



**Universal Periodic Review**

**Annual Progress Report  
22<sup>nd</sup> September 2010 - 21<sup>st</sup> September 2011**

**An Assessment by Stakeholders of Government's  
performance in implementation  
of UPR Recommendations**

**Nairobi, Kenya  
September 2011**

## Table of Contents

<i>Acronyms</i> .....	<i>v</i>
<i>Acknowledgements</i> .....	<i>vi</i>
<i>Executive Summary</i> .....	<i>vii</i>
<i>Introduction</i> .....	<i>x</i>
<b>Progress On Implementation</b> .....	<b>1</b>
<b>1 Access To Justice</b> .....	<b>1</b>
1.1 Police Reforms.....	1
1.2 Judicial Reforms.....	2
1.3 Investigation and punishment of instances of extra-judicial killings.....	3
1.4 Recommendations .....	3
<b>2 Transitional Justice</b> .....	<b>4</b>
2.1 Restoring confidence in the TJRC Process.....	4
2.2 Resettlement and compensation of IDPs .....	4
2.3 Compliance with Government obligations under the ICC Statute.....	5
2.4 Recommendations .....	5
<b>3 Protection Of Human Rights Defenders and Witnesses</b> .....	<b>6</b>
3.1 Implementation by Government .....	6
3.2 Implementation by civil society.....	6
3.3 Recommendations .....	6
<b>4 Freedom of Expression and Access to Information</b> .....	<b>7</b>
4.1 Legal Regime protecting Freedom of Information and Access to Information.....	7
4.2 Release of investigation reports on attacks and harassment of journalists .....	7
4.3 Recommendations .....	7
<b>5 The Death Penalty</b> .....	<b>8</b>
5.1 Status of implementation .....	8
5.2 Recommendations .....	8
<b>6 Torture and Ill Treatment</b> .....	<b>9</b>
6.1 Implementation by Government .....	9
6.2 Implementation by civil society.....	9
6.3 Recommendations .....	10
<b>7 Children’s Rights</b> .....	<b>11</b>
7.1 Raising the age of criminal responsibility in line with international standards .....	11
7.2 Increasing accessibility to education .....	11
7.3 Eliminating Child Labour.....	12
7.4 Ensuring the Protection of Children’s Rights .....	13
7.5 Ratification of Conventions and Optional Protocols Addressing Children’s Rights.....	14
7.6 Recommendations .....	14
<b>8 Women’s Rights</b> .....	<b>15</b>
8.1 Implementation of constitutional provisions on representation of women .....	15
8.2 Put in place effective measures to deal with violence against women .....	16
8.3 Improved access to reproductive healthcare services for women .....	17
8.4 Emerging Issues .....	18
8.5 Recommendations .....	18
<b>9 Rights of Minorities and Indigenous Peoples</b> .....	<b>19</b>
9.1 Implementation of the <i>Endorois</i> Decision .....	19
9.2 Designing and Prioritizing Affirmative Measures And Development Programmes .....	20
9.3 Ratification of ILO 169.....	20
9.4 Recommendations .....	20

<b>10</b>	<b>Sexual Orientation and Gender Identity .....</b>	<b>21</b>
10.1	Enactment of a comprehensive Anti-Discrimination Law.....	21
10.2	Development of appropriate health policies to protect the health rights of sexual minorities .....	21
10.3	Development of appropriate policies on transgender and intersex persons .....	22
10.4	Active prosecution of perpetrators of violence targeting LGBTI persons.....	23
10.5	Recommendations .....	23
<b>11</b>	<b>Rights of Persons with Disabilities .....</b>	<b>24</b>
11.1	Promotion and Protection of the Rights of Persons with Disabilities.....	24
11.2	Recommendations .....	25
<b>12</b>	<b>Citizenship .....</b>	<b>26</b>
12.1	Implementation by Government .....	26
<b>13</b>	<b>Economic, Social and Cultural Rights .....</b>	<b>27</b>
13.1	Progressive realization of the right to food and water .....	27
13.2	Policy formulation to realize the right to food .....	27
13.3	Right to water .....	28
13.4	Enhancement of Anti-Poverty Programmes in the Country.....	28
13.5	Ratification of the Optional Protocol to the International Covenant On Economic, Social And Cultural Rights (OP-ICESCR).....	30
13.6	Recommendations .....	30
<b>14</b>	<b>Ratification of International Instruments.....</b>	<b>31</b>
<b>CONCLUSION.....</b>		<b>32</b>

## Acronyms

ACHPR	- African Commission on Human and Peoples' Rights
CIC	- Commission for the Implementation of the Constitution
FGM	- Female Genital Mutilation
HRC	- Human Rights Council
IDPs	- Internally Displaced Persons
ILO	- International Labour Organization
IMLU	- Independent Medico-Legal Unit
KIPPRA	- Kenya Institute for Public Policy Research and Analysis
KNCHR	- Kenya National Commission on Human Rights
KSC-UPR	- Kenya Stakeholders Coalition on the Universal Periodic Review
OHCHR	- Office of the High Commissioner for Human Rights
OP-CAT	- Optional Protocol to the Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment
OP-CEDAW	- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
OP-ICESCR	- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
PEV	- Post-Election Violence
The Outcomes Charter	- Stakeholders Outcomes Charter on the Universal Periodic Review of Kenya
TJRC	- Truth, Justice and Reconciliation Commission
UPR	- Universal Periodic Review
UN	- United Nations

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The Coalition would also like to thank Lawrence Mute (KNCHR) for providing guidance and editing the report, and the KSC-UPR Steering team and all the members who gave inputs at various stages to ensure the report was completed.

This report contains an assessment of the Government of Kenya's performance in implementing recommendations made to it during the Universal Periodic Review (UPR).

