

Training workshop on
WOMEN, LAND and HOMES:
Assessment of impacts of dispossession

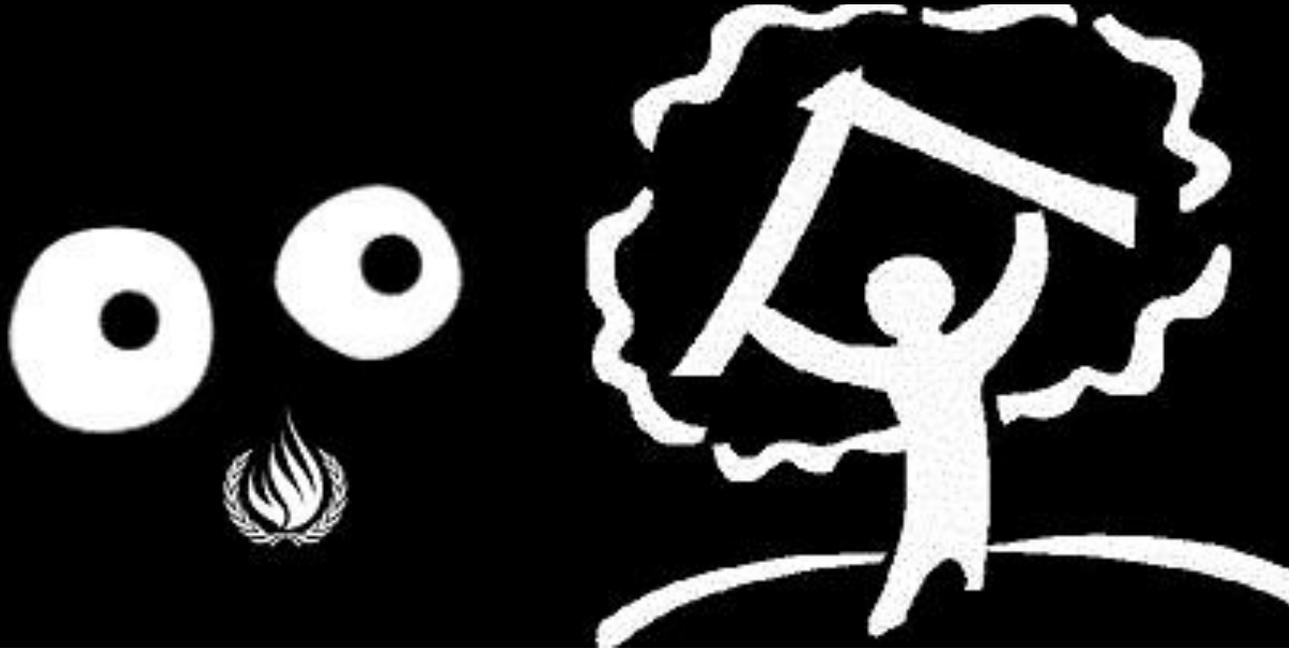
organised by
Habitat International Coalition, Housing and Land Rights Network (HIC—HLRN)

in collaboration with
Mazingira Institute and Pamoja Trust
23rd—25th July 2018, Nairobi



“Assessing Impacts of Women’s Dispossession from Land and Home”

Human Rights Habitat Observatory



Housing and Land Rights Network
Habitat International Coalition



Commitments & Obligations !





