

Universal Periodic Review

(21st session)

Contribution of UNESCO to Compilation of UN information

(to Part I. A. and to Part III - F, J, K, and P)

Kenya

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations: Human rights treaties which fall within the competence of UNESCO and international instruments adopted by UNESCO

1. Table:

<i>Title</i>	<i>Date of ratification, accession or succession</i> dd/mm/yyyy	<i>Declarations /reservations</i>	<i>Recognition of specific competences of treaty bodies</i>	<i>Reference to the rights within UNESCO's fields of competence</i>
Convention against Discrimination in Education (1960)	Not state party to this Convention	<i>Reservations to this Convention shall not be permitted</i>		Right to education
Convention on Technical and Vocational Education (1989)	Not state party to this Convention			Right to education
Convention concerning the Protection of the World Cultural and Natural Heritage (1972)	Acceptance 05/06/1991			Right to take part in cultural life
Convention for the Safeguarding of the Intangible Cultural Heritage (2003)	Ratification 24/10/2007			Right to take part in cultural life
Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)	Ratification 24/10/2007			Right to take part in cultural life

II. Input to Part III. Implementation of international human rights obligations, taking into account applicable international humanitarian law to items F, J, K, and P

Right to education

Constitutional Framework:

2. According to **Article 43.(1).(f)** of the new **Constitution of 2010**¹, “Every person has [...] the right to education”. **Article 53.(1).(b)** adds that “Every child has the right [...] to free and compulsory education”. **Article 54.(1).(b) provides that** “A person with any disability is entitled [...] to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person.”

3. According to the Constitution, “the State shall take measures including affirmative action programmes to ensure that the youth [...] access relevant education and training” (**Article 55.(a)**) and “put in place affirmative action programmes designed to ensure that minorities and marginalised groups [...] are provided special opportunities in education [...]” (**Article 56.(b)**).

4. The Constitution also establishes a Teachers Service Commission (**Article 237**).

Legislative Framework:

5. The basic legislative framework for education in Kenya is made up of:

- i) The ***Basic Education Act no. 14 of 2013***² was enacted to “give effect to Article 53 of the Constitution and other enabling provisions; to promote and regulate free and compulsory basic education; to provide for accreditation, registration, governance and management of institutions of basic education; to provide for the establishment of the National Education Board, the Education Standards and Quality Assurance Commission, and the County Education Board and for connected purposes”.³
- ii) The ***Education Act*** of 1968, revised in 1980, assigned the responsibility for education to the Ministry of Education and instituted various organs for the organization and management of education at all levels.”⁴
- iii) The ***Children’s Act No. 8*** of 2001, revised in 2010,⁵ requires “the government to undertake all the necessary steps to make available free basic education to every child, which shall be compulsory in accordance with the Convention on the Rights of the Child. The Act also provides for the establishment of a National Council for Children’s Services.”⁶

¹ <http://www.unesco.org/education/edurights/media/docs/ed9b79a472951c4a445398db7dbb3fcb18835390.pdf>

² <http://www.unesco.org/education/edurights/media/docs/4b91d5f02f62dd6d54cd2888c19c2b74ff03377d.pdf>

³ Basic Education Act 2013, p. 220, accessible at:

<http://www.unesco.org/education/edurights/media/docs/4b91d5f02f62dd6d54cd2888c19c2b74ff03377d.pdf>

(Accessed 18 November 2013)

⁴ World Data on Education, IBE, 7th Edition, 2010/2011, p. 3, accessible at:

http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Kenya.pdf (Accessed 18 November 2013)

⁵ <http://www.unesco.org/education/edurights/media/docs/f587bfa8b9536d479977207b897df7a3223f57ed.pdf>

⁶ World Data on Education, IBE, 7th Edition, 2010/2011, p. 4, accessible at:

http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Kenya.pdf (Accessed 18 November 2013)

- iv) The *Teachers Service Commission Act* of 1967 (Cap 212 of the Laws of Kenya).⁷
- v) The *Sessional Paper No. 6 of 1988* mapped out policy changes on education and work force training for the last decade of the 20th century and beyond. The *Sessional Paper No. 1 of 2005* stipulates policies and strategies the government will undertake and implement in order to address the challenges facing education and training. The *Sessional Paper No. 5 of 2005* makes provision for gender equality and development policy to promote equality within all sectors of national development including education.⁸

Policy Framework:

6. General information:

- a) **Kenya Vision 2030**, the country's new long-term National Planning Strategy formulated in 2007, identifies education as a key within the social pillar to steer Kenya into middle-level income country in 20 years.⁹
- b) The vision for the education sector for 2030 is “to have globally competitive quality education, training and research for sustainable development”, while the mission is “to provide, promote, and coordinate the provision of quality education, training and research for the empowerment of individuals to become responsible and competent citizens who value education as a lifelong process”. To achieve this vision, four strategic areas, namely, access, quality, equity, science, technology and innovation have been identified for support based on their impact on the economic, social and political pillars.¹⁰