This assessment has been undertaken against the backdrop of the key expectations of the Kenya Stakeholders Coalition for the UPR (KSC-UPR) as outlined in the Outcomes Charter which was launched in February 2011 and shared with the Government. The KSC-UPR comprises human rights organizations as well as Kenya's national human rights institution, the Kenya National Commission on Human Rights (KNCHR).

The assessment follows the thematic areas around which the UPR recommendations were made. These areas are: 1) access to justice, 2) transitional justice, 3) protection of human rights defenders and witnesses, 4) freedom of expression and access to information, 5) the death penalty, 6) torture and ill-treatment, 7) children's rights, 8) women's rights, 9) the rights of minorities and indigenous peoples, 10) sexual orientation and gender identity, 11) the rights of persons with disabilities, 12) citizenship, 13) economic and social rights, and 14) ratification of international instruments.

The analysis begins with the recommendations on access to justice, where the key finding is that judicial reforms appear to be on track while police reforms have not been carried out with the same effectiveness and generally seem to lag behind. Related to access to justice is transitional justice, where we find that despite the on-going criminal process at the International Criminal Court, the Government is still non-committal in prosecuting middle and lower-level perpetrators of the post-election violence (PEV) and providing remedies for victims. No local mechanisms have been put in place and there are no efforts to establish a local tribunal to close the gap on impunity by trying the many perpetrators of PEV. Further, a lasting solution is yet to be found for the thousands of Internally Displaced Persons (IDPs), including IDPs from past clashes (1992 and 1997) and IDPs from other causes such as natural disasters.

On protection of human rights defenders (HRDs), our finding is that the Government has not yet released an official report on the deaths of Oscar King'ara and Paul Oulu, two HRDs who were killed two years ago. Threats to HRDs continue as evidenced by instances of deportation of HRDs from the country. The Government has also not heeded the recommendation to extend an invitation to the United Nations (UN) or the African Special Rapporteur on HRDs.

Recommendations touching on freedom of expression and access to information are also yet to be implemented and a Freedom of Information Bill is yet to be tabled in Parliament, despite the Government's commitment that it would enact a Freedom of Information Law by the end of 2010. We find that little has been done so far to resolve the pending cases of harassment and attacks on journalists.

The Government is also yet to abolish the death penalty *de jure*, although a moratorium still exists on its application and the Court of Appeal has also in a recent decision declared application of the mandatory death penalty as unconstitutional.

We note recommendations around protection from torture and ill-treatment will largely depend on enactment of a comprehensive anti-torture legislation. This is yet to happen, though a draft Prevention of Torture Bill has been developed. Of particular importance is also ratification of the Optional Protocol to the Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment ('OP-CAT') which will enable more effective monitoring of places of detention. This ratification is yet to happen. The report however notes positively the drafting of the Coroner's Bill, which, if passed into law, will create the office of the Coroner. This will greatly improve the investigation of deaths resulting from torture and extra-judicial killings as well as forced disappearances.

On children's rights, we find that the Government has not made much progress towards implementation of the UPR recommendations: the age of criminal responsibility has not been increased from eight to ten as was anticipated; enrolment of children in school, particularly those with special needs, is yet to increase and girls from poor households still miss out on school as they cannot afford sanitary towels.

Implementation of the recommendations on women's rights has also not taken place. Several laws that seek to protect women's rights (the Family Protection Bill, the Marriage Bill and Equal Opportunities Bill and the Matrimonial Property Bill) which have been outstanding for a long time are yet to be enacted into law. Violence against women remains prevalent, yet the measures to contain this are largely lacking. Constitutional provisions regarding the representation of women in Parliament and public offices have also come under threat.

Turning to the rights of minorities and indigenous people, we note a positive step in the recognition of these groups under the Constitution. This is particularly important since the Government's initial response during the UPR had been that there are no indigenous people in Kenya. The KSC-UPR however notes that it is too early to measure the impact of the constitutional provisions on the rights of indigenous people as they are yet to be implemented. Further, the Government is yet to implement the decision of the African Commission on Human and People's rights regarding the *Endorois* community.

Another issue which has benefited greatly from the 2010 Constitution is the rights of persons with disabilities. The report takes positive note of the constitutional provisions on the promotion and protection of the rights of persons with disabilities as their implementation will lead to realization of the UPR recommendations. We however find that the Disability Policy has not yet been finalized, five years since it was first developed, and the Persons with Disabilities Act of 2003 is yet to be amended to conform to the Constitution and the Convention on the Rights of Persons with Disabilities.

On citizenship, it is our finding that there has been partial implementation through enactment of a Citizenship and Immigration Act, 2011. It is however still too early to measure the impact of this on the groups of people who have over the years been denied citizenship. Other related laws (The Births and Deaths Registration Bill, The Identification and Registration of Citizens Bill and the Refugee Bill) are yet to be enacted; hence a holistic assessment of the legal framework is not possible at this stage.

Regarding economic, social and cultural rights (ECOSOC), we find that a number of poverty-alleviation programs have been on-going and budgetary allocation to most of these programs have increased. However, the impact of these programs on alleviating poverty has been minimal. An effective monitoring

and evaluation system for these programs is also lacking within the various Government ministries where they are housed. Basic ECOSOC rights such as the right to food have not been achieved and the country often faces food crises which rise to catastrophic levels yet the Government has not managed to put in place sustainable solutions.

On ratification of international human rights instruments, we find that this has been put on hold pending the enactment of a Ratification of Treaties Bill, which is one of the requirements under the Constitution.

We acknowledge that the UPR process happened at a time when the country was undergoing a constitutional review process. The 2010 Constitution ushered in a new era characterized by an expanded bill of rights and several other changes which would alter the country's human rights landscape. It was only natural that the focus from August 2010 would shift to implementing constitutional provisions. In compiling this report therefore, the KSC-UPR has taken account of these constitutional and subsequent legislative developments and their impact on implementation of the UPR recommendations. We note that effective implementation of the constitutional provisions would in fact lead to implementation of many UPR recommendations. There is however need to go beyond the constitutional provisions and implement each and every recommendation which the Government committed to.