Development of human rights

from general to specific; from theoretical to practical

UN Charter, 1945

Universal Declaration of Human Rights (UDHR), 1948

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

International Covenant on Civil and Political Rights (ICCPR), 1966

Racial Discrimination (CERD), 1965

Discrimination against Women (CEDaW), 1979

Convention against Torture (CaT), 1984

Rights of the Child (CRC), 1989

Migrant Workers (MWC), 1990

People with Disabilities (CRPD), 2006

Forced Disappearances (CED), 2006

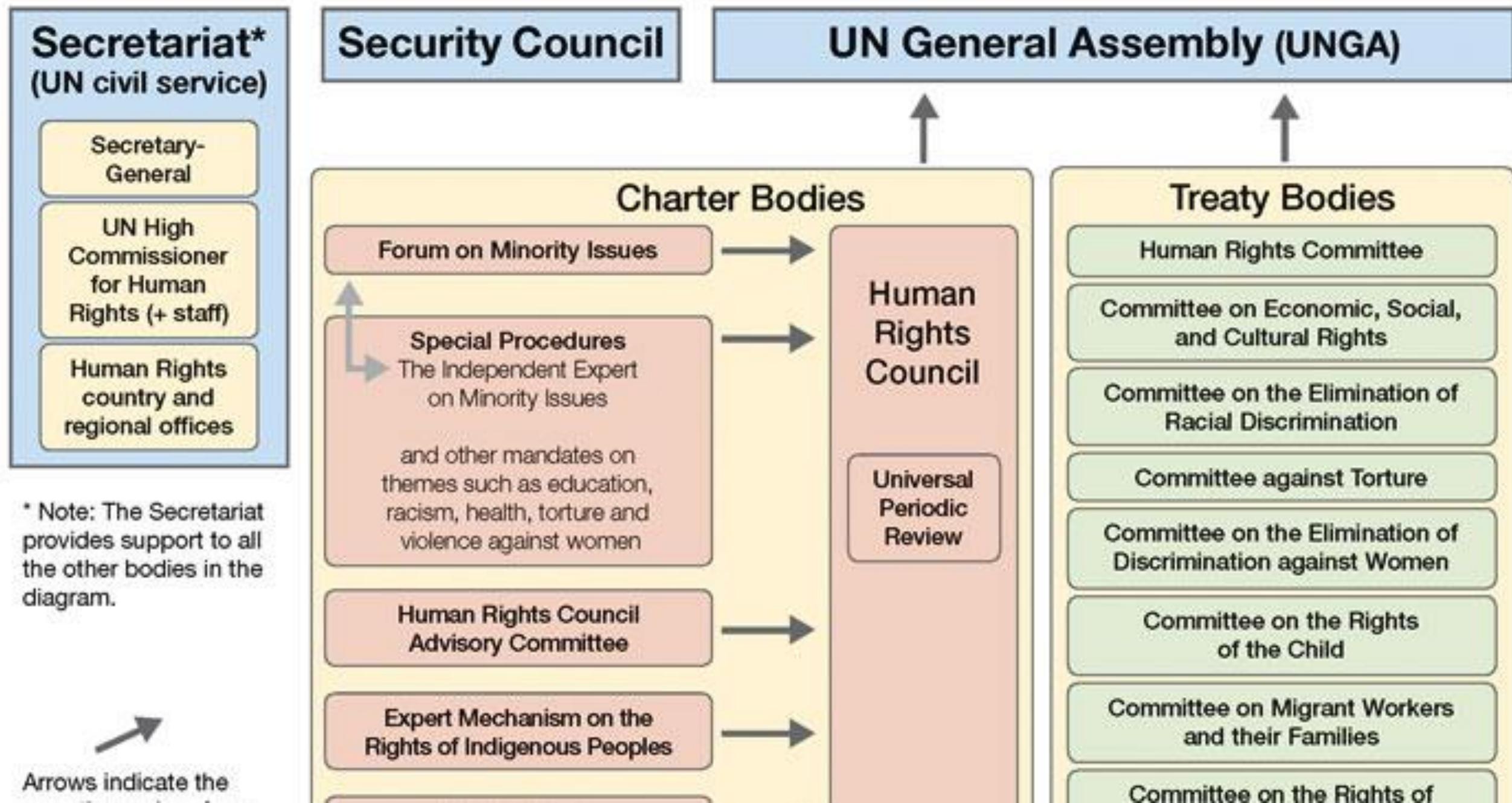
Declarations, guidelines, body of principles, minimum rules

State Obligations!

- Legal effect + *binding* nature
- Regular reporting against performance criteria and indicators
- **What to do** - Implementation formula:
 - Respect / Protect / Fulfill (promote, facilitate, assist)
- **How to do it** - Over-riding implementation principles:
 - Self-determination, Nondiscrimination, Gender equality, Rule of law, Maximum of available resources, Continuous improvement, International cooperation and assistance
- **Apply to *all* spheres of government and organs of the state**
- State regulation of non-state actors
- Individual, collective, domestic and extraterritorial dimensions



Note: This diagram is not exhaustive. It highlights the major human rights bodies and mechanisms which are covered in this training.



