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Kenya Government Report to the Human Rights Council

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paragraph 15 (a) of the annex to Human Rights Council
resolution 5/1***

Kenya

* The present document was not edited before being sent to the United Nations translation services.

I. Methodology and consultation process

1. The Kenya National report was prepared in line with the guidance provided in the Elements for a road map based on resolution 5/1 of the Human Rights Council and on the general guidelines for the preparation of information under the Universal Periodic Review contained in document A/HRC/6/L.24. The national report covers the entire geographical area of Kenya.

II. Consultative process

2. This report is a result of wide consultations within Government, the Kenya National Commission on Human Rights, other National Institutions, Non Governmental Organisations, Civil Society organizations and other stakeholders including academic and policy analysis institutions.

3. The final report was subjected to validation by different stakeholders. The process was spearheaded by the Multi-Stakeholders National Advisory /Consultative Committee on Kenya's International Human Rights Obligations and coordinated by the Ministry of Justice, National Cohesion and Constitutional Affairs.

III. Country background

4. Kenya is an East African country covering a total area of 582, 650 km of which 560,250 km constitutes dry land while water takes the rest of about 13,400 km. Approximately 80% of the land area is arid or semi-arid, and only 20% is arable.

5. The total population of Kenya is estimated at 39,002,772 (2009 estimates) people, 75%-80% of whom live in the rural areas. The country's population is characterised by high infant mortality rates (54.7 deaths/1000 live births), low and declining life expectancy (between 47and 58 years), total fertility rate (4.56 children born/woman), all 2009 estimates. Kenya is also faced with a high dependency burden, with over 42% of the population below 15 years.

A. General political structure

6. Kenya gained independence in 1963 and has been a Constitutional multi-party electoral democracy since 1991. In 2002, the Kenya National African Union (KANU) lost the general elections for the first time since independence to the National Rainbow Coalition (NARC), a grouping of 14 political parties. The dominance of a single party since independence had a lot of impact on the enjoyment of human rights in the country.

7. There are three arms of the Government: the Legislature, Executive, and Judiciary. The President, is the head of state and government, is eligible for two five-year terms. The post of prime minister was created under the coalition government soon after the post election violence in 2008. The role of the Prime Minister is to coordinate and supervise the execution of the functions and affairs of the Government of Kenya including those of Ministries. The unicameral legislature consists of the 224-seat National Assembly, composed of 210 elected members, 12 members nominated by the different political parties, and two ex-officio members. Administratively, the country is divided into eight provinces including the capital area.

B. Applicable laws

8. Section 3 of the Judicature Act (Chapter 8 Laws of Kenya) enumerates the primary sources of Kenya laws and these include: *The Constitution* as the supreme law of the land; *Acts of Parliament* which also include subsidiary legislation, *Specific Acts of Parliament of the United Kingdom* cited in the schedule to the Judicature Act ; *The Transfer of Property Act, 1882 of India* as the procedural law applicable where the Registration of Titles Act, the Land Titles Act and the Government Lands Act are applied; *English Statutes of General application in Force in England on 12th August 1897*, applicable in Kenya in the form that they had at the reception date; *The Substance of Common Law and Doctrines of Equity* applicable to the Kenyan inhabitants in so far as the circumstances of Kenya permit; *African Customary law* applicable only in civil cases where one or more of the parties is subject to or affected by it, in so far as it is not repugnant to justice and morality or inconsistent with any other law; and *Islamic Law* applied in Kadhi's Courts ,where all the parties profess the Muslim religion, on questions of Muslim law relating to personal status, marriage, divorce and inheritance issues.

C. Kenya's Development Agenda and The Vision 2030

9. The *Kenya Vision 2030* is a long term plan to guide Kenya's development agenda up to 2030.

10. Under the *Vision 2030*, Kenya is expected to become a middle income, prosperous country, providing a high quality of life for all the people. The three pillars of the Vision will ensure that Kenya achieves and sustains growth in the economic sphere, build a just and cohesive society through equitable social development, and a clean and secure environment and produce a democratic political system that nurtures issue-based politics, the rule of law, and protects all the rights and freedoms of every individual and society.

11. The launch of Vision's, First Medium Term Plan (MTP) marked a critical milestone for Kenya as it is now the primary document which outlines the consensus on policies, reform measures, projects and programmes that the Coalition Government has committed to implementing during 2008-2012.

12. Among the priority areas which are under implementation in its first year and which have a great impact on human rights, are projects geared towards national healing and reconciliation, as well as rapid economic reconstruction to reverse the damage and setbacks that the country suffered following the post-election violence. The prominence given to measures to promote equity is expected to contribute to the reconciliation process and the overall national economic growth.

13. Other critical issues and challenges that the MTP addresses, which will have a great impact on the realization of human rights, include the creation of more employment opportunities especially for the youth and the attainment of gender balance in the National programmes. Introducing measures aimed at ensuring equitable development in all regions of the country is also a key objective of the MTP.

IV. Framework within which human rights are protected

A. The Constitution

14. Chapter V of the Kenya Constitution provides for the fundamental rights and freedoms of all persons in Kenya. Section 70 of the Constitution provides "*Whereas every*

person in Kenya is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest....” The importance of this provision lies in the fact that it does not discriminate against foreigners but affords protection of the rights and freedoms of “every person in Kenya” without exception.

B. The judiciary

15. The High Court has inherent jurisdiction to hear cases of violations of fundamental rights.

16. Section 84 of the Constitution enables any person who considers that his/her rights have been violated to apply to the High Court without prejudice to any other remedy that may be open to him/her. If in proceedings in a subordinate court a question of the violations of rights arises, the case may be referred to the High Court at the request of any of the parties to the suit.

17. The High Court has wide powers to make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the rights and freedoms of the individual. Rights can also be invoked in the form of a defence, as part of the ordinary court procedure.

