COVID- 19. On the contrary, effective IPC reduces hospital-acquired infections by at least 30% (WHO 2016). In the context of HCFs, we also differentiate IPC and

WASH: IPC cannot be met without WASH services, the later providing the basis for adequate IPC (water, sanitation and hygiene services). It is important to note that with a potential increased patient influx, the demand for water and sanitation services might be higher than the available offer and that it will be essential to support the gap to avoid health service to be disrupted.

20. According to Kenya status Report on infection prevention and control in health facilities 2022, It was found that most of the facilities (63.7%) had adequate availability of water accounting for, while the rest of the facilities (36.3%) had less than adequate water supply. This shows that water availability was a likely threat to full adherence of Infection Prevention and Control practices in majority of the facilities assessed.
21. The National IPC (2021) policy recommends for the availability of water at all times and in sufficient quantities.
22. Majority (78%) of the assessed facilities did not hand hygiene protocols in place. This is indicative that most of the facilities may not be aware of the need for hand hygiene protocols which could lead to poor hygiene practices. The assessment revealed that, availability of hygiene protocols improved with level of care, from level 2 at 13% and Level 5 at 50%. The overall availability of hand hygiene protocol was highest in Kajiado at 38%, and least in Homabay and Kisumu each at 8%. This indicated a low availability of hand hygiene protocols across the counties, a key IPC requirement for setting and monitoring adherence in optimal hand hygiene behavior.
23. According to National IPC guidelines for healthcare service in Kenya (2021), in order to provide high-quality health care services and prevent unnecessary HAIs, strict adherence to simple and cost-effective IPC practices such as hand hygiene must be observed. Hand hygiene at the point of care (POC) is recognized as a best practice for promoting compliance at the moments when hand hygiene is most critical. The recommended coverage of functional hand hygiene stations as per the National IPC Policy for Health Care Services (2021) should be 100%. However, from this assessment, it was reported that less than half (41.8%) of the facilities had functional hand hygiene stations at all points of care while. Thus, over half of the health facilities do not practice hand hygiene at every service point posing great health risks to clients and healthcare providers. According to WHO/UNICEF global report (2020), a third (30%) of health facilities lack hand hygiene facilities at the point of care. As noted, this situation is far worse in Kenya with the assessment revealing almost two thirds (60%) of the facilities as having inadequate hygiene stations at service delivery points.

24. The assessment revealed that only a small proportion (17.6%) of the facilities had adequate hand hygiene facilities within the healthcare waste disposal area, thus indicating critically low hand hygiene practices around the waste disposal facilities. The availability of functional hand hygiene stations at waste disposal areas was highest (67%) at Level 5, less than 20% in all other levels of care, and lowest at Level 4 at 6.7%. This implies that the waste handlers may not wash their hands and equipment that carry the wastes regularly thus could be a high potential source of infection within our healthcare settings, thus exposing the healthcare waste handlers and the entire healthcare providers and those seeking care within the facilities.
25. With the current outbreak of Monkeypox and recommendation given by WHO that disease outbreak and disasters are inevitable as a result of climate change. The government of Kenya need to invest in outbreak prevention which include WASH Policies in regard to disease prevention, WASH infrastructures which are climate sensitive and regulations on cutting the disease epidemiological triad.

National legal and policy framework

26. Member States of the World Health Organization agreed to a global process to draft and negotiate a convention, agreement or other international instrument under the Constitution of the World Health Organization to strengthen pandemic prevention, preparedness and response.
27. A key international instrument on international Health, rooted in the WHO Constitution, is the International Health Regulations (2005), which was established “to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.
28. Epidemic prevention and response are core elements of the right to health under the International Covenant on Economic, Social and Cultural Rights (ICESCR).
29. OHCHR is working with Member States, UN partners, civil society and the private sector to identify human rights trends, risks and the impact of national responses as they assess good practice and raise awareness of specific concerns.
30. The global outbreak of mpox was declared a public health emergency of international concern (PHEIC) on 23 of July 2022 [World Health Organization](#) published a strategic preparedness and response plan for mpox and a suite of technical guidance documents. Surveillance, diagnostics, risk communication and community engagement remain central to stopping the outbreak and eliminating human-to-human transmission of mpox in all contexts.