While implementation of the recommendations is the responsibility principally of the Government, this report discusses the various efforts made by civil society in complimenting the Government's work towards implementation. The report also contains recommendations that are critical towards fulfilling the State's human rights obligations and commitments in the UPR process.

## Introduction

The review of Kenya under the Universal Periodic Review (UPR) was finalized on 22<sup>nd</sup> September 2010 with the adoption of its outcomes report by the Human Rights Council (HRC). 158 recommendations were made to Kenya during the UPR Working Group session in May and at the September adoption of its report, the State indicated that only the recommendation on decriminalization of same sex marriages remained totally rejected.

The four year period between 2006 and 2010 within which Kenya was reviewed was a test of the State's promise to protect and uphold the human rights of every Kenyan.<sup>1</sup> An echoing sentiment during the review process was the need for Kenya to carry out urgent reforms, many of which would be anchored in the Kenya Constitution 2010. Almost a year following the promulgation of the Constitution, which closely coincides with a year since the Human Rights Council considered and adopted the outcome of the review on Kenya, is a unique opportunity to assess the country's progress towards the greater realization of human rights.

The Kenya Stakeholders Coalition for the UPR (KSC-UPR) in partnership with the Kenya National Commission on Human Rights (KNCHR), have since the conclusion of the process, embarked on the follow-up phase, bearing in mind that the recommendations made during the review would only meet the objectives of the UPR if implemented. The Stakeholders prepared an outcomes charter which established the framework for the monitoring work of the next four years. This Charter highlighted the key human rights priority areas for Kenya on which Stakeholders would focus until Kenya's next review, to ensure implementation of the identified issues and ensure State compliance with the recommendations in fulfillment of its obligations.

This report is the first annual progress report which assesses the Government's performance so far in implementing the UPR recommendations. The aim of this report is to identify and document milestones as well as challenges in implementation of the UPR recommendations.

<sup>1</sup> Kenya Stakeholders Coalition For The Universal Periodic Review (2<sup>nd</sup> November 2009)

## PROGRESS ON IMPLEMENTATION

### 1 Access To Justice

#### Introduction

A broad range of recommendations were made that went beyond justice for post-election violence (PEV) victims and focused generally on police and judicial reforms as means of enhancing access to justice.<sup>2</sup>

The State was urged to fully implement the proposals made by the National Task Force on Police Reforms (the Ransley Task Force); accelerate the judicial reform process; establish an independent, credible and authoritative Police Oversight Authority; and strengthen and promote respect for civil and political rights through the judicial process.

The State was further urged to provide human rights training to judges, police officers, prison guards and all law enforcement officers; ensure that the Constitution took greater account of the dimension of human rights protection and promotion; unite behind a new constitution through a fair referendum, and fully implement the result; set out how it will act against the culture of impunity, including for perpetrators of extrajudicial killings; and strengthen the law on the use of firearms by police officers, by introducing a policy of "zero tolerance" for their abusive use.

The Stakeholders expected that implementation of these recommendations would entail a reformed, responsive, effective and accountable police service and judiciary. Particular expectations were effective implementation of the Ransley Task Force Report; implementation of constitutional provisions relating to police and judicial reforms and investigations and punishment in instances of extra judicial killings and redress to victims.

The Constitution, on a positive note, explicitly recognizes access to justice as a right for all Kenyans. Wide-ranging reforms are however required to make this right enforceable.

#### 1.1 Police Reforms

##### Implementation by Government

The Ransley Task Force had made over 200 recommendations to correct and improve service delivery by the Kenya Police. In January 2010, the Government formed a 15- member Committee to oversee implementation of these recommendations. This Committee embarked on an implementation plan which was projected to cost KShs.78 billion over a period of three years (2010-2013). One of the initiatives of this Committee was a new curriculum for the Police, unveiled in March 2011 which extended the duration of training for police officers.<sup>3</sup>

The 2010 Constitution required that all police officers undergo vetting. In June 2011, the Government

<sup>2</sup> Recommendations 101.15,101.20,101.21,101.22, 101.26, 101.31- 101.34,101.61- 101.64, 101.69, 101.72 and 101.73.

<sup>3</sup> Under the new curriculum the Kenya Police, Administration Police (AP) and the General Service Unit (GSU) recruits would be required to undergo 15 months of intensive training as opposed to the usual six months. The cadet Police Officers would undergo 21 months of training including 3 months internship. A compulsory three-month internship was also introduced within the curriculum.



began this process. However, this exercise was opaquely carried out without any guidelines and in a manner that was not transparent. Following protests by an extremely vigilant public, KNCHR and the civil society, the controversial vetting exercise was halted to await legislative guidelines.

To implement constitutional provisions on police reforms, several bills have been developed, namely the National Police Service Bill, the National Police service Commission Bill and the Civilian Police Oversight Bill. These Bills await enactment by Parliament.

## Implementation by Stakeholders

KNCHR developed a simplified version of the Ransley Task Force Report. This was disseminated to different regions in the country with the dissemination forums being used as avenues to educate the public on the various aspects of police reforms. The civil society was also involved in the review of impending bills (National Police Service Bill, Police Service Commission Bill and Independent Police Oversight Authority Bill) and made suggestions for improvement.

### 1.2 Judicial Reforms

Judicial reforms anchored in the Constitution included establishment of an independent Judicial Service Commission. The Constitution also required that magistrates and judges in office at the time the constitution came into force should undergo vetting. In line with this and the recommendations which had been made during the UPR, stakeholders expected to see the appointment of a new Chief Justice as well as effective vetting of judges and magistrates as required by the Constitution. A law for vetting judges and magistrates was enacted and the Judges and Magistrates Vetting Board has already been appointed.