- General Comment No. 1 Reporting by States parties
- General Comment No. 2 International technical assistance (art. 22)
- General Comment No. 3 The nature of State obligations (art. 2, para. 1)
- [General Comment No. 4 The right to adequate housing \(article 11 \[1\]\)](#)
- General Comment No. 5 Persons with disabilities
- General Comment No. 6 The ESCRs of older persons
- [General Comment No. 7 The right to adequate housing: forced evictions](#)
- General Comment No. 8 Economic sanctions and respect for ESCR
- General Comment No. 9 The domestic application of the Covenant
- General Comment No. 10 The role of NHRIs and ESCR
- General Comment No. 11 PoA for primary education (art. 14)
- General Comment No. 12 The right to adequate food (art. 11)
- General Comment No. 13 The right to education (art. 13)
- General Comment No. 14 The right to health (art. 12)
- General Comment No. 15 The right to water (arts. 11 and 12)
- [General Comment No. 16 Equal right of men & women to all ESCR \(art. 3\)](#)
- General Comment No. 17 The right to work (art. 6)
- General Comment No. 18 Intellectual property (art. 15.1[c])
- General Comment No. 19 Social Security (art. 9)
- General Comment No. 20 Cultural Life (art. 15.1)
- [General Comment No. 21 Nondiscrimination \(2.2\)](#)
- [General Comment No. 22 The right to sexual & reproductive health \(article 12\)](#)
- General Comment No. 23 The right to just and favourable conditions of work (article 7)
- General Comment No. 24 State obligations in the context of business activities

Legal specificity: General Comments (CESCR)

Adequate Housing

(CESCR General Comment No. 4: "The right to adequate housing," para. 8)

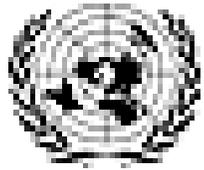
- Legal security of tenure
- Services, materials, facilities & infrastructure
- Environmental goods & services (land & water)
- Affordability
- Habitability
- Accessibility (physical)
- Location
- Cultural adequacy
- Participation, assembly, association, self-expression
- Education, information, capability & capacity
- Security (physical), privacy, VaW
- Movement, reparations (refugees & IDPs)



Forced Eviction

General Comment No. 7





Committee on Economic, Social and Cultural Rights General Comment No. 7: “forced eviction”



the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights (para. 3).

Criteria of lawful eviction involves a change of habitual process that ensures all of the following conditions:

- a. An opportunity for genuine consultation with those affected;
- b. adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- c. Information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- d. Especially where groups of people are involved, government officials or their representatives to be present during an eviction;
- e. All persons carrying out the eviction to be properly identified;
- f. Evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies;
- g. Provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts;

Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available. (GC7, para. 15–16)



Concluding observations on the combined second to fifth periodic reports of Kenya*

Legal aid

9. While noting the introduction of the National Legal Aid and Awareness Programme, the Committee is concerned at the insufficient resources allocated to the Programme. The Committee is also concerned that access to free legal aid is still very limited, making it difficult for disadvantaged and marginalized individuals to claim their economic social and cultural rights.

10 The Committee recommends that the State party expedite the adoption of the Legal Aid Bill, expand the National Legal Aid and Awareness Programme and allocate sufficient resources to the Programme so that disadvantaged and marginalized individuals, particularly indigenous peoples, women, people living in rural areas and urban informal settlements, are able to claim their economic, social and cultural rights.



Committee on Economic, Social and Cultural Rights

Distr.: General

6 April 2016

Original: English

Concluding observations on the combined second to fifth periodic reports of Kenya***Equal rights of women and men**

23. While noting with appreciation that gender equality is guaranteed through the Constitution and national laws, the Committee remains concerned at gender discriminatory provisions in the existing laws, particularly customary laws that allow polygamous marriages and deny women's equal rights to inheritance and ownership of land (art. 3).

24. The Committee recommends that the State party take all the steps necessary to review the existing laws with a view to repealing gender discriminatory provisions, including those in customary law, especially in relation to polygamous marriages and to the rights of women to inheritance and ownership of land. It also recommends that the State party review the Matrimonial Property Act of 2013 and take all the measures necessary to strengthen its enforcement once reviewed, including raising awareness among women, local and traditional communities and their leaders, the judiciary and land administration officials and providing legal support to women to claim their rights.