C. Legislative authority

18. The Parliament of Kenya is vested with the legislative power. In the field of human rights, Parliament has passed many laws which give effect to the rights enshrined in the Constitution and in the International and Regional human rights instruments that Kenya is a party to. In addition, Parliament has established institutions to monitor the respect and protection of human rights and to operationalise the pro-human rights laws such as:

- The Kenya National Commission on Gender and Development (KNCGD)
- The Kenya Anti-Corruption Commission (KACC)
- National Council for Children Services (NCCS) and
- National Council on Persons with Disabilities (NCPD)

Others Institutions with a mandate for human rights include:

(a) The Kenya National Commission on Human Rights (KNCHR)

19. The Kenya National Commission on Human Rights (KNCHR) is a statutory body established under an Act of Parliament, the Kenya National Commission on Human Rights Act, 2002 and in conformity with the Paris Principles. The KNCHR has a geographical jurisdiction that covers the whole of Kenya. It is vested with both human rights promotion and protection competence. The mandate of the Commission as set out in section 16 of the Act is quite broad. Part 1 (Preliminary) of the KNCHR Act interprets human rights to mean “the fundamental rights and freedoms of any individual protected under the Constitution and any human rights provided for in any international instrument to which Kenya is signatory”.

(b) The Public Complaints Standing Committee (PCSC)

20. This was established in Kenya in June 2007 with to receive, register, sort, classify and document all complaints against public officers in Ministries, Parastatals/State Corporations, Statutory Bodies or any other public institution. In addition, the PCSC is mandated to enquire into allegations of misuse of office, corruption, and unethical conduct, breach of integrity, maladministration, delay, injustice, discourtesy, inattention, incompetence, misbehaviour, inefficiency or ineptitude in the service to the citizens.

Transitional mechanisms of Addressing Human Rights Violations

21. The violence that was experienced after the presidential elections of 2007 necessitated the setting up of additional institutions to deal with Transition Justice Issues and the underlying causes of the violence. These include:

(c) Commission of Inquiry on Post-election Violence (CIPEV) (the Waki Commission)

22. Its mandate was to investigate the facts and circumstances surrounding the post-election violence, the conduct of state security agencies in their handling of it, and to make recommendations on legal and administrative measures to eradicate impunity.

(d) An Independent Review Electoral Commission (IREC)

23. The Independent Review Electoral Commission (IREC) chaired by Justice Krieglar, was appointed by government soon after the post election violence that followed the 2007 elections to come up with recommendations to reform the electoral process in Kenya.

(e) The Interim Independent Electoral Commission and the Interim Independent Boundary Review Commission

24. The Krieglar Commission recommended the establishment of the two new commissions – The Interim Independent Electoral Commission (IIEC) and the Interim Independent Boundary Review Commission (IIBRC). The IIEC is overseeing electoral reforms and in particular the creation of a new voter register, development of modern system for collection, collation, and transmission and tallying of electoral data, promotion of voter education and efficient conduct of elections and referenda.

25. The IIBRC is in the process of establishing, reviewing and drawing up new administrative and constituency boundaries. It will also make recommendations for delimitation of constituencies and local authorities' electoral units and recommend the optimal number of constituencies on the basis of equality of votes.

(f) A Truth, Justice, and Reconciliation Commission (TJRC)

26. The Act establishing this Commission recognizes that since independence, there has occurred in Kenya gross violations of human rights, abuse of power and misuse of public office and that some of these cannot be properly addressed by the already existing institutions due to procedural and other hindrances. The commission has the mandate to address the past in order to prepare for the future by building a democratic society based on the rule of law; giving the people a fresh start by according justice to the victims of injustice by adequately addressing past violations.

(g) National Cohesion and Integration Commission

27. This Commission is an instrument for the reform of the state and for creating a more perfect, peaceful and cohesive nation. It has the mandate to identify and analyze factors inhibiting the attainment of harmonious relations between ethnic communities, particularly

barriers to the Participation of any ethnic community in social, economic, commercial, financial, cultural and political endeavors and make recommendations on how to reconcile the nation by promoting arbitration, conciliation, mediation and similar forms of dispute resolution mechanisms in order to secure and enhance ethnic and racial harmony and peace.

D. International and regional human rights instruments

28. Kenya is a state party to all the core human rights instruments except the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which is currently under consideration, the Rome Statute of the International Criminal Court; all the international anti- terrorism instruments; and has also ratified 49 ILO conventions with 43 of them in force.

29. At the regional level, Kenya has ratified the African Charter on Human and Peoples' Rights; the African Charter on the Rights and Welfare of the Child; the OAU Convention Governing Specific Aspects of Refugee Problems in Africa; the OAU Convention Against anti-Corruption; and The Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples Rights.

E. The extent to which human rights treaties have been domesticated

30. Kenya is a dualist state requiring domestication of international instruments in the national arena through legislation by Parliament. In this regard, the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and recently the Convention relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa have been fully domesticated by the promulgation of the Children's Act (Chapter 586 of the Laws of Kenya) and the Refugees Act (No. 13 of 2006) respectively. The provisions of these laws are closely modeled on those of the international and regional instruments, with necessary exceptions as necessitated by the circumstances of Kenya.

31. The country has also fully domesticated the 4 Geneva Conventions through The Geneva Conventions Act (Chapter 198 of the Laws of Kenya) and the Convention on Persons with Disabilities through The Persons with Disabilities Act.

32. Further, the Rome Statute of the International Criminal Court has been domesticated by the International Crimes Act, 2008.

33. While some instruments are given effect by a single law, others have been given effect through more than one law. For example, CEDAW, ICESCR and ICERD have substantially been domesticated through different legislations.