The Judicial Service Commission has been involved in recruitment for judicial officers,<sup>4</sup> a process largely viewed as transparent.

## Implementation by stakeholders

The Vetting of Judges and Magistrates Act (No. 2 of 2011) was passed in February 2011. While this was a welcome step towards reforming a judiciary that had long lost the public's confidence, the civil society was concerned that the vetting should comply with rules of natural justice. The legislation as enacted did not contain clear guidelines or the threshold which needed to be met when determining the suitability of judges and magistrates to continue serving. KNCHR therefore developed a tool which outlined the vetting criteria and delineated parameters for the Vetting Board to ensure that any discretion exercised by the Board would not be arbitrary. KNCHR will submit this tool to the already constituted Board in the belief that the Board will adopt it as one of its operational tools.

<sup>4</sup> So far a Chief Justice, his Deputy, 5 Supreme court judges and 28 High Court Judges have been appointed

### 1.3 Investigation and punishment of instances of extra-judicial killings

With regard to investigating and punishing instances of extra-judicial killings and providing remedies to victims, there have been no reported instances of prosecution or remedies. This issue still remains unresolved for many victims who have suffered as a result of police and security forces excesses.

### 1.4 Recommendations

Judicial reforms appear to be on track, largely through the efforts of the newly constituted Judicial Service Commission. Police reforms have however not been carried out with the speed and effectiveness which was expected, resulting for instance in the termination of the vetting process for police officers.

Our recommendations therefore are that:

- The police reforms should be accelerated and they should encompass both the constitutional provisions and the recommendations of the Ransley Task Force.
- While extra-judicial killings have been on the decline, it is still important that past cases be investigated, their perpetrators prosecuted and victims provided with appropriate remedies.

## 2 TRANSITIONAL JUSTICE

### Introduction

Recommendations made to the State in this regard centered on the establishment of a credible Truth, Justice and Reconciliation Commission ('TJRC'); establishment of a credible local tribunal; and full cooperation with the International Criminal Court (ICC).<sup>5</sup>

The Stakeholders expectations from these recommendations were that the State would take measures to restore confidence in the Truth, Justice and Reconciliation process; hasten to put in place a comprehensive and transparent programme for resettlement and compensation of all Internally Displaced Persons ('IDPs') in the country; comply with Government obligations towards the ICC in accordance with the Rome Statute and reaffirm its commitment to effectively investigate and prosecute perpetrators of all post-election violence crimes.

### 2.1 Restoring confidence in the TJRC Process

#### Implementation by Government

The credibility of the TJRC was questioned due to allegations of lack of integrity of the Chairperson, Bethwel Kiplagat. The Government appointed a tribunal to investigate these allegations; but this process was halted following a challenge filed in court by the Chairperson. Due to these frustrations, the TJRC began the bulk of its work a year late. Consequently, though, the TJRC has been granted a six months extension from November 2011 to enable it discharge its mandate effectively. The hearings conducted so far have also been limited in scope and have tended to concentrate only on certain incidents such as the Wagalla massacre. Further, suspected perpetrators have mainly appeared in Nairobi as opposed to sites of the incidences.

There is also lack of complementarity and harmony on the different truth-seeking mechanisms. Each mechanism, from the TJRC, prosecutions (national, regional and international), to legal, policy and institutional reforms have been pursued as stand-alone processes, without regard to duplication of roles or taking into account unaddressed gaps.

### 2.2 Resettlement and compensation of IDPs (including IDPs from earlier conflicts such as the 1992 and 1997 general elections)

The Government's approach to resettlement has mainly targeted IDPs displaced by the 2007/2008 PEV, leaving unattended IDPs displaced before, after or elsewhere as a result of other factors such as natural disasters. Efforts have been made to resettle and offer reparations to the 2007/2007 PEV IDPs. However, many IDPs are still in the camps awaiting resettlement, while others are yet to get the Ksh. 10,000 (start-up fund) and Ksh. 25,000 (for housing) among other support programmes.<sup>6</sup> A Parliamentary Select Committee established in November 2010 to investigate the protection and assistance of IDPs is yet to

<sup>5</sup> Recommendations 101.23- 101.25, 01.65- 101.68,101.75-101.83,101.116- 101.118, 102.13- 102.15.

<sup>6</sup> These figures are tokens which are not based on any international standards for reparations (see for instance the UN Basic Principles on the Rights to remedy).

issue a report on its findings.

A draft policy and cabinet memo have been developed by the Government, civil society and UN agencies under the Protection Working Group on Internal Displacement to seek durable solutions to the issues. The Government has also committed to ratify the AU/ Kampala Convention on IDPs.

Thus, while there are clear attempts to initiate legal and policy measures, there is laxity on effecting the administrative and institutional frameworks to ensure effective and timely resettlement, reparations and other remedies and support to all the IDPs in Kenya. Again and as indicated above, the IDPs interventions have been driven as a stand-alone activity yet it should be part of the greater transitional justice processes in Kenya.

### 2.3 Compliance with government obligations under the ICC Statute and commitment to prosecute perpetrators of all post election violence crimes

In December 2010, the ICC issued summons against six individuals in Kenya over their roles in the PEV. The initial appearance of the suspects before the Court was held in April 2011 and the process has reached the confirmation of charges hearing stage. The Government did not however establish a local tribunal for investigation and prosecution of middle and lower level perpetrators, leaving a dangerous gap which could perpetuate impunity. Instead, the Government engaged in diplomatic efforts to garner support for the referral and deferral of the Kenyan cases, and challenged the admissibility of the cases before the ICC. At the same time, Parliament passed a motion urging the Government to opt out of the Rome Statute. All this is illustrative of the Government's non-committal stand in prosecuting perpetrators of PEV and providing remedies for victims.