Forced evictions

47. The Committee reiterates its concerns that pastoralist communities and persons living in informal settlements are under constant threat of eviction due to the lack of legal security of tenure and that forced evictions continue without prior notice and provision of adequate alternative housing or compensation. It is also concerned that the State party has not yet enacted a legislative framework to recognize and protect communities' right to land and to explicitly prohibit forced evictions and define the circumstances and safeguards subject to which evictions may be carried out, despite the decisions of its own domestic courts (art. 11).

48. The Committee recommends that the State party take concrete steps to guarantee security of tenure for all, including residents of informal settlements. It also recommends that the State party prioritize the enactment of the Community Land Bill and the Evictions and Resettlement Bill. The Committee further recommends that the State party implement judicial orders that provide remedies to victims of forced evictions as a matter of priority and adopt a moratorium on mass evictions at the national level until adequate legal and procedural safeguards are in place. The Committee draws the attention of the State party to its general comment No. 7 (1997) on the right to adequate housing: forced evictions and the 2007 basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18).

Committee on the Elimination of Discrimination against Women (CEDaW)

General recommendation No. 34 (2016)

on the rights of rural women

CEDaW, Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights...

CEDaW, Article 14

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the rights to:

- ▶ **participation**
- ▶ **health**
- ▶ **information**
- ▶ **family planning**
- ▶ **social security**
- ▶ **training and education**
- ▶ **right to organize**
- ▶ **access agricultural credit and loans**
- ▶ **equal treatment in land and agrarian reform, as well as in land resettlement schemes**
- ▶ **adequate living conditions**
- ▶ **water and sanitation, transport and communications**

Legal specificity: General Recommendations (CEDaW)

General recommendation No. 1: reporting guidelines

General recommendation No. 2: reporting guidelines

General recommendation No. 3: education and public information programmes

General recommendation No. 4: reservations

General recommendation No. 5: temporary special measures

General recommendation No. 6: effective national machinery and publicity

General recommendation No. 7: resources

General recommendation No. 8: article 8

General recommendation No. 9: statistical data

General recommendation No. 10: tenth anniversary of the adoption of CEDAW

General recommendation No. 11: technical advisory services for reporting

General recommendation No. 12: violence against women

General recommendation No. 13: equal remuneration for work of equal value

General recommendation No. 14: female circumcision

General recommendation No. 15: women and AIDS

General recommendation No. 16: unpaid women workers in rural & urban family enterprises

General recommendation No. 17: measurement & quantification of the unremunerated domestic activities of women & their recognition in GNP

General recommendation No. 18: disabled women

General recommendation No. 19: violence against women

General recommendation No. 20: reservations

General recommendation No. 21: equality in marriage and family relations

General recommendation No. 22: article 20 of the Convention

General recommendation No. 23: women in political and public life

General recommendation No. 24: article 12 - women and health

General recommendation No. 25: article 4 paragraph 1 - Temporary special measures

General Recommendation No. 26: Women Migrant Workers

General recommendation No. 27: Older women and protection of their human rights

General recommendation No. 28: The Core Obligations of States Parties under Article 2 of the Convention

General recommendation No. 29: Article 16 - Economic consequences of marriage, family relations and their dissolution

General recommendation No. 30: women in conflict prevention, conflict and post-conflict situations

Joint general recommendation No. 31 of CEDaW & CRC No. 18 on harmful practices

General recommendation No. 32: gender-related dimensions of refugee status, asylum, nationality and statelessness of women

General recommendation No. 33: women's access to justice

General recommendation No. 34: the rights of rural women

General recommendation No. 35: gender-based violence against women, updating No. 19

General recommendation No. 36 the right of girls and women to education

General recommendation No. 37: Gender-related dimensions of disaster risk reduction in the context of climate change



**CEDaW General
recommendation
No. 34 (2016) on
the rights of
rural women**

State obligations:

- ▶ **Implement substantive equality in relation to land and temporary special measures**, comprehensive strategy to achieve equal access to natural resources, and address discriminatory stereotypes, attitudes and practices that impede their rights to land and natural resources (57);
- ▶ Ensure that **customary systems** do not discriminate (58);
- ▶ **Raise awareness** about rural women's rights to land, water and other natural resources among all relevant actors (58);
- ▶ **Ensure that legislation guarantees rural women's equal rights to land** and other natural resources, irrespective of civil and marital status or guardian or guarantor arrangements, and that they have full legal capacity (59);
- ▶ Promote rural women's access to and **meaningful participation in agricultural cooperatives** (59a);
- ▶ **Enhance rural women's knowledge and role in fisheries and aquaculture**, and promote their access to **forests and sustainable forest resources**, including safe access to fuelwood and non-wood forest resources (59b);