F. Individual redress mechanisms at the international level

34. The Government in conjunction with the Kenya National Commission for Human Rights is in the process of assessing its position in relation to individual complaints mechanism to the UN Treaty Bodies. It is worth noting that Kenya has not had a major issue with the individual Regional Mechanisms that are currently in place.

V. Achievements and best practice

A. Civil and political rights

(a) The witness protection programme

35. An effective and efficient witness protection programme is a cornerstone of successful prosecution of cases. Kenya domesticated article 24 and 26 of the United Nations Convention against Organized Crime with the enactment of a Witness Protection Act in 2006. Kenya is the second country in Africa to have in place a witness protection programme. The operationalization of the programme is at an advanced stage with a fully fledged secretariat in place.

36. The Witness Protection Bill is currently under review to delink the Unit from the Attorney General's office and thus ensure its independence.

(b) Moratorium on the death penalty

37. There has therefore been a *de facto* moratorium of the death penalty in force in Kenya since 1987.

38. Currently, there is a presidential directive to all relevant Government Ministries and Departments to conduct empirical studies and engage all stakeholders urgently, to determine whether the continued existence of the death penalty in the laws of the land has any value or impact in the fight against crime. This is in recognition of the fact that 'extended stay on death row causes undue mental anguish and suffering, psychological trauma, anxiety and constitutes inhuman treatment'.

(c) Freedom of movement, religion and association

39. Freedom of movement and travel, religion, and association are all constitutionally protected and respected. There are sporadic allegations of intimidation and government interference in these areas, but they are not the norm. NGOs (non-government organizations) are also given access to the country, and allowed to investigate human rights abuses without restriction.

(d) Prison reforms

40. In recognition of the fact that a prisoner is entitled to the basic freedoms guaranteed by the constitution and other international human rights standards the government has revamped the Kenya Prison Service by putting in place programmes that focus on strategic issues that are human rights based, promote governance and democratic practices in prison management. This is already bearing fruit as evidenced by the fact the 2009 Outstanding Correctional Service Employee Global Award was given to a Kenyan. Plans are also underway to review the Borstal Act (cap 92) to synchronize it with the children's act in order to capture the multiple needs and challenges of juveniles in prison custody.

41. The government has also embarked on structural development programmes for the prisons with a view to improving prisons condition through infrastructural upgrades and civil works in many prison facilities countrywide. These facilities will increase spaces for the accommodation of prisoners and therefore humanize the general prison conditions.

(e) **Political Parties' Act**

42. The enactment of the Political Parties' Act is a significant step in Kenya's democratic development. It prepares the ground for an equal playing field as parties will strive to be transparent, accountable and well managed as the Act stipulates.

B. Economic, social and cultural rights

National and Anti-poverty Programmes

(a) **Economic Stimulus Programme (ESP) 2009**

43. The Economic Stimulus Programme is a short to medium term, high intensity, and high impact programme aimed at jumpstarting the economy towards long term growth and development, securing the livelihoods of Kenyans and addressing the challenges of regional and Inter-generational inequity. The ESP is anchored within the principles of the Vision 2030 and recognition of global concerns on environmental sustainability.

(b) **The kazi kwa vijana programme**

44. This was launched on 12th August 2009 as one of the strategies of poverty alleviation through employment creation. The specific objectives of this programme are to: Provide food relief to 5 million Kenyans; to increase food production or gain a means to earn income to buy food and other basic items; employ the affected population particularly the youth in community projects and channel the skills and energies of the youth to productive activities.

(c) **Constituency Development Fund**

45. The fund aims to control imbalances in regional development brought about by partisan politics. It targets all constituency-level development projects, particularly those aiming to combat poverty at the grassroots. The fund comprises an annual budgetary allocation equivalent to 2.5% of the government's ordinary revenue. Parliament has agreed to increase this allocation to 7.5% of government's revenue. 75% of the fund is allocated equally amongst all 210 constituencies. The remaining 25% is allocated as per constituency poverty levels. A maximum 10% of each constituency's annual allocation may be used for an education bursary scheme to enhance the right to education.

(d) **Right to education**

46. Kenya has begun realizing some of the gains of universal free primary education (FPE). School enrolment is on the increase and the number of children joining secondary schools has increased. This has been aided by the enactment of the Children's Act which provides for the penalizing of parents or guardians who fail to take their children to school.

47. Measures to ensure that the most vulnerable children are not left behind have been put in place including school-feeding programmes, a bursary and book funds to help retain the poor and vulnerable in schools. Under the FPE programme, additional capitation grants are provided to children with special needs enrolled in public schools, units and other institutions to ensure their effective integration.

48. The Government is also offering free tuition for secondary education.

(e) **Right to health**

49. In striving to ensure the best attainable state of mental and physical health to her citizenry, Kenya has enacted a number of legislations and developed policies to

operationalise measures aimed at promoting mental and physical health. These include: HIV and AIDS Prevention and Control Act; which outlaws discrimination in all its forms and subtleties against persons with or perceived or suspected of having HIV and AIDS; the domestication of the Reproductive Health Agenda to promote safe motherhood and the survival of the child; the National Malaria Strategy ; and Measures to convert the National Health Insurance Fund into a National Social Health Insurance Fund to cover all employees both in the formal and informal sectors of the economy and to offer coverage for outpatient costs.

(f) Right to housing

50. To ensure the right to housing, the Government has: Created a specific Ministry for Housing to ensure better implementation of programmes; has developed a National Housing Policy for Kenya and passed a Sessional paper for the same leading to the development of a National Housing Bill; and has been upgrading informal settlements under the Kenya slum Upgrading Programme (KENSUP).