### 2.4 Recommendations

- It is important that the country does not approach another election with the crimes committed during the past election unaddressed. The Government should put in place a local mechanism to bring to justice perpetrators of the 2007 PEV. Since it has not been possible to establish a special tribunal, the Government should consider conferment of jurisdiction to the High Court to try the perpetrators of the international crimes committed.
- Resettlement of IDPs should be finalized as a matter of urgency, while addressing reparations for all IDPs (including IDPs from the 1992 and 1997 clashes).



### 3 PROTECTION OF HUMAN RIGHTS DEFENDERS (HRDs) AND WITNESSES

#### Introduction

Recommendations in this regard were that the State should ensure the effective protection of witnesses and HRDs by prioritizing the full operationalization of the various witness protection institutions; and investigate and punish all instances of harassment and attacks against HRDs and reaffirm its commitment to protect HRDs and witnesses by extending standing invitations to Special Rapporteurs to assess the situation in the country.<sup>7</sup>

#### 3.1 Implementation by Government

So far, the Government has not released an official report on the death of Oscar King'ara and Paul Oulu. Threats to HRDs continue as evidenced by instances of deportation of HRD's.<sup>8</sup> The Government has not extended an invitation either to the UN or the African Special Rapporteur on HRDs.

#### 3.2 Implementation by Stakeholders

In 2011, The Independent Medico-Legal Unit (IMLU), Release Political Prisoners(RPP), The Kenyan Chapter of International Commission of Jurists (ICJ-Kenya) and KNCHR have engaged in a collaborative effort to combat extra-judicial killings and threats to HRDs and witnesses by assisting in seeking redress. In May 2011, presentations on the status of extra-judicial killings in 2011 were made before a meeting of diplomatic missions convened by the British High Commission at the request of RPP.

In April 2011, IMLU conducted a medical-legal training workshop for forty HRDs from the grassroots nationwide to enhance their capacity in investigation, documentation and reporting of torture and related violations.

#### 3.3 Recommendations

The State should put in place comprehensive legislation for the protection of HRDs. The Government must desist from harassing or preventing HRDs from carrying out their work.

<sup>7</sup> Recommendations 101.43,101.88.-101.89

<sup>8</sup> Clara Gutteridge, a human rights defender and a British Citizen, was deported from Kenya on 11<sup>th</sup> May 2011. She was investigating counterterrorism-related rights violations in Kenya and Uganda as part of a fellowship for the Open Society Justice Initiative, and was entering the country at the invitation of the Kenya National Commission on Human Rights.

### 4 FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

#### Introduction

During the Review session, the State was urged to enact as a matter of urgency the Freedom of Information Bill; review its national legislation on freedom of expression so that it fully complies with the relevant provisions of the International Covenant on Civil and Political Rights; Investigate harassment and attacks against journalists in order to bring those liable to justice; and Engage in a participatory and inclusive process with civil society in the implementation of UPR recommendations.<sup>9</sup>

From these recommendations, the Stakeholders expected that the Government would put in place a progressive legal regime protecting freedom of expression and access to information. Specifically, the Stakeholders expected the enactment of a Freedom of Information Bill before 2011, as well as release of investigation reports on attacks and harassment of journalists.

#### Implementation by Government

##### 4.1 Legal Regime protecting Freedom of Information and Access to Information

The Freedom of Information Bill has not yet been enacted and there are no efforts to table the Bill in parliament. Further, there are still several laws in existence that have the potential to restrict press freedom and freedom of expression, such as The Official Secrets Act (Cap 187), The Books and Newspapers Act (Cap. 111) and the Preservation of Public Security Act (Cap. 57).

##### 4.2 Release of investigation reports on attacks and harassment of journalists

Little has been done so far to resolve pending cases of harassment and attacks on journalists. One such case is that of Simon Mbugua, the former Member of Parliament of Kamukunji, who attacked a reporter from the Star newspaper in April 2011 and threatened an Editor with Nation Television in March 2011. A prison officer also reportedly attacked a photographer with Citizen TV in Eldoret in June 2011. Given the weak protection base in which journalists operate, nobody has come out to condemn or pursue these incidences. Stakeholders also expected a report on the raid of the Standard Group offices which is yet to be released, almost four years after the incident.

Article 35 of the Constitution of Kenya protects freedom of expression and access to information. The full realization of this provision is dependent on the enactment of a comprehensive Freedom of Expression and Access to Information law.

##### 4.3 Recommendations

- The Government should scale up efforts to enact comprehensive Freedom of Information Legislation
- The Government should release the investigation reports on harassment and attacks of journalists and provide redress to the victims and their families.

<sup>9</sup> Recommendations 101.10 and 101.87

## 5 THE DEATH PENALTY

### Introduction

Recommendations made in this regard centered on abolition of the death penalty and ratification of the 2<sup>nd</sup> Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).<sup>10</sup> The State initially rejected this recommendation but later accepted that it would work towards abolition. Stakeholder expectations were a published state position on abolition of the death penalty and also a plan of action for civic education and other measures towards abolition.

### 5.1 Status of implementation

So far, the death penalty remains on the statute books, although a moratorium still exists on its application. A positive development is the decision of the Court of Appeal in July 2010<sup>11</sup> in which the Court ruled that the automatic nature of the death penalty in Kenya for murder violates the right to life and amounts to inhumane punishment. The Court further declared unconstitutional the application of a mandatory death sentence on all prisoners convicted of murder (and held that this would apply to other offences for which the mandatory death penalty is provided). In addition, it also stated that holding a person on death row for more than three years would be unconstitutional.

### 5.2 Recommendations

- The Government should take the lead in educating the public on the need for abolition of the death penalty.

<sup>10</sup> Recommendations 103.1 and 103.2.