State obligations:

- ▶ **Strengthen customary and statutory institutions and mechanisms for defending or protecting women's rights to land and other natural resources, including community paralegal services (59c);**
- ▶ **Implement agricultural policies that support rural women farmers, recognize and protect the natural commons, promote organic farming and protect rural women from harmful pesticides and fertilizers and their effective access to agricultural resources (62);...**
- ▶ **Ensure that land acquisitions, including land-lease contracts, do not violate the rights of rural women or result in forced eviction, and protect rural women from the negative impacts of the acquisition of land by national and transnational companies, development projects, extractive industries and megaprojects; (62c);**
- ▶ **Obtain rural women's free and informed consent before any acquisitions or project affecting rural lands or territories and resources, and, when such land acquisitions do occur, they align with international standards, including adequately compensation (62d);**
- ▶ **Adopt and effectively implement laws and policies that limit the quantity and quality of rural land offered for sale or lease to third States or companies (62e).**



Human Rights System Reviews: Kenya

- ▶ CESCO reviewed in 2016
- ▶ CEDaW reviewed in 2017
- ▶ UPR in 2019 (Stakeholder submission deadline 20 June 2019)



United Nations

**Committee on the Elimination of All Forms of
Discrimination against Women**

CEDAW/C/KEN/CO/8

**Distr.: General
22 November 2017
Original: English**

Concluding observations on the eighth periodic report of Kenya*

Rural women

42. The Committee is concerned about the high poverty rate among women, their exclusion from decision-making with regard to rural development, discrimination against rural women in relation to property rights and their limited access to high-quality health care, leading to complications such as vesicovaginal fistulae. The Committee is also concerned about the effects of climate change, including the current drought in the State party, on rural women.

43. Recalling its general recommendation No. 34 (2016) on the rights of rural women and its previous recommendation (CEDAW/C/KEN/CO/7, para. 42), the Committee calls upon the State party:

(a) To promote the participation of rural women in decision-making processes and their access to high-quality health care, education and adequate water and sanitation;

(b) To facilitate the access of rural women to land, eliminate all customs and traditional practices that impede their equal access to land and establish a clear legislative framework to protect their rights to inheritance and land ownership;



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Indigenous women

44. The Committee notes with concern that indigenous women in the State party, including Endorois women, have limited access to traditional lands owing to the failure to implement the ruling of 2010 by the African Commission on Human and Peoples' Rights, which recognized their rights to ancestral land in the Rift Valley, and the lack of consultation with them. It is also concerned about reports of violence, including killings against indigenous women and girls in Baringo County during cattle raids.

45. The Committee recommends that the State party:

(a) Take immediate steps to implement the ruling of the African Commission on Human and Peoples' Rights regarding the rights of the Endorois people to their ancestral land, and ensure consultation with Endorois women during this process;

(b) Take all measures necessary to protect indigenous women and girls, including those in Baringo County, from violence and theft, and ensure that the perpetrators are prosecuted and adequately punished.



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Marriage and family relations

50. The Committee notes that the Marriage Act of 2014 consolidated all marriage regimes in the State party, and that other laws intended to promote equality in marriage have been passed. It remains concerned, however, about:...

51. The Committee recommends that the State party:...

(b) Repeal section 11 of the Land Laws (Amendment) Act of 2016 and reinstate the requirement of spousal consent for any transactions relating to marital property as it was under the Land Registration Act of 2012;

A person wearing a white headscarf and a brown jacket is kneeling in a vast field of green grass, possibly engaged in agricultural work or a traditional practice. The field is bright and sunlit.