Progress made in Kenya since the last review

During the 3rd Cycle in 2020, Kenya accepted the following 2 recommendations:

31. 142.182 by Viet Nam calling for the country to accelerate the development of the national public waterworks for water resources storage to better ensure the right to water and sanitation of its people.
32. 142.190 by Sudan calling the country to continue efforts to eradicate poverty and provide drinking water and sanitation to the population; this has not been fully implemented with water scarcity and poverty still rampant across the country.
33. Good personal hygiene and sanitization measures were critical for COVID-19 control. Kenya launched nation-wide media campaigns to educate the citizens on the proper handwashing techniques and use of face masks immediately after the first COVID-19 case was detected in March 2020 (National center for biotechnology information)
34. On Global Handwashing Day 2021, UNICEF and WHO launched 'State of the World's Hand Hygiene: a global call to action to make hand hygiene a priority in policy and practice'. The report argues that accelerating progress towards "adequate and equitable hygiene for all" as called for in SDG target 6.2 is a no-regrets investment that leaves the world better prepared to manage future disease outbreaks and pandemics.
35. Kenya National building code 2024 Modernized Structural Design Requirements: Revised seismic design criteria to improve resilience against earthquakes, reflecting updated geotechnical and engineering knowledge

Recommendations

The Government of Kenya should;

36. Provide a policy and regulations for all public institutions and public transports to have handwashing stations and protocols for the same.
37. Develop Monkeypox Strategic Preparedness, Readiness, and Response Plan (SPRP) with focus on WASH according to WHO guidelines.
38. Operationalize the universal health coverage section no.3 which is to ensure the Kenya Health system resilience to detect, prevent and respond to public health security threats such as pandemics and disease outbreaks amongst others.
39. Make efforts to put in place in compliance with the WHO First Global Patient Safety report that identified two specific geographic zones within the health care setting: the patient zone and the health care area.

40. Revise the Kenya National building code 2024 Modernized Structural Design Requirements code to include WASH infrastructural design criteria to improve resilience against disease outbreak, climate sensitive disasters.

HOUSING RIGHTS

Issue 1: Opaqueness in the implementation of the affordable housing program:

41. The implementation of Kenya's affordable housing program faces significant opaqueness and challenges, despite the government's ambitious launch of 426 projects aimed at delivering over 647,922 housing units nationwide. The current project breakdown reveals that 9,935 units are ongoing, with various high-profile projects like Pangani Affordable Housing and Mukuru Met Site Social Housing in different stages of development.ⁱ However, despite these efforts, key obstacles persist, including high costs and complex processes in acquisition of the affordable houses despite mandatory forcible taxation to fund the program, lack of integration of the Slum Upgrading and Prevention Policy and Strategy in the affordable housing Program leading to the lack of clarity of focus housing for low income earners. Additionally, the program has been marred by inhumane evictions and destruction of homes, leading to concerns about the treatment of displaced individuals and the overall execution of the housing initiative.ⁱⁱ
42. Further, the introduction of a controversial 1.5 % house development fundⁱⁱⁱ taxation for salaried and self-employed Kenyans, aimed at funding the program, is against human rights principles and the right to fair administrative action owing to the forcible and mandatory taxation measures to fund the program while there is no guarantee on allocation of the affordable houses. The framework on implementation of the program was established through the Affordable housing Act, 2024 without adequate public consultation. As a result, the Program is not designed to address the housing needs for Kenyans and their cultural contexts including the right to adequate housing for low-income earners as recommended in the 3rd Universal Periodic Review Cycle Report. The situation has been worsened by the lack of substantive law on public participation. The Public Participation Bill, 2023 is a step forward towards a framework for public consultation. However, the proposed bill does not set adequate standard for sufficient public consultation. These issues highlight a broader failure to adhere to national and international human rights standards concerning eviction and resettlement, underscoring the need for comprehensive public engagement, adherence to constitutional and human rights principles, and transparent governance in the implementation of affordable housing initiatives.