<sup>11</sup> *Godfrey Ngotho Mutiso v The Republic*, Criminal Appeal No. 17 of 2008, available at <http://kenyalaw.org/DownloadsFreeCases/76411.pdf>, last accessed on 1<sup>st</sup> September 2011

## 6 TORTURE AND ILL TREATMENT

### Introduction

The key recommendations arising from states at the UPR were the eradication of the use of torture and ill treatment by public officials as well as prosecution and punishment of those responsible. The State was also urged to accede to the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT).<sup>12</sup>

The stakeholders expected that the State would enact and make operational comprehensive Prevention of Torture legislation and accede to the OP-CAT.

### 6.1 Implementation by Government

The Ministry of Justice, National Cohesion and Constitutional Affairs supported stakeholder efforts towards and participated in development of a Prevention of Torture Bill which aims to domesticate the Convention Against Torture and provided a comprehensive framework on protection against torture and ill-treatment. This Bill was launched in June 2011 by the Minister for Justice.

A Coroner's Bill has also been developed which if passed into law will create the Office of the Coroner, which will greatly improve the investigation of deaths resulting from torture and extra-judicial killings as well as forced disappearances.

### 6.2 Implementation by Stakeholders

Through a collaborative effort, KNCHR and non-governmental organizations (IMLU, ICJ-KENYA and Muslims for Human Rights) spearheaded the development of the Prevention of Torture Bill in November 2010. The Bill provides a legislative framework which has been lacking and without which there cannot be any effective protection against torture. Significantly, the Bill provides a definition of torture in line with CAT and criminalizes torture and other cruel, inhuman or degrading treatment. The Bill also provides stiff penalties for those convicted of offences and seeks to establish institutional mechanisms for the support and assistance of victims of torture. The Bill has been presented to the Commission for Implementation of the Constitution (CIC) for consideration before being presented to Parliament for debate.

Further, in the period under review, IMLU held training for 24 lawyers from its national network to enhance their capacity in forensics, emerging international jurisprudence on torture and constitutional developments.

IMLU also filed a case<sup>13</sup> to seek redress for victims allegedly tortured by the Kenyan military during *Operation Okoa Maisha* in 2008. ICJ-Kenya joined the matter as *amicus curiae*. KNCHR and Human Rights Watch representatives are expected to testify at the hearing having prepared reports on the same violations in 2008. The case also relies on evidence from the Concluding Observations of the UN Committee against

<sup>12</sup> Recommendations 102.12, 101.46, 101.84, 101.3, 102.2

<sup>13</sup> East Africa Court of Justice Ref. No. 3 of 2010

Torture (Nov 2008) and the report of UN Special Rapporteur on Forced Disappearances, Summary and Arbitrary Executions.

In June 2011, IMLU and ICJ-Kenya in collaboration with Research International, released the findings of a national survey on the prevalence of torture in Kenya which has been shared with key Government institutions including the Kenya Police who actively participated in its validation.

### 6.3 Recommendations

- The Government should table the Prevention of Torture Bill, 2011 and Parliament should pass the same to give full effect to the provisions of Article 25 and 29 of the Constitution.
- The Government should ratify OPCAT

## 7 CHILDREN'S RIGHTS

### Introduction

Several recommendations were made to Kenya with regard to the protection and promotion of the rights of children.<sup>14</sup> The key priority areas outlined in the Outcomes Charter in so far as children's rights are concerned were: raising the age of criminal responsibility in line with international standards; continued focus on enhancing the rights to health and education of children; adopting a national plan of action on children's rights; and the adoption of a comprehensive national policy on the fight against child prostitution and trafficking of children.

### 7.1 Raising the age of criminal responsibility in line with international standards

The Government has not taken steps to implement this recommendation. The age of criminal responsibility in Section 14 (1) of the Penal Code (Cap. 63) still remains at eight years. However, civil society is presently developing the Child Justice Bill that proposes to increase the age of criminal responsibility for children from eight to twelve years.<sup>15</sup> It also proposes special and separate procedural measures for handling children in conflict with the law. This will therefore deal with the broad concerns by the Committee on the Rights of the Child about the lack of a specialized system for dealing with children in the justice system.<sup>16</sup>

### 7.2 Increasing accessibility to education

#### Implementation by Government

Kenya has been lauded for the introduction of free primary education. The Government continues to allocate more resources to education.

Kshs. 8.25 Billion was allocated in the 2011/2012 budget to the Education Ministry To improve enrolment and transition rates as well as equity in access to education. Kshs. 18.5 Billion was allocated for free day secondary education and a further Kshs. 387.7 million was earmarked for early child hood development, which has not been funded before. A further Kshs. 53.8 Billion was allocated for tertiary education to further enhance access to higher education for children. Ksh.1.67 billion was allocated towards the free school feeding programme, mainly in arid and semi-arid areas of the country.

The Government allocated an additional Ksh.840 million under the Ministry of Education to scale up the bursary program in order to cater for Ksh.20,000 annual bursary fees for additional 42,000 orphans and children from poor households in secondary schools throughout the country. A further Ksh.300 million was allocated to the Ministry of Education to provide sanitary towels to all needy primary school going girls.

<sup>14</sup> Recommendations 101.11, - 101.12), - 101.17, - 101.19, - 101.59 -101.60,101.70. - 101.71, 101.85 - 101.86, 101.90 - 101.91, 101.109 -101.110, - 101.113. , 101.126.102.7

<sup>15</sup> Under the Strengthening Access to Justice through Legal Sector Development Programme in East Africa (SAJEA) collaboration between the Canadian Bar Association and selected organizations in East Africa. In Kenya the participating organizations are the Law Society of Kenya, The CRADLE - The Children Foundation, Kenya Law Reform Commission, the Judiciary and the Ministry of Justice, National Cohesion and Constitutional Affairs. The Bill is to be introduced as a private members Bill in Parliament.

