

THE CARTER CENTER



Kenya

NGO Submission to the U.N. Human Rights Committee

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Reporting Organization

The Carter Center is a not-for-profit, nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University to advance peace and health worldwide.

The Carter Center's Democracy Program works globally to promote democratic elections and governance consistent with human rights. The Center has monitored more than 100 elections in 38 countries since 1989, forging many of the techniques now common to the field. Recognizing that democratic transitions involve much more than elections, the Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance. The Democratic Election Standards (DES) initiative aims to build consensus on standards for democratic elections, based on state obligations under public international law.

The Carter Center in Kenya

The Carter Center first deployed international observation missions in Kenya to assess the 2002 Presidential and Parliamentary elections. A summary of its findings can be found [here](#). Additionally, the Center also observed the National elections of 2012 and 2017. Key summaries of these missions can be found [here](#) and [here](#), respectively. This report is based on data collected by the Center between February 2015 and March 2018.

Issues and Suggested Questions for the Human Rights Committee

Article 3 and Article 25: Equality between Men and Women

Article 2: Right to an Effective Remedy

Article 3 and 25

The Kenyan Constitution guarantees equality of opportunity by reiterating the principle that “Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.” Most importantly, it is a constitutional imperative that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

As mentioned in the fourth periodic report submitted by Kenya, the government has made several attempts in the past few years to introduce legislation to implement Article 81(b) of the Constitution, which requires that not more than two thirds of the members of elective public bodies shall be of the same gender. These attempts were made in 2016, 2017 and, most recently, in 2018. However, on all these occasions, parliament debated the matter, but failed to pass the bills.

Parliament's continued failure to pass legislation to implement the two-thirds gender rule enshrined in the constitution not only undermines other efforts made to achieve equality between women and men in the political sphere but also the adherence to the rule of law in Kenya.

It also reinforces Kenya's patriarchal culture, to which the country attributed the poor performance of women in Kenya's political arena in its fourth periodic report. This was true in the 2017 election cycle. As reported by The Carter Center, women aspirants and candidates continued to be subject to physical harassment and intimidation, beginning as aspirants in the political party primaries and continuing as candidates for the elections. Perpetrators were reportedly often influential male aspirants and candidates. Female politicians were also more vulnerable and subject to smear campaigns and "dirty politics" throughout this period. They were also the targets of false accusations, propaganda, and disinformation campaigns often perpetrated by male opponents.

This continued discrimination, harassment, and double standards violate articles 3, 21, and 25 of the International Convention on Civil and Political Rights.

Recommendation: The Carter Center recommends that the Kenyan government redouble its efforts to pass implementing legislation for the two-thirds gender rule in order to strengthen the position of women in politics. The Center also encourages the judiciary to ensure that the rule of law is upheld through its role in seeing that the provisions of the constitution are enforced within a reasonable time frame.

Article 2

Article 2(3) of the ICCPR and Article 8 of the Universal Declaration of Human Rights guarantees the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law. There can be no question that Article 81(b) of the Kenyan Constitution grants a fundamental right to the less-represented gender by requiring that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

The continued failure of the Kenyan parliament to pass implementing legislation has resulted in cases being filed asking the courts to enforce this provision of the constitution and, if not, that any future election of parliament be declared unconstitutional if more than two-thirds of its elected members are of the same gender. The courts to date have refused to take the necessary steps to enforce the rule or to declare that any election that results in a parliament that does not meet the rule is null and void. This is a denial of an effective remedy for the violation of a fundamental human right guaranteed by the Kenyan Constitution.

Questions for consideration:

What specific steps will Kenya take to ensure the implementation of the two-thirds gender rule before the next election?

What steps will Kenyan take to ensure an effective remedy for those harmed by the continued failure of the Kenyan parliament to implement the two-thirds gender rule?

Article 6: Right to Life

The charged campaign environment during the 2017 elections, coupled with the violent protests and excessive use of force by security, increased the vulnerability of women. Following the Aug. 8, 2017 elections, there were reports of human rights violations, including beatings and killings by security forces as well as sexual violence against women and girls. Multiple organizations and agencies joined an appeal to the inspector general of police and other government agencies charged with protecting the rights of women and girls to raise concerns about cases of sexual violence perpetrated in the electoral period and reportedly committed by police officers. At least 86 cases of sexual and gender-based violence were either reported or documented in Nairobi County in the run-up to the 2017 election and after, with 62 percent of the sexual violence cases perpetrated by police and 38 percent by civilians.²

During the October 26, 2017 election in the Nyanza region and in Nairobi, protests turned violent after youth clashed with security forces. Security forces retaliated with the use of live ammunition and excessive force, resulting in at least six dead and scores injured. This is an example of the multiple violent protests, more than 100 reported deaths, and many more injuries which occurred in the run-up to the 2017 elections. Victims included children.

Violence from security forces, including arbitrary murder violates articles 6 the International Convention on Civil and Political Rights.

Questions for consideration:

What concrete steps will the Kenyan government take before the next elections to ensure that security forces are properly trained and instructed in the use of force that does not result in the loss of life?

What steps have the Kenyan government taken to ensure that those security forces who engaged in the use of excessive force during the 2017 election are prosecuted?