National legal and policy framework

43. Kenya's legal and policy framework for housing is designed to address the country's significant need for adequate and affordable housing. Article 43 of the Kenyan Constitution guarantees every person's right to accessible and adequate

housing. This commitment is reinforced through national strategies such as the Kenya Vision 2030, which prioritizes quality housing development, and the Bottom-Up Economic Transformation Agenda, aiming to deliver 250,000 houses annually. The Affordable Housing Programme (AHP), part of the "Big Four" agenda launched in 2017, has seen substantial financial commitment, with KSh 125 billion allocated from 2018 to 2022. However, it fell short of its target to deliver 500,000 units, achieving less than 10% of this goal by 2022. The Finance Act 2023 introduced a housing levy of 1.5% from employees and employers to fund this initiative, alongside incentives like stamp duty exemptions and VAT relief to promote affordable housing. The Framework for the Affordable Housing Scheme is established under the Affordable Housing Act, 2024. Upon acquisition, there is no absolute ownership of the units. The Act provides that except with the prior written consent of the Board, a purchaser of an affordable housing unit under the Act shall not by contract, agreement or otherwise, sell or agree to sell his or her unit or any interest therein to any other person.

44. Even when provided, most of this housing is beyond the reach of the typical low-income urban resident. Over 90% of slum residents cannot afford monthly rents of above KSh. 10,000, thus greatly complicating the current policy orientation of providing affordable housing for sale instead of social housing for rental. An estimated 6.4 million urban residents reside in informal settlements, while 60% of people live in slums in Nairobi.^{iv} While in rural areas, poor housing and lack of essential amenities, such clean drinking water, remains a challenge. Furthermore, 68% of Kenyans do not have secure land tenure or documents.
45. Other policy initiatives include Sessional Paper No. 3 of 2009 on National Land Policy, which provides a framework to ensure the provision of security of tenure and efficient land management structures, both in urban and rural areas. The Sessional Paper No. 3, 2016 on National Housing Policy for Kenya, which seeks to arrest the deteriorating housing conditions countrywide and to bridge the shortfall in housing stock arising from demand that far surpasses supply, particularly in urban areas. The National Slum Upgrading and Prevention Policy 2016 is a direct policy response on the slum challenge in Kenya. It identifies land tenure and administration in slums as the greatest challenge in tackling the slums problem. The policy further recommends the strengthening of the capacity of urban community groups to enable them meaningfully to participate in upgrading processes. It also roots for the enactment of comprehensive slum upgrading and prevention legislation to deal with all the key areas of slum upgrading and prevention.

Progress made in Kenya since the last review

46. Since the last review, Kenya has made notable progress in advancing housing rights and addressing housing challenges through various legislative, policy, and practical measures. These developments signify a renewed commitment to

improving housing access and affordability, particularly for low-income communities;

Enactment of the Affordable Housing Act, 2024

47. The Affordable Housing Act, 2024, marks a significant milestone in Kenya's housing policy landscape. This legislation builds on the previous housing initiatives and introduces a structured framework for enhancing access to affordable housing. The Act aims to increase government commitment to housing projects and ensures that more resources are channeled towards constructing affordable homes for low-income Kenyans. This legislative shift aligns with the country's broader goals of addressing housing shortages and promoting sustainable urban development.

Expansion of Housing Projects

48. Under the State Department for Housing and Urban Development, the government has launched an impressive 426 projects intended to deliver over 647,922 housing units across Kenya. These projects are at various stages of development, reflecting a substantial increase in the scale and scope of housing initiatives. For example, projects such as the Pangani Affordable Housing and Mukuru Met Site Social Housing are advancing, signaling progress in providing new housing opportunities.

National Housing Survey

49. A nationwide housing survey conducted between March and June 2024 represents a major step forward in understanding and addressing housing needs in Kenya. The survey aims to create a comprehensive housing inventory, which is crucial for identifying gaps and formulating targeted interventions. By providing a detailed analysis of housing conditions, access, and gaps, the survey will help in designing more effective housing policies and programs.