(g) Right to Work and in Work

51. Kenya has a high rate of unemployment coupled with low Labour force productivity. Measures have been put in place to expedite settlement of trade disputes, to promote industrial harmony, enforce laws aimed at promoting health and safety standards and strengthen the National Productivity centre so as to institutionalize a productivity measurement process. To this end the government has put in place legislation to declare and define the fundamental rights of employees and has consolidated all the laws relating to trade unions and trade disputes to promote the freedom of association. These include; The Employment Act 2007, The Labour relations Act 2007, The Work Injury Benefits Act 2007 and The Occupational Safety and Health Act, 2007.

(h) Children's rights

52. In 2008, the African Report on Child Wellbeing rated Kenya as one of the top most child-friendly African Governments. This is due to putting in place appropriate legal provisions to protect children against abuse and exploitation, allocating a relatively higher share of the national budget to provide for the basic needs of children and success in achieving relatively favourable well being outcomes as reflected in the children themselves. Kenya has also fully domesticated the Convention on the Rights of the Child (CRC).

C. Challenges and constraints

(a) Poverty and inequality

53. According to the World Bank, Kenya is one of the ten most unequal societies in the world, with the richest tenth of households controlling more than 42 percent of the country's income while the poorest tenth survive on less than one per cent. Poverty remains a major impediment to both the fulfillment of basic needs and the realization of the full potential of many Kenyans, particularly women and children. The population in absolute poverty is estimated at 45.9% (2007). The economy has been characterised by stagnation in economic growth in the last two decades. Currently, approximately 56% of Kenyans live below the international poverty line of less than \$1 per day. According to the Kenya Economic Report 2009, the number of Kenyans depending on others is 84%.

54. While substantial attention has been placed on poverty alleviation, the gap between the poor and non-poor in (their) entitlement to human rights is wide. There also exists a large disparity in incomes and access to education, health and land, as well as to basic

needs, including: clean water, adequate housing and sanitation. Absolute levels of poverty, especially in specific “pockets of poverty” around Kenya, as well as gender, inter-regional, intra-regional and inter-generational inequalities remain key challenges that are currently being addressed through the Vision 2030 and the anti-poverty programmes.

(b) Unemployment

55. The unemployment challenge in Kenya is characterized by several dimensions. The first and most obvious is a high population growth rate that is not matched with the creation of viable economic opportunities. Currently persons under the age of 30 comprise 72 per cent of the unemployed, while persons under the age of 24 constitute 51 per cent. This is a formidable risk factor for both the youth and the prosperity of the economy. Other factors that contribute towards this wider unemployment challenge include rural-urban migration, extensive underemployment and the general mismatch between emerging jobs and the skills available on the market.

(c) Bad governance and lack of respect for the rule of law

56. Kenya still faces key structural challenges beginning with the inadequacy of the current Constitution and the need for a modernized, rights-based and democratic constitutional order, despite a generation of constitutional reform efforts. In addition, the policy, legal and institutional framework across the economic and social sectors as well governance, human rights, justice and the wider rule of law continue to be inadequate on the whole.

57. Further, ineffective justice and dispute resolution mechanisms to deal with disputes, conflicts, injustice, rights abuses and outright crime, continue to promote impunity which is further exacerbated by low public confidence in governance and rule of law institutions. Governance and rule of law failure is also characterized by weak inter-agency cooperation and cross-agency collaboration across the governance and rule of law institutions and a largely historical overemphasis on operations and activities over results for Kenyans.

(d) Weak institutions

58. The weakness and ineffectiveness of institutions responsible for enforcement of human rights remains a challenge for the promotion and protection of human rights. For example, the Kenyan judiciary has been extremely ineffective in the protection of human rights constrained by incapacity, corruption, incompetence, outdated legislation, under-resourcing and failure to assert their independence.

59. Our national human rights institution, the Kenya National Commission on Human Rights is at its nascent stage and is therefore in the process of laying a firm foundation for establishing a credible working relationship with institutions like the Police, Prisons and Armed Forces that would make it possible for the Commission to play a meaningful role in training and initiation of dialogues on human rights, the ultimate goal being the development and entrenchment of a human rights culture in all their operations. The Police Oversight Board and the Public Complaints Standing Committee have legal constraints which are currently under review.

(e) Ineffective Constitutional and outdated laws for the enforcement of rights

60. The Kenyan constitution has many claw-back provisions that undermine the enforcement of human rights. There is therefore need to review the provisions to ensure that a binding and enforceable Bill of Rights is entrenched in the constitution. Kenya is currently undertaking a comprehensive review of the constitution. The existing drafts of the Constitution have many progressive human rights provisions on issues of gender equality,

citizenship, social economic rights and group rights. When enacted, the new constitution based on the existing drafts would go a long way in establishing a firm foundation for the promotion and protection of human rights.

61. There are also many statutes that are clearly an obstacle to the realization of human rights and need to be reviewed to reflect the respect for and desire to promote human rights. The government has revamped the Kenya Law Reform Commission to review all laws affecting the enjoyment of human rights and make the necessary amendments, repeal them or enact new appropriate legislation.

(f) Lack of public awareness

62. Many people are not aware of their human rights and therefore suffer human rights abuses without seeking redress. Although civic education has been conducted by civil society over the years it has not effectively reached the bulk of the population. With the operationalisation of the National Legal Aid and Awareness Programme, the Government hopes to make a difference to ameliorate this situation.

(g) Corruption

63. Corruption continues to be a major challenge. However, Kenya has established a policy and legal framework for the war against corruption. A multi-stakeholder driven National Action plan against Corruption, which is in its second year of implementation, has also been developed. The fight against corruption seeks to protect public resources from wanton plunder and wastage in order to avail resources for national development, poverty alleviation and hence the realization of human rights in the country.

(h) Child labour in Kenya

64. Child labour continues to be one of the most serious challenges facing most children in Kenya today. It has been practiced in Kenya for a long time, although its magnitude and nature have changed over time. In the 1980s and 1990s, child labour was widespread in agricultural and fisheries sectors, but more recently, it has spread more rapidly to other sectors notably, domestic service, the informal, and commercial sexual exploitation of children. The Children's Department, in collaboration with others, has engaged hoteliers in signing of the international Code on Sexual Exploitation of children in the tourism sector.