<sup>16</sup> CRC/C/KEN/CO/2, 2 February 2007

However, this huge budgetary allocation has been undermined by gross misappropriation of funds, thus negating the real benefits intended for children. Allegations of misappropriation of funds emerged in 2009, leading to withdrawal of funding by certain development partners. These allegations were confirmed further by the Ministry of Finance in its audit report detailing how public funds were misappropriated under the Ministry of Health and the Kenya Education Sector Support Programme under the Ministry of Education.<sup>17</sup> According to the report, Ksh. 4.2 billion was embezzled over the period 2005 and 2009. While some officials have been taken to court over the misappropriation, comprehensive action is yet to be taken against all persons who were responsible for managing the funds.<sup>18</sup>

The implementation of the free education programme is also facing challenges that threaten access to quality education. This was evidenced by the dismal performance of public schools in the national examinations. This has been attributed to limited infrastructure and human personnel. According to the Human Resource Development Report, 2011<sup>19</sup>, Kenya needs 52,335 more teachers for primary schools. Overall, it is estimated that the country faces a shortage of 79,295 teachers.<sup>20</sup> Access to education is also not equitably realized since the free education programme does not address the education needs of children from poor and marginalized backgrounds. This is evidenced by regional disparities in enrolment and performance. Although the free education programme has also been lauded for increasing enrolment and bridging the gender gap in enrolment, the performance of girls is still poor compared to that of boys. Furthermore, girls' education is further threatened by early marriage, female genital mutilation (FGM), teenage pregnancies, and lack of access to sanitary towels.

Following adoption of the new Constitution, the education sector is set to undergo reforms, a process that opens opportunities to address gaps that impede access to basic and quality education for children. A task force was set up in April 2011 to spearhead this process.

### Implementation by Civil Society

The Girl Child Network (GCN) runs a programme addressing education issues to influence policy using evidence-based research.

Also addressing gaps that hinder access by poor families to basic education, Undugu Society of Kenya runs four non-formal schools in Nairobi's informal settlements, namely, Kibera, Mathare, Pumwani and Ngomongo. Undugu welcomes street children into these schools where they learn while still living in the streets.

### 7.3 Eliminating Child Labour

The Government of Kenya, through the Ministry of Labour, has finalized the Child Labour Policy which has been submitted to Cabinet. A National Steering Committee was formulated to review the activities

<sup>17</sup> Final Audit Report Addressing the Governance Challenges in the Kenya Education Sector Support Programme (KESSP) under the Ministry of Education and the Pending Bills Audit of the Ministry of Medical Services, Ministry of Finance, 2011

<sup>18</sup> Hansard August 15, 2011 pp 16-25

<sup>19</sup> Human Resources Sector Development Report, 2011/12 – 2013/14

<sup>20</sup> Daily Nation, January 25, 2011

and progress made by the Ministry of Labour with the assistance of non-governmental organizations.<sup>21</sup>

## 7.4 Ensuring the Protection of Children's Rights

### 7.4.1 National Plan of Action on Children's Rights

The Government of Kenya has published the National Plan of Action on Children to be implemented over a five year period from 2008 – 2012. The Action Plan provides for priority areas for implementation under the four child rights pillars of survival, development, protection and participation. It is not clear how far its implementation has been done, noting that its period is almost coming to an end. Another key aspect is continuous monitoring and reporting on the status of implementation so as to measure the level of its efficacy. This information is not available. Furthermore, the implementation of the Action Plan is tasked to different institutions, and this requires effective coordination. Coordination and collaboration among Government agencies and other actors such as CSOs remains a challenge, thus it is difficult to provide an accurate reflection on the actual status of the Action Plan. This is further hindered by lack of centralized information within government that can assist in evaluating the Action Plan. Even the Government has acknowledged some of these challenges as impediments to the realization of the National Plan of Action on Children's Rights objectives.<sup>22</sup>

In 2009, the Government merged all separate national policies on children into the Kenya Children Policy which was approved by the relevant Cabinet Committee on 13<sup>th</sup> July 2010.<sup>23</sup> The National Policy on Children provides the framework for addressing issues related to children's rights and welfare in a holistic and focused manner. However, the Children's Policy has yet to be presented to Parliament for adoption.

### 7.4.2 Making Operational the Counter Trafficking in Persons Act

#### Implementation by Government

During the period of review, the Counter Trafficking In Persons Act (CTIP) (No. ?? of 2010) was passed by Parliament. The Act encapsulates state obligations in accordance with international human rights law, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000). However, there has been laxity in the Ministry of Gender, Children and Social Development towards its implementation. No successful prosecutions against suspected human traffickers have taken place although a few cases have been prosecuted using the CTIP Act.

The Government has yet to adopt a comprehensive national policy on the fight against child prostitution and trafficking of children.

Kenya's National Plan of Action (NPA) for Combating Human Trafficking 2008-2013 was recently adopted by the Ministry of Gender, Children and Social Development. This provides a framework for anti-trafficking efforts whose thematic focus is on prevention, awareness raising, victim assistance and

<sup>21</sup> Kenya National Assembly Official Record 31<sup>st</sup> August 2010

<sup>22</sup> National Plan of Action on Children's Rights 2008-2012, Pg. 8.

<sup>23</sup> Kenya National Assembly Official Record 20<sup>th</sup> June 2010



protection, law enforcement co-operation, training and exchange of information, among others. The NPA still faces many challenges: it lacks elaborate timetables for implementation; it also lacks budgetary allocation, clear division of tasks and responsibilities, especially in relation to prevention activities and lacks a framework for monitoring and evaluation.