Recommendations:

The Government should;

50. Adhere to the Constitution, and Section 152C and D of the Land (Amendment) Act, 2016.
51. Conduct capacity building initiatives for officials on eviction processes.
52. Enhance collaboration and communication among government agencies involved in housing and land management to streamline land use planning.
53. Enhance Transparency Measures on land use planning and management to ensure that evictions are conducted fairly and that affected individuals are adequately compensated

Issue 2: Arbitrary unlawful eviction in urban and peri-urban informal settlements

54. The state reported in its 3rd cycle UPR Report that there were legal safeguards regarding eviction from public, private and community land, and further that the national land commission was mandated to give a three months mandatory notice to all affected persons occupying public land through both a gazette notice

and newspaper of nationwide circulation and radio announcement in a local language where appropriate.^v

55. However, between 2022 and 2024, there have been several significant instances of arbitrary and unlawful evictions of marginalized communities in Kenya. This includes communities living in urban and peri-urban informal settlements and indigenous communities in rural areas. In 2023, reports indicated that around 4,500 families faced eviction from informal settlements in Nairobi, including areas such as Mathare and Mukuru informal settlements to pave way for project development. Indigenous people and local and local communities have equally faced arbitrary unlawful eviction for purposes of conservation. Approximately 700 of the Ogiek indigenous community in Sasimwani, were arbitrarily evicted from their Land in Mau Forest on alleged environmental grounds despite the decision of the African Court on Human and Peoples Rights in 2017 and 2022 in which the Court affirmed the security of tenure for the Ogiek Communities.^{vi} This represents a continuation of previous trends where large-scale evictions have been reported.
56. In 2024, more than 3,000 individuals were reportedly affected by disputes over land ownership and use, with many facing forced relocation without adequate compensation or resettlement options. In May, 2024, mandatory and forcible eviction of residents allegedly residing within 30 meters mark along Nairobi River affected approximately one hundred and twenty-seven thousand (127,000) communities living in Mathare, Mukuru kwa Reuben, Mukuru kwa Njenga, Hazina, Kamukunji Sinai, Sarangombe, Gikomba, Kisumu Ndongo, Udungu, Makina Vuma, Kawangware, Upendo and Westlands informal settlements while other communities continue to face threats of eviction. Further, the eviction process was discriminatory in that it excluded people residing in high-end residential areas whose homes remain untouched. On 29 April 2024, Sengwer homes in Kapkok glade within the Embobut forest were raided by Kenya Forest Service Guards and burnt to the ground, destroying all their belongings and leaving families destitute and precarious at a time of heavy rainfall. More than 800 houses were burnt, affecting more than 2,800 families so far. ^{vii}
57. The effects of these unlawful evictions are profound. Displaced families experience severe socio-economic disruptions, including loss of livelihoods, educational interruptions, exposure to diseases, poor to no access to health facilities, lack of adequate food in good quantity, lack of access to clean water and sanitation, loss of lives due to police brutality, torture and unlawful detention of persons and heightened vulnerability. The situation is further exacerbated by the lack of adequate resettlement options and compensation, leading to ongoing humanitarian crises in affected areas. Efforts by human rights organizations to address these issues are met with challenges in enforcing legal protections and

ensuring justice for the displaced populations. Thus, there is an urgent need for improved enforcement of legal safeguards, transparent procedures, and effective public participation to address these ongoing issues and uphold^{viii} the rights of affected communities.