65. Strategies to mainstream child labour issues in national development both downstream (direct support) interventions and upstream interventions (legislative and policy). The strategies will focus on prevention, withdrawal, rehabilitation and integration. A national child labour survey and a policy on child labour will be developed to facilitate implementation of the said interventions.

(i) Overstretched prison facilities

66. With an average population of 50,000 inmates against a recommended capacity of 20,000 and after 43 years of low investment, the Kenya prisons are overstretched working its staff and facilities beyond recommended levels. Despite the gains which have been realized in ongoing reform programmes, more is still in the pipeline on building capacity of containment and reducing congestion while increasing impact in rehabilitation. In 2008, an integrated Corrections Service Reform secretariat was formed to review the way other justice sectors impact on the penal system.

(j) The freedom and independence of the media

67. Since 2003 great inroads have been made in enhancing media freedom in Kenya. In order to facilitate the development of the information and communications sector including

broadcasting, multimedia telecommunications, postal services and electronic commerce, the Kenya Communication (Amendment) Act 2009 was enacted by the parliament to amend the Kenya Communication Act, 1998. However there have been some concerns raised on certain provisions of this Act and the government is working on appropriate amendment in collaboration with key players in the media industry to ensure media freedom.

D. Key national priorities

68. These are areas identified from the government's policy documents and plans which dovetail with areas of priority identified by the public nationally during the collection of views on the policy for human rights in Kenya, the second report to the African Peer Review Mechanism and the Land Policy. Most of these priorities were also embodied in the *principles of partnership of the coalition government* signed on February 28, 2008, under the Kenya National Dialogue and Reconciliation Framework. The framework identified four main agenda items to move the country out of the political crisis that was witnessed after the 2007 presidential elections. The final goal of this political dialogue is to achieve sustainable peace, stability and justice through the rule of law and respect for human rights. Within the mentioned framework, there is commitment to address long-standing issues as a matter of priority. Implementation of these agenda items will have a lasting impact on human rights protection and realization in Kenya.

(a) Constitutional reforms

69. Constitutional reform in Kenya has assumed a special level of urgency due to numerous social, political and economic changes that Kenya has experienced in the last decade and as the normative framework of politics, governance and public power it is evident that it will only satisfy the Kenyan population if it incorporates major new developments in national political preferences, good governance and progressive public management principles.

70. The Constitutional review process in Kenya has been synonymous with the struggle for democracy and human rights. The process has been on-going for nearly two decades but it was not until 1997 that it formally started with the enactment of the Constitution of Kenya Review Commission Act. The Kenya review Commission produced a draft of a proposed constitution popularly known as the "Bomas Draft" which was later revised and was the subject of a referendum in November 2005. It was voted against. Part of the reason for the rejection was the failure to agree on certain issues which have been viewed as contentious due to divergent views that different groups hold.

71. The widespread violence that erupted in the country soon after the 2007 election provided additional impetus for the enactment of a new constitution. Indeed, one of the agendas of the Parties under the Kenya National Dialogue and Reconciliation was, among other things, the urgent need for constitutional reform in order to tackle issues that constitute underlying causes of prevailing social tensions, instability and the cycle of violence. Towards this end, Parliament enacted the Constitution of Kenya (Amendment) Act, 2008 and the Constitution of Kenya Review Act, 2008 to serve as the legal framework for achieving a new constitution. This established the Committee of Experts which is expected to finalize its work within twelve months from the date of the commencement of the Act. The draft that the Committee comes up with will be subjected to a referendum. If a consensus is achieved on the identified contentious issues, Kenya will get a new Constitution. It is important to note that the Bill of rights is not one of the contentious issues despite the fact that it provided for the three generations of rights.

(b) Judicial reforms in Kenya

72. Judicial Reforms are predicated upon a new constitution and constitutional amendments. This is expected to anchor judicial reforms, including financial independence, transparent and merit-based appointments, discipline and removal of judges, strong commitment to human rights and reconstitution of the Judicial Service Commission.

73. The Government established a taskforce to look into judicial reforms on 29th May, 2009 to look at the above issues which are considered necessary to strengthen and enhance the performance of the Judiciary in the short and long term, and to advise on how and when the proposed reforms should be carried out.

(c) Police reforms

74. Kenya's past human rights record and gains has been marred by allegations of human rights violations by Government security agencies. These range from allegations of extra judicial killings, torture to harassment which the Government has been unequivocal in condemning. There have been prosecutions of government security officers when investigations have indicated evidence of complicity or guilt in such violations though not to the level of expectations by Kenyans.

75. Agenda 4 of the Kenya National Dialogue and Reconciliation (KNDR) following Kenya's 2007 disputed presidential election results included the police service as one of the key institutions that needed urgent reforms. The reforms are intended to turn the Kenya Police and Administration Police into professional and accountable services able to provide effective security, protect and promote human rights in their work.

76. The Government appointed a National Task Force on Police Reforms which was gazetted on 8th May 2009 and handed in its report on 30th October 2009. The report made over 200 recommendations. The Cabinet has already approved the implementation of the recommendations which may be categorized into four pillars:

- Improved police accountability through the establishment of an Independent Policing Oversight Authority to ensure professional and independent investigations into complaints against police and their internal accountability mechanism
- Professionalize the police services and improve their welfare: through an overhaul of police training curriculum in line with democratic policing that emphasizes human rights protection, improved remuneration, general welfare and benefits
- Operational and administrative reforms: provision of adequate equipment and decentralization of decision making to the provinces to enhance efficiency, effective delivery of services and accountability to the citizens at the community levels and
- Institutional, legal and policy reforms: establishment of new institutions, new legislations and amendments to existing legislations and new policies to enhance policing coordination, deployment and performance. These include new policing structures with a dominant oversight, national security and policing policies, among others

These reforms are expected to significantly improve national security, the promotion and protection human rights in Kenya.