WOMEN'S HOUSING AND LAND

IN THE GLOBAL AGENDAS



**Housing and Land Rights Network
Habitat International Coalition**

UN 2030 Sustainable Development Agenda



SUSTAINABLE DEVELOPMENT GOALS



African Land Governance and the Global Agenda



PARIS2015
UN CLIMATE CHANGE CONFERENCE
COP21·CMP11



Goal 5: Attain gender equality, empower women and girls everywhere

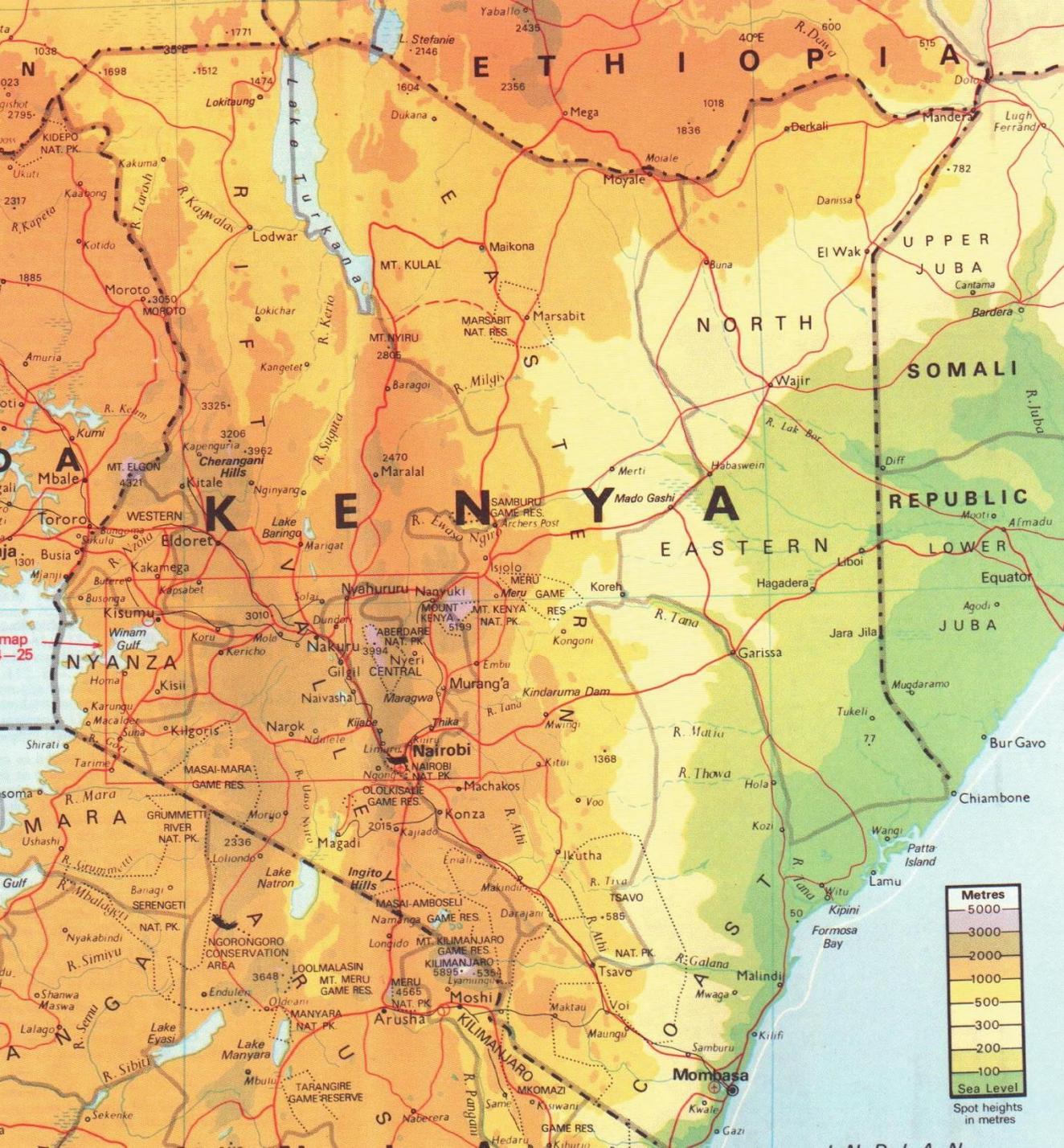
Target 5.a

Undertake reforms to give **women equal rights to** economic resources, as well as access to **ownership and control over land** and other forms of property, financial services, inheritance and natural resources, in accordance with national laws

Goal 5: Attain gender equality, empower women and girls everywhere

Target 5.a

- ▶ **Sub-indicator (a)** is a prevalence measure. It measures the prevalence of people in the agricultural population with ownership or tenure rights over agricultural land, disaggregated by sex. $\frac{\text{No. people in agricultural population with ownership or tenure rights over agricultural land}^*}{100}$, by sex $\frac{\text{Total agricultural population}}$
- ▶ **Sub-indicator (b)** focusses on the gender parity, measuring the extent to which women are disadvantaged in ownership / tenure rights over agricultural land. $\frac{\text{No. women in the agricultural population with ownership or tenure rights over agricultural land}}{\text{Total in the agricultural population with ownership or tenure rights over agricultural land}} * 100$



- National Spatial Plan 2015-2045 launched in March 2017
- Laws to protect women inheritance of their father's and or spouse's properties including land and the laws over ride customary laws and considerations
- SDG 5.a: Constitution 2010 Article 45 (3) “Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.”