National legal framework

58. The national and international frameworks designed to protect against arbitrary and unlawful evictions underscore the importance of due process, respect for human rights, and fair treatment of displaced individuals. The Constitution of Kenya provides robust protections for affected communities. Article 19(2) and Article 19(3) uphold human dignity and fundamental freedoms, while Article 25(a) ensures that certain rights, including freedom from cruel treatment, cannot be violated. The right to life enshrined under Article 26 and the right to human dignity under Article 28 are compromised when arbitrary unlawful evictions are conducted resulting to severe deprivation of shelter and exposure of affected individuals to life-threatening conditions. The Constitution also mandates fair administrative action under Article 47 and the right to prompt and just compensation for property deprivation pursuant to Article 40, which also provides for resettlement and/or compensation of landless persons termed as “occupiers in good faith”.
59. The Fair Administrative Actions Act and the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2016) further require adherence to procedural fairness and the provision of support for displaced individuals. Violations of these statutes, alongside breaches of the Public Officers Ethics Act and the National Land Policy, indicate systemic failures in upholding legal protections.
60. Pursuant to article 2 of the Constitution, Kenya is bound by standards set forth in instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These covenants, including General Comment 4 and General Comment 7, mandate legal protection against forced evictions and stress the need for procedural safeguards and fair treatment. The OCHA Guiding Principles on Internal Displacement also emphasize that displacement should be justified by compelling public interests and not carried out arbitrarily. In addition, the Land (Amendment) Act, 2016, and the Land Act, 2012, along with their regulations, stipulate procedural requirements for evictions, including proper notification and consultation. These laws reflect the constitutional mandate to manage land and resources for the benefit of the people, reinforcing the need for transparent and fair processes.

61. Despite these frameworks, recent arbitrary unlawful evictions have ignored these protections, leading to significant human rights violations and social disruptions. For instance, the forcible evictions of thousands of families from informal settlements in Nairobi and other regions have demonstrated a disregard for both domestic and international legal standards. This situation highlights the urgent need for better enforcement of existing laws and frameworks to prevent such abuses in the future.

Progress made in Kenya: Public Participation and Legal Framework

62. The introduction of the proposed Public Participation Bill 2023 is a positive development in enhancing community involvement in housing and land use decisions. Although Kenya's Constitution already mandates public participation, the new Bill seeks to establish substantive standards for consultation. This will ensure that community input is more effectively integrated into housing policy and project planning, fostering greater transparency and accountability in decision-making processes.

63. Despite progress, arbitrary and unlawful evictions from informal settlements continue to be a significant issue. The government's efforts to expand affordable housing must be coupled with measures to protect vulnerable communities from displacement. Ensuring that housing projects are implemented with proper consideration of existing residents' rights and providing alternative accommodations or compensation are essential to mitigating the negative impacts of such evictions. While the Affordable Housing Act, 2024, has introduced new opportunities, it has also highlighted ongoing challenges, particularly concerning tenure security for affordable housing constructed on public land. Clarifying ownership and tenure arrangements remains critical to ensuring that beneficiaries of affordable housing projects have secure and stable living conditions.

64. Further, even though the current Government is implementing the affordable housing program as recommended in the 3rd cycle report, the program does not provide clarity of focus on the implementation of the social housing/ affordable housing for low-income people to achieve the SDG regarding the reduction of poverty and enhance access to the right to adequate housing. The Framework for implementation of the affordable housing scheme introduced the housing levy through the Finance Act, 2023 which is a fund established to implement the housing program taxing employers and employees in Kenya.

Recommendations

The government of Kenya should;

65. Integrate urban renewal projects and slum upgrading programs into the affordable housing scheme program to ensure clarity of focus is provided on the social housing agenda and housing for low-income earners.

66. Enhance transparency by implementing robust monitoring and evaluation systems that provide clear, accessible information on project status, funding allocations, and tender processes. Regular audits and public disclosures can help ensure accountability.
67. Foster meaningful public participation by actively engaging with communities through consultations and feedback mechanisms.
68. Integrate the National Slum Upgrading Policy and Strategy in the affordable housing program
69. Adhere to the clear framework under the Section 134, 152D and C of the Land Act in conducting the evictions and resettlement processes.