7. Financing education

- a) In line with MDGs and EFA goals, the Government has implemented Free Primary and Secondary Education in 2003 and 2008 respectively.¹¹ Between 1963 and 1983, enrolment in primary education increased from 891,533 to 4.3 million pupils. [...] [T]he **free primary education policy** [...] resulted in a further increase in enrolment from 5.9 million in 2002 to 8.2 million pupils in public and private schools in 2007. Another 300,000 primary school-age children were enrolled in non-formal learning centers.¹²
- b) In September 2009, Kenya announced plans to delay financing of free education for 8.3 million primary school children and 1.4 million secondary school children, prompting school administrators to press for a temporary restoration of user fees. The government

⁷ World Data on Education, IBE, 7th Edition, 2010/2011, op. cit., pp. 3-4

⁸ World Data on Education, IBE, 7th Edition, 2010/2011, op. cit., pp. 3-4

⁹ Kenya National Report submitted for the 48th International Conference on Education, 2008, p. X, accessible at: http://www.ibe.unesco.org/National_Reports/ICE_2008/kenya_NR08.pdf (Accessed 18 November 2013)

¹⁰ World Data on Education, IBE, 7th Edition, 2010/2011, p. 3, accessible at: http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Kenya.pdf (Accessed 18 November 2013)

¹¹ Kenya National Report submitted for the 48th International Conference on Education, 2008, p. 14, accessible at: http://www.ibe.unesco.org/National_Reports/ICE_2008/kenya_NR08.pdf (Accessed 18 November 2013)

¹² World Data on Education, IBE, 7th Edition, 2010/2011, p. 16, accessible at: http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Kenya.pdf (Accessed 18 November 2013)

claimed costs associated with emergency feeding programmes forced the delay. More equitable avenues could have been explored, however.¹³

8. Teachers

- a) Evidence from several countries demonstrates that policy interventions can make a difference in improving reading skills. Involving schools and communities is a key to success. [...] In the Malindi district of Kenya, teachers were trained for five days on a set of carefully designed lessons to teach effective reading skills to the students of Grade 2 [...]. This training resulted in the significant improvements: the comparison of the Grade 2 students results before and after the teachers were trained showed that reading speed had improved by 80%, on average. While it is difficult to attribute all the improvement to the training, the study showed that this relatively small intervention generated an important impact on the poor state of reading skills and contributed significantly to a positive change of the situation.¹⁴

Cooperation:

9 Kenya is **not party** to the 1960 UNESCO Convention against Discrimination in Education.

10. Kenya **did not report** to UNESCO on the measures taken for the implementation of the 1960 Recommendation against Discrimination in Education within the framework of the:

- a) **Sixth Consultation** of Member States (covering the period 1994-1999)
- b) **Seventh Consultation** of Member States (covering the period 2000-2005)
- c) **Eighth Consultation** of Member States (covering the period 2006-2011)

11. Kenya **did not report** to UNESCO on the measures taken for the implementation of the 1974 UNESCO Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms within the framework of the:

- a) **Fourth Consultation** of Member States (covering the period 2005-2008)
- b) **Fifth Consultation** of Member States (covering the period 2009-2012)

12. Kenya **reported** to UNESCO on the measures taken for the implementation of the 1976 UNESCO Recommendation on the Development of Adult Education within the framework of the:

- a) **First Consultation** of Member States (1993)
- b) **Second Consultation** of Member States (2011)

13. Kenya is **not party** to the 1989 UNESCO Convention on Technical and Vocational Education.

¹³ EFA Global Monitoring Report 2010, pp. 24-25, accessible at: <http://unesdoc.unesco.org/images/0018/001866/186606E.pdf> (Accessed 18 November 2013)

¹⁴ EFA Global Monitoring Report 2010, p. 112, accessible at: <http://unesdoc.unesco.org/images/0018/001866/186606E.pdf> (Accessed 18 November 2013)

Freedom of opinion and expression

Constitutional and Legislative Framework:

14. Freedom of expression is guaranteed under Article 33 of the Constitution of Kenya (1969, amended in 2010).¹⁵ Article 34 of the Constitution protects the freedom of media.

15. The Media Act (2007)¹⁶ provides for the establishment of the Media Council of Kenya; the conduct and discipline of journalists and the media; the self-regulation of the media and related purposes.¹⁷ Article 33 of the Act stipulates that decisions of the complaints commission and council should be “enforced as an order of Court”.