Transitional justice, national healing and reconciliation**(a) Tackling Impunity and corruption**

77. The problem of impunity in Kenya partly results from the challenges in ensuring that the principle of the rule of law is observed. The Kenyan constitution provides for the

institutions of the rule of law, including the separation of the powers of the three branches of government for checks and balances, a bill of rights and an independent judiciary. Nevertheless, there is need for concerted efforts to eradicate the patterns of human rights violations, abuse of office, corruption and the mismanagement of public resources in order to strengthen rule of law. Kenya has a long history of unaddressed human rights violations and economic crimes dating back to the colonial era.

78. Since 2003 the Government has expressed its commitment to addressing the problem of impunity for human rights violations as well as economic crimes. In July 2009 a Truth Justice and Reconciliation Commission (TJRC) was appointed to address past human rights violations and injustices. The Commission is not expected to handle perpetrators of post election violence but will only deal within its mandate of correcting injustices.

79. It is also expected that the ongoing constitution review process will culminate in a new constitutional order that creates a stronger policy, legal and institutional framework for the enforcement and promotion of human rights, prevention of corruption and other forms of social injustice.

(b) Tackling Political Violence

80. While Kenya has experienced political violence since the re-introduction of multiparty politics in early 1990s, the disputed elections of 2007 precipitated an unprecedented crisis and violence that left about 1,500 Kenyans dead and hundreds of thousands internally displaced. This brought to the fore the weaknesses in many legal and institutional frameworks governing elections in Kenya as well as the need to address long-standing grievances. The setting up of the transitional justice mechanisms discussed earlier were necessitated by this state of affairs. Specifically, having investigated into the actions and omissions of the State Security Agencies, the Commission on Post Election Violence made recommendations for a special tribunal to seek accountability against persons bearing the greatest responsibility for crimes, particularly crimes against humanity, relating to the 2007 General Elections in Kenya.

81. At the time of writing the report, the Government has agreed in principle to cooperate with The International Criminal Court as efforts to establish a local mechanism to try perpetrators continue. The International Crimes Act which also domesticates the Rome Statute and will largely facilitate this process.

(c) Resettlement of Internally displaced persons

82. Kenya's post-election violence has displaced more than 600,000 persons within the country since December 2007. Although violence-induced displacement is not a new phenomenon in Kenya, the magnitude, speed and intensity of this displacement were unprecedented. Clashes in the 1990s, also around general elections, displaced hundreds of thousands of Kenyans, many of whom remain displaced today. With the establishment of a coalition government on April 14, 2008, there was a need to transition from humanitarian relief to more permanent solutions for the IDPs. Their return from camps to their previous homes has significant political and economic implications for the government. The government's National Reconciliation and Emergency Social and Economic Recovery Strategy prioritizes quick resettlement, citing: promoting development (particularly in the agricultural sector); improving the national image abroad; preventing IDP camps from becoming fertile grounds for recruitment into militias and criminal gangs; and enhancing human rights of those displaced.

83. Tension and localized violence in some areas continue to prevent the large-scale reintegration or return of the displaced into communities. Some have faced attacks in various areas despite the existence of newly built police camps. On July 17, 200 persons

who had attempted to return to Ngirimoli, Kuniyak and Kipkelion districts in the Rift Valley were displaced once more to Nakuru district. This group cited continued insecurity, and lack of food and shelter. It is clear that the security of the IDPs is intrinsically linked to local reconciliation efforts. The government and other actors have initiated reconciliation efforts and conflict resolution mechanisms.

(d) Overcoming negative ethnicity

84. Ethnicity is still a very important factor in Kenya. It is highly politicised. The tendency to vote according to one's ethnic preference rather than policy options is still strong and so is the allocation of economic and other social resources. Public images of leaders are closely associated with their ethnic background rather than the soundness of their policies.

85. Given its multiplicity and deep historical and social foundations, it is both impossible and indeed undesirable to suppress let alone eliminate the ethnic factor in public policy issues in Kenya. The problem arises, however, when ethnicity is politicised and manipulated for other objectionable purposes. The crucial issue to be resolved is the role of negative ethnicity in the weakening of democracy and the effect it has on the promotion of human rights and development in Kenya.

86. The Government is committed to addressing the problem of negative ethnicity in order to ensure that the diverse Kenyan communities live together harmoniously and in peace. To this end, *The National Cohesion and Integration Act of 2008* which aims to encourage national cohesion and integration by outlawing discrimination on ethnic grounds and to provide for the establishment, powers and functions of the National Cohesion and Integration Commission has been enacted. The Commission has already been operationalised.

(e) Enhancing security

87. The Government of Kenya recognizes that this is a major concern for a majority of Kenyans and is already taking administrative and institutional reforms of the security institutions to make them more accountable to the public and to minimize conditions for abuse of power. Security issues in Kenya are exacerbated by both external and internal factors. External factors include; Kenya's porous borders, insecurity in neighbouring countries and the resultant proliferation of small arms and light weapons, influx of refugees and the threat posed by terrorism. Internally, security is threatened by organised criminal gangs which are partially a result of youth unemployment. The Government's capacity to effectively protect its citizen's human rights has been seriously compromised by limited institutional capacity and weak legal framework. This is compounded by an ineffective complaints mechanism against police infringements on citizens' rights.

(f) Tackling poverty

88. Poverty remains a major impediment to both the fulfillment of basic needs and the realization of the full potential of many Kenyans, particularly women and children. To improve equity and reduce poverty, efforts are being focused on universal primary education, improved access to basic health, expanded productive capacity in agriculture, development of the hitherto overlooked arid and semi-arid areas, and upgrading the living conditions for urban dwellers that have suffered from poor urban infrastructure and social services mainly due to high urbanization rates.