Issue: Lack of Equitable Access to Land and Security of Tenure

70. Kenya faces a significant issue of unequal access to land and insecure land tenure, particularly affecting indigenous communities relying on customary land tenure systems. Customary tenure—traditional systems of land ownership and management—holds cultural and historical importance. Approximately 39.3 million hectares (69.1%) of Kenya's 56.91 million hectares are recognized as land under various tenure systems, while about 0.8 million hectares (1.4%) remain unrecognized.
71. Despite the 2010 Constitution and the Community Land Act (2016) recognizing customary land rights, the complex process for formal registration poses barriers. County governments hold unregistered land in trust but cannot facilitate compensation for unregistered lands, leaving communities vulnerable to state acquisition without just compensation. This has resulted in notable cases of unlawful land acquisition, such as the 2016 Mukutani Forest Block incident, where the Endorois community faced displacement without prior consent or compensation.
72. Inadequate security of tenure contributes to informal settlements and conflicts over resources. While Section 134 of the Land Act (2012) aims to address landlessness by allocating funds for land settlement, implementation challenges exist, including outdated data and difficulties in identifying legitimate beneficiaries. Additionally, the Law of Succession Act exacerbates gender inequality by undermining women's land rights.

National legal and policy framework

73. The Community Land Act, No. 27 of 2016, seeks to enhance land management in Kenya, operationalizing Article 63 of the Constitution that recognizes community land rights. The Act mandates formal registration for communities claiming land rights, restricting state acquisition of community land to legally justified cases with fair compensation.

74. With around 38.5 million hectares of recognized land – including both registered and unregistered community land – the Act emphasizes protection and management of these lands. County governments are responsible for managing unregistered lands and compensation funds, but challenges persist in documentation and the establishment of Community Land Management Committees, delaying rights resolution.
75. Although the Act aims to preserve customary land rights, its implementation struggles with the formalization of these rights. Communities often face unlawful evictions despite legal protections against arbitrary acquisition, emphasizing the need for better documentation and compliance with existing laws.

Progress made in Kenya since the last review.

76. Since 2021, Kenya has made significant progress in land access and tenure security, notably through the digitalization of land titles and the introduction of the National Land Information Management System. The Ardhi Sasa platform enhances land transaction efficiency, backed by a KSh 2 billion budget for land registry improvements in the 2023/24 financial year.
77. These initiatives have improved title deed issuance and equitable land ownership, although disparities remain in historically disputed regions. The government's allocation of KSh 2.6 billion for landless settlement demonstrates a commitment to addressing displacement. However, challenges in accurately identifying beneficiaries and complex administrative processes persist, highlighting the necessity for improved systems in land settlement.

Recommendations.

The government of Kenya should;

78. Review existing laws to formally recognize customary land tenure in national policies.
79. Amend the Law of Succession Act to ensure women's property rights align with constitutional guarantees.
80. Enforce compliance with the Land (Amendment) Act sections on community rights.
81. Implement the National Slum Upgrading Strategy for informal settlement management.
82. Conduct planning, survey, and demarcation of land in settlement schemes.
83. Ensure equitable allocation of settlement scheme land.
84. Streamline documentation processes for settlement plots
85. Discourage settlement in disaster-prone areas.
86. Accelerate enforcement of community land laws.
87. Fully implement the African Commission ruling on human and people's rights.

i

<https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/midtermreports/nhrismidtermreports/upr-3rd-cycle-mid-term-KNCHR.pdf> Kenya National Commission on Human Rights 3rd Cycle Universal Periodic Review (UPR) Mid-Term Report

ii KNCHR Press Statement-Address On State Of Human Rights And Fundamental Freedoms In Kenya
<https://www.knchr.org/DesktopModules/E>

iii Finance Act, 2023

iv <https://documents.un.org/doc/undoc/gen/g19/321/77/pdf/g1932177.pdf> paragraph 55

v KNCHR Press Statement-Address On State Of Human Rights And Fundamental Freedoms In Kenya
<https://www.knchr.org/DesktopModules/E>

vi <https://nation.africa/kenya/counties/elgeyo-marakwet/government-defends-decision-to-evict-sengwer-community--4617338> Nation Media on 9th May, 2024: Government defends decision to evict Sengwer community from Embobut forest

vii Section 54 of the Affordable Housing Act, 2024

List of Organizations

1. Water Sanitation and Hygiene rights
 - 1.1. Economic and Social Rights Centre (Hakijamii)
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