16. The Books and Newspapers Act (1960) sets out requirements of registration and execution of a bond in the prescribed form in the sum of 1,000,000 shillings (approximately US\$11,000), with one or more sureties as may be required and approved by the Registrar.¹⁸ As stipulated in Section 11 of the Act, the bond serves as security towards the payment of any monetary penalty or damages which may at any time be imposed upon or adjudged against the newspaper.

17. The Communication Act (1998, amended in 2009) provides for the development of the information and communications sector, including broadcasting, multimedia and telecommunications.¹⁹ The Films and Stage Plays Act provides for controlling the making and exhibition of cinematograph films, for the licensing of stage plays, theatres and cinemas.²⁰

18. Under Section 3 of the Official Secrets Act (1969), it is prohibited for any person in government services, or who holds or has held a government contract, to communicate any information to a person to whom he is not authorized to communicate it.²¹ Similarly, it is an offence for a person to receive such information.

19. Defamation is a criminal offence under Articles 194-200 in the Penal Code of Kenya (1930, last amended in 2009).²² It is regulated further under the Defamation Act (1970, amended in 2009), which is also applicable to the press.²³ Section 16A of the Act sets out penalties for defamation, stipulating: “provided that where the libel is in respect of an offence punishable by death the amount assessed shall not be less than 1,000,000 shillings (approximately US\$11,000), and where the libel is in respect of an offence punishable by imprisonment for a term of not less than three years the amount assessed shall not be less than four hundred thousand shillings.”

¹⁵ http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution_of_Kenya_2010.pdf

¹⁶ http://www.mediacouncil.or.ke/jdownloads/Media%20Laws/media_act_2007_and_rules_of_procedure..pdf

¹⁷ http://www.kenyalaw.org/kenyalaw/klr_app/view_cap.php?CapID=622

¹⁸ http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

¹⁹ http://www.cck.go.ke/regulations/downloads/KCA_2009.pdf

²⁰ http://www.kenyalaw.org/kenyalaw/klr_app/view_cap.php?CapID=154

²¹ http://www.kenyalaw.org/kenyalaw/klr_app/view_cap.php?CapID=122

²² <http://www.kenyalaw.org/Downloads/GreyBook/8.%20The%20Penal%20Code.pdf>

²³ <http://www.kenyalaw.org/Downloads/Acts/Defamation%20Act%20%28Cap.36%29.pdf>

20. In December 2013, Kenyan National Assembly passed the Kenya Information Communication (Amendment) Bill (KICA Bill) 2013.²⁴ The KICA Bill creates a Communication and Multimedia Appeals Tribunal under the Kenyan Communication Authority which in turns enable the Cabinet Secretary to select the members of the tribunal undermining the independence of the media. This new tribunal will have the power to impose high monetary fines to media outlets and journalists as well as deregistering journalists.

Media Self-Regulation:

21. Media self-regulation mechanisms exist in the country including through the Kenya Union of Journalists and the Media Council of Kenya (MCK)²⁵, the latter of which also has its Complaints Commission. Since 2007, the Council adopted a ‘co-regulation’ approach where board members and the Secretariat receive some support from government funds and serve as the leading institution in the regulation of media and in the conduct and discipline of journalists in Kenya.²⁶ Under the Media Act, the Council is granted powers similar to those of a court of law.

Safety of Journalists:

22. UNESCO recorded the killing of journalist Francis Nyaruri in Kenya in 2009.²⁷ The Director-General of UNESCO condemned the killing and called on the country to inform UNESCO, on a voluntary basis, of the actions taken to prevent the impunity of the perpetrators and to notify the Director-General of the status of the judicial inquiries conducted on each of the killings condemned by UNESCO.²⁸ According to the information provided to UNESCO by Kenya, the case is currently under investigation.

III. RECOMMENDATIONS

23. ***Recommendations made within the framework of the Working Group on the Universal Periodic Review, 6 May 2010:***²⁹
24. ***The recommendations formulated during the interactive dialogue listed below have been examined by Kenya and enjoy its support:***

²⁴

<http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2013/THEKENYAINFORMATIONANDCOMMUNICATIONSAMENDMENTBILL2013.pdf>

²⁵ <http://www.mediacouncil.or.ke/>

²⁶ <http://www.mediacouncil.or.ke/>

²⁷ <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/press-freedom/unesco-condemns-killing-of-journalists/countries/kenya/>

²⁸ Decision on the Safety of Journalists and the Issue of Impunity. Adopted by the IPDC Intergovernmental Council at its 27th Session (available at

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/ipdc2010_safety_decision_final.pdf)

²⁹ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/144/88/PDF/G1014488.pdf?OpenElement>