(g) Youth Employment

89. Creating employment for the youth has been prioritized not only due to the fact that 38% of Kenya's population is between 15-35 years of age, but this will also go a long way in tackling other issues like poverty and security risks. A lot of political violence has also been attributed to the availability of many idle youths.

(h) Access to Justice

90. Although the reform of the justice sector has remained a government priority since 2003, many Kenyans still face significant challenges in accessing justice. The government is committed to ensuring that the necessary reforms are undertaken in the justice sector to ensure accessible and timely justice to all Kenyans.

(i) Women's Rights

91. The government has given a commitment to the realization of the Millennium Development Goal on gender equality and women empowerment by 2015. There is also commitment to ensuring that gender issues are mainstreamed in all Government Ministries and Agencies at all levels. Important legislative, institutional and policy reforms continue to be undertaken to improve the rights of women. Indeed it is important to note that the Political Parties Act provides that a third of party officials be of either gender. This is an important step in promoting internal democracy and accountability. The realization of all human rights remains a major challenge to a large number of women owing to cultural, economic, institutional and political obstacles.

92. Women constitute over 50 per cent of Kenya's total population and comprise the majority of the work force in the agricultural sector ,which remains the backbone of Kenya's economy. In spite of this, women remain largely marginalized in terms of access and control of resources and social economic opportunities. For example, only 3 per cent of women possess title deeds. This severely limits the ability of women to access credit from the formal financial sector. Indeed, a majority of the 39 per cent of the Kenyan population without access to financial services are women.

93. The launch of the Women Enterprise Fund, marked an important milestone in Kenya's efforts towards addressing gender related economic imbalances in the society. The Women Enterprise Fund is a flagship project under the social pillar in the *Vision 2030* and the government will therefore continue to allocate more resources to the revolving fund in order to enhance its capacity to address gender inequality in a sustainable way.

94. Beyond the Women Enterprise Fund, the Government is also implementing the women employment affirmative action. This is intended to ensure that at least 30 per cent of new employees recruited into the public service are women.

95. Moreover, a national framework to monitor and document affirmative action in Government planning, budgeting, legislation and policy formulation has also been set up.

(j) Food Security

96. The International Food Policy Research Institute rates Kenya among the 30 countries with least food security in the world (October, 2009). Factors that have affected food insecurity at district/household level include, successive poor performance of the rains in the previous three seasons; significant decline in crop production; inadequate livelihood diversification; deterioration of terms of trade for the pastoralists and agro-pastoralists; sustained high food commodity prices; insecurity particularly in pastoral areas; widespread land degradation; livestock diseases and ensuing quarantines; perennial water scarcity and

the post –election violence where the country recorded a massive drop in tourism earnings and a rise in economic recession .

97. This assessment is in line with the findings of the Kenya Food Security Steering Group (KFSSG) which conducted the 2009 long rains food security assessment in late May and July 2009 covering 30 districts? At the beginning of August 2009 the country had about 500,000 MT of maize against a monthly requirement of 300,000 MT, suggesting possibilities of serious shortfalls by end of September.

98. The Government has come up with short and long term measures to achieve food security. These include management of moderate and severe acute malnutrition, giving food relief, water trucking, provision of drought resistant seeds, drilling and equipping of boreholes, provision of high value food under irrigation and construction/rehabilitation of irrigation schemes. *The Saidia Jamii Programme* (help the family) has also been designed to cushion the urban poor and vulnerable persons in the country from the food insecurity impacts. This will see over 100,000 poor and vulnerable persons, particularly those in informal settlements receive a 1,500 shillings monthly allowance for food in the pilot phase of the programme.

(k) Environmental Protection

99. Kenya is currently faced with serious environmental challenges that have a direct impact on food production, availability of water resources, energy and on the regional climatic conditions. The destruction of forests that are vital water catchment areas has drastically reduced Kenya's forest cover. Kenya is responding to these challenges. A process of environmental reform, as outlined in the Environmental Policy framework Paper which aims to tighten environmental management, policy and legislation in the country has started. The Country is currently trying to reclaim all the water towers that have been adversely affected by human settlement and activities. At the International level, Kenya is a signatory to a range of international conventions to protect the environment, such as the Convention on Climate Change, the Convention on Biodiversity and the RAMSA Convention on wetlands.

(l) Children's Rights

100. Despite the domestication of the Convention on the Rights of children with the passing of the Children's Act in Kenya, children continue to be subjected to sexual violence, prostitution, trafficking, labour and other forms of violations. While critics charge that the *Children Act* is far from perfect in its design and its enforcement, it remains a positive step that gives Kenyan children enforceable rights against adults and the government. The Government is committed to ensuring that the Child is protected from all harmful practices and violations.

101. In a special way, the Government has taken measures to protect orphaned children since they are particularly vulnerable to the cyclical effects of HIV/AIDS. They suffer from emotional trauma and psychosocial distress, lack of parental guidance, poverty, vulnerability to hazardous labour and sexual exploitation, and lack of access to education. To militate against this, the Government has put in place the Cash Transfer for Orphans and Vulnerable Children (CT-OVC) Project. This uses cash transfers to strengthen the ability of vulnerable households to protect and care for OVC, ensuring that orphans stay within their communities.

(m) Health

102. Access to health services remains a challenge in Kenya due to weak health infrastructure and lack of a national health insurance scheme. This is compounded by of

HIV-AIDS which has been declared as a national disaster, allowing for coordinated efforts against the pandemic.

(n) People with Disabilities

103. While the government has enacted some important legislation and adopted some progressive policies to promote the rights of those with disabilities, there are still gaps in harmonization of various policies interventions that the Government is addressing as a matter of priority.