HIGH-LEVEL POLITICAL FORUM On Sustainable Development

HLPF 2018:
Transformation
toward
sustainable and
resilient
societies



SDG 6: Ensure availability and sustainable management of water and sanitation for all



SDG 7: Ensure access to affordable, reliable, sustainable and modern energy for all



SDG 11: Make cities and human settlements inclusive, safe, resilient and sustainable



SDG 12: Ensure sustainable consumption and production patterns



SDG 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss



SDG 17: Strengthen the means of implementation and revitalize the global partnership for sustainable development

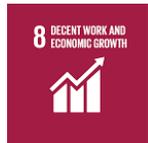


HIGH-LEVEL POLITICAL FORUM On Sustainable Development

HLPF 2019:
Empowering
people and
ensuring
inclusiveness
and equality



SDG 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all



SDG 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all



SDG 10: Reduce inequality within and among countries



SDG 13: Take urgent action to combat climate change and its impacts



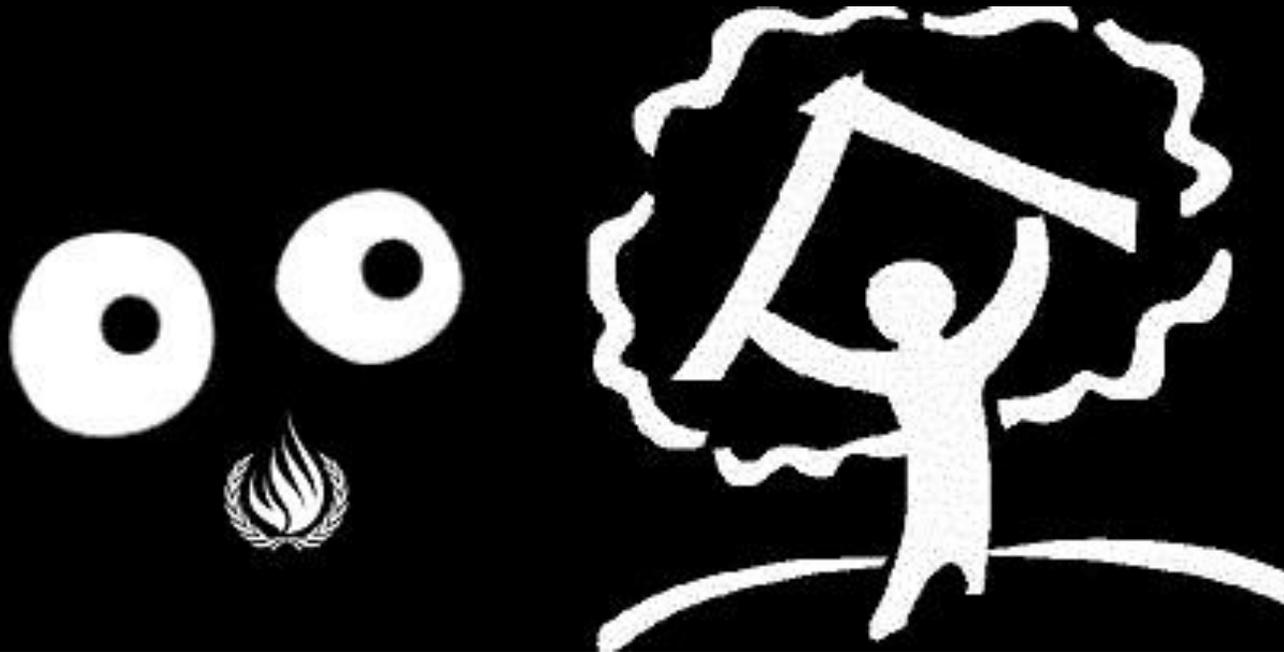
SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels



SDG 17: Strengthen the means of implementation and revitalize the global partnership for sustainable development



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