- i) 101.17. *Include in the national action plan for the promotion and protection of human rights continued attention to and focus on children and an emphasis on ensuring their right to health and education (Saudi Arabia);*
 - ii) 101.34. *Establish a human rights education system for members of the police and detention and prison staff, together with systems for the full and independent investigation and regular punishment of human rights violations by such personnel (Czech Republic);*
 - iii) 101.35. *Continue human rights education and training (Senegal);*
 - iv) 101.47. *Undertake more effective measures to address the problems of impunity, violence and trafficking in women and girls, including through the strengthening of law enforcement and the judicial system and intensive media and education programmes aimed at increasing public awareness on the rights of women (Malaysia);*
 - v) 101.62. *Develop an administration of justice policy that would address principles of access to justice and public interest education, and take reform measures to address corruption, in particular within the judicial system (Germany);*
 - vi) 101.90. *Undertake a study on child labour at the national level with the support of the International Labour Organization and other partners to look at the issue of child labour, and enact as quickly as possible legislation focused on the prevention of child labour and the removal of its victims from the workplace, as well as their rehabilitation, social reintegration and education (Uruguay);*
 - vii) 101.109. *Strengthen its educational policy to guarantee the required quality of education, accessible to all members of its population, especially the marginalized and most vulnerable groups (Slovakia);*
 - viii) 101.110. *Develop education policies that ensure quality education, particularly for the poor, marginalized and vulnerable segments of its population, and request international assistance to that end (Bolivia);*
 - ix) 101.111. *Formulate an educational policy aimed at combating illiteracy, with particular emphasis on the education of the girl child (Niger);*
 - x) 101.112. *Develop and implement a specific education policy which would cover all children with special needs (Ireland);*
 - xi) 101.113. *Continue to develop programmes and measures aimed at ensuring quality and free education and health services for its population (Cuba);*
 - xii) 101.126. *Seek the support of the international community and cooperate with it to formulate policies aimed at further broadening access to free and compulsory education, particularly for children from poor households (Indonesia);*
25. Analysis: Kenya's new Constitution enshrines free and compulsory education. Policies were adopted by the Government to make primary and secondary education free. A long term national plan on education covers gender equality and quality education including marginalized children. However, this plan does not include specific measures to fight against child labour and illiteracy and to further promote human rights.

26. **Specific recommendations for the second UPR cycle on the right to education:**

- i) Kenya should be encouraged to ratify the 1960 UNESCO Convention against Discrimination in Education.
- ii) Kenya should be encouraged to continue to submit state reports for the periodic consultations of UNESCO's education related standard-setting instruments.
- iii) Kenya could be encouraged to set up its efforts to improve the quality of education, so that children can really benefit from the free primary education in public schools.
- iv) Kenya could be encouraged to take additional measures to improve access to education for vulnerable children, especially children from low-income households, and to make sure that education is truly inclusive for all children.
- v) Kenya could be encouraged to continue its efforts towards gender equality in the field of education.

Freedom of opinion and expression

27. Kenya is encouraged to decriminalize defamation and place them within the civil code that is in accordance with international standards.
28. Kenya is recommended to review the Kenya Information Communication (Amendment) Bill (KICA Bill) 2013 to ensure that it is in accordance with international standards in promoting freedom of expression.
29. Kenya must ensure that journalists and media workers are able to practice the profession in a free and safe environment as part of their fundamental human rights. It must investigate all attacks on journalists and media workers, and ensure full implementation of the rule of law.

Cultural rights

30. As a State Party to the Convention concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention for the Safeguarding of the Intangible Cultural Heritage (2003), the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), Kenya is encouraged to fully implement the relevant provisions that promote access to and participation in cultural heritage and creative expressions and, as such, are c to implementing the right to take part in cultural life as defined in article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights. In doing so, Kenya is encouraged to give due consideration to the participation of communities, practitioners, cultural actors and NGOs from the civil society as well as vulnerable groups (minorities, indigenous peoples, migrants, refugees, young peoples and peoples with disabilities), and to ensure that equal opportunities are given to women and girls to address gender disparities.

**Freedom of scientific research and
the right to benefit from scientific progress and its applications**

31. With regard to contribution of science and technology to development, Kenya, following up to its report submitted in 2012, is further encouraged to report to UNESCO within the framework of the on-going consultations with Member States on the monitoring of the implementation and the proposed revision of the 1974 Recommendation on the Status of Scientific Researchers, in particular on the measures undertaken in the country to implement

such principles of the Recommendation as the obligation of state authorities to ensure that scientific researchers have the responsibility and the right to work in a spirit of intellectual freedom; to participate in the determination of the aims, content and methods of research, which should be compatible with respect for universal human rights and fundamental freedoms, as well as ecological and social responsibility; to creativity, occupational mobility, international cooperation for furtherance of international peace, cooperation and understanding, etc.