(o) Education

104. In 2003, the government introduced the Universal Primary Education (UPE) policy which has significantly increased enrolment rates in the country. However, an estimated 1.3 million children remain out of school. Strengthening and ensuring effective implementation of policy reforms in the education sector to eliminate barriers to quality basic education remains a priority.

(p) Minority/Marginalized Groups

105. Addressing historical regional imbalances, exclusion and marginalization is the target of current budgetary and structural reforms. The government of Kenya has pursued an active strategy for the development of Kenya's Arid and Semi-Arid Lands (ASALs) for more than a decade. ASAL areas account for more than 80% of Kenya's land area yet hold only 20% of the population. Due to their low economic potential, these areas tended to be neglected in development strategies until, it was recognised that they merited special attention since (a) their inhabitants are often amongst Kenya's poorest; (b) they need to support and feed a growing population if they are not to become an increasing burden on the rest of the economy (c) they are minorities.

106. The rights of these groups will be recognized and protected" (Draft Land policy; p.6).1. The reason is that "minority communities are culturally dependant on specific geographical habitats. Over the years, they have lost access to land and land based resources that are key to their livelihoods following the gazettelement of these habitats as forests or national reserves or their excision and allocation to individuals, who subsequently obtain titles to the land. These communities are now recognized as minority groups deserving special protection by the State with regard to their land rights and ability to manage their natural resources in a sustainable manner.

107. To protect and sustain the land rights of the minorities, the Government has committed itself to:

(a) Undertake an inventory of the existing minority communities with a view to obtaining a clear assessment of their status and land rights; and

(b) Facilitate the practice of their land tenure and resource management systems by providing a suitable legal framework" (Draft land policy § 69-71).

(q) Land reforms

108. Since colonialism, land distribution, administration and management has been a source of conflict and tension in Kenya. The government recognizes that there are weaknesses in these areas and has developed a draft National Land Policy that seeks to comprehensively address the problems around land. The draft policy was approved by Cabinet on June 25th, 2009 and a sessional paper on the same is in the final stages of preparation for discussion by parliament. The Key recommendations of the national policy include issues on land administration, access to land, land-use planning, addressing

historical injustices, environmental degradation, conflicts, proliferation of unplanned informal urban settlements, outdated legal frameworks and information management systems. It also addresses constitutional issues such as compulsory acquisition of land and relevant compensation, development control as well as tenure system.

109. As the discussion of the sessional paper is awaited, some land reforms are being implemented. These include amending the law to provide for a Land Titles tribunal and a technical committee has been established to determine the modalities of for the harmonisation of land laws to make them more responsive to service delivery. Under land administration, the Ministry of lands has started addressing the issue of poor records to help curb a lot of mal practices and facilitate service delivery. The Ministry of Lands is also currently addressing the historical coastal land issues of tenants-at-will and squatters, by taking an inventory of land that is either idle, heavily squatted on or where members of the public are tenants-at-will.

E. Cooperation with human rights mechanisms

110. Kenya attaches great importance to the promotion and protection of human rights as universally shared principles and norms enshrined in the United Nations Charter, the Universal Declaration of Human Rights and other relevant human rights instruments. Kenya is actively involved in the work of the key human rights organizations and has served on the Commission of Human Rights during the terms, 1984-1986; 1992-1994; 2001-2003 and 2004-2005. The participation of Kenyan nationals in various committees such as the Human Rights Advisory Committee and in other capacities as special rapporteurs and mandate holders is a testimony to the country's commitment to the cause of human rights. In addition, Kenya has hosted various regional and international human rights meetings.

111. In line with Kenya's efforts to enhance, promote and protect human rights, Kenya is committed to Working closely with the Special Procedures of the treaty bodies and mechanisms of the Council by inviting Special Rapporteurs to visit Kenya and extending maximum cooperation to them. The following Special Rapporteurs have already visited Kenya:

- Special Rapporteur on the Rights of Indigenous people
- Special Rapporteur on the Internally Displaced Persons
- Special Rapporteur on Torture
- Representative of the UN Secretary General on Crimes Against Humanity
- Special Rapporteur on Housing as a component of the right to an adequate standard of living
- Special Rapporteur on extrajudicial, arbitrary or summary executions

F. Expectations in terms of technical assistance

112. In order to consolidate the gains that Kenya has made in human rights, assistance would be welcome to build enough capacity to develop appropriate human rights indices to enable the country monitor and evaluate the achievement of different rights on a continuous basis. This will also improve the quality of reports to the treaty bodies, follow-up on the concluding observations and recommendations of special procedures and mechanisms of the Human Rights Council.

Kenya is also in the process of enacting a new Constitution and would therefore call for assistance in ensuring an operationalisation process which is human rights respecting.

Conclusion

National policy and action plan for human rights

113. Despite all the challenges that the country faces in ensuring the realization of all the human rights, Kenya is committed to the promotion and protection of human rights at the national and international levels and will continue to support the initiatives and necessary reforms towards this end. For Kenya, there is a firm recognition that all human beings are equal and as was reaffirmed in Vienna in 1993, that all human rights are universal, inter-dependent and inter-related.

114. In this regard, Kenya is in the process of finalizing the development of a National policy and Action Plan for Human rights through a very wide consultative process. It will be used to: audit the country's strengths, weaknesses, opportunities and threats in the protection and promotion of human rights; enable the government to rationally set human rights goals and priorities within achievable time frames; and will be a tool for planning the allocation and management of resources in a manner that is consistent with the priorities identified for the promotion, protection and enhancement of human rights in Kenya. The National Policy and Action Plan for human rights will therefore clearly link human rights issues to the country's national planning and development agenda especially in ensuring that Kenya achieves one of the *Vision 2030* goals of becoming a human rights respecting state.