### Implementation by Stakeholders

Various civil society organizations and international organizations are involved in counter trafficking initiatives. International Organization for Migration(IOM) has conducted community awareness raising events in Nairobi, Mombasa, Malindi, Eldoret, Garissa, Kiambu and Naivasha and has also distributed Information, Education and Communication materials (IEC) among the refugees in Dadaab Camp through its sub office. IOM has also been instrumental in repatriation of victims and reunification of families. The Africa Network for Prevention and Protection Against Child Abuse and Neglect (ANPCAN) has developed trafficking in persons materials to create awareness at the border communities in Moyale, Busia and Loitoktok. The CRADLE has also developed IEC materials targeting children and these have been distributed during workshops in various districts around the country, including Suba, Mombasa, Kwale, Malindi and Taita. The CRADLE also uses football matches, children clubs and paralegal trainings to reach out to the community on various issues among them child trafficking. These messages have had a preventive focus as well as serving to inform people on the risks associated with trafficking of human beings. The CRADLE also provides legal aid and psychosocial support for child victims of trafficking.

### 7.5 Ratification of Conventions and Optional Protocols Addressing Children's Rights

Kenya is yet to ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

However, a Cabinet Memorandum initiating the process of ratifying the Optional Protocol to that Convention has been prepared by the Ministry of Gender, Children and Social Services.

### 7.6 Recommendations

It is evident that the Government has not made much progress towards implementation of the UPR recommendations. While some of the recommendations will be fulfilled by implementing the constitutional provisions regarding the rights of the child, it is important that the Government specifically:

- Ensure the minimum age of criminal responsibility is increased from eight years to twelve years.
- Continue allocating more funds to increase enrolment to schools especially for children from poor households and children with special needs
- Ensure an adequate and sustainable supply of sanitary towels in schools
- Put in place structures to operationalize and enforce the Counter-Trafficking in Persons Act.

## 8 WOMEN'S RIGHTS

### Introduction

Several recommendations were made to the State with regard to the protection and promotion of women's rights. These included: establishing a policy for gender promotion to ensure the improved representation of women in decision making bodies; undertaking more effective measures to address the problems of violence and trafficking of women; eradicating FGM; and improving access to reproductive health services for pregnant women.<sup>24</sup>

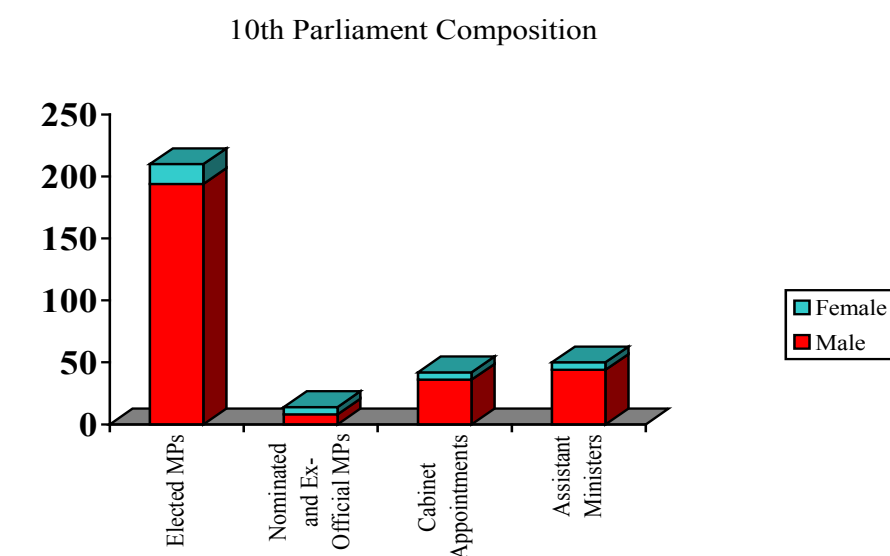
The Stakeholders' expectations were that the Government would implement constitutional provisions on representation of women, put in place effective measures to deal with violence against women and improve access to reproductive health care for women under Article 43(1).

### 8.1 Implementation of constitutional provisions on representation of women

#### Implementation by Government

The Constitution of Kenya 2010 contains provisions aimed at increasing representation of women in Parliament, the Judiciary and Civil Service.<sup>25</sup> Articles 175, 177 and 179 further aim at ensuring gender equality in the devolved governments. Only after the results of the next General Election in 2012 will it be possible to determine if the provisions in the Constitution have been implemented.

Though there has been a 2% increase in the number of women holding parliamentary or government office in the 10<sup>th</sup> Parliament (2008-2012), women's representation still remains incredibly low .



<sup>24</sup> Recommendations 101.39, 101.41, 101.47-101.58, 101.92-101.94

<sup>25</sup> Articles 97, 98 and 100 of the 2010 Constitution



Statistics also show that, broadly speaking, the participation of women in the Judiciary is better than participation of women in parliamentary or governmental office. (See Annex 1)

Article 27 (6) of the Constitution requires the Government to take legislative and other measures, including affirmative action programmes, to redress past discrimination. Despite this acknowledgement for the need of affirmative action, and the drafting of an Affirmative Action Bill in 2000, there are few affirmative action programmes relating to recruitment either within the public or the private sector.

Lack of enforcement mechanisms for any of the gender representation provisions, including the rule of one third representation of either gender, is also an emerging problem.

### Implementation by Stakeholders

Article 27 (6) of the constitution requires that not more than 2/3 of members of elective public bodies shall be of the same gender. In a bid to safeguard this provision, the appointments to the Supreme Court were challenged by six women rights organizations<sup>26</sup>, accusing the Judicial Service Commission of gender discrimination as it had only nominated one woman out of the five positions available in the Supreme Court; effectively meaning that of seven judges (including the Chief Justice and the Deputy Chief Justice), the Supreme Court would comprise five men and two women. While this case was dismissed by the High Court, an appeal has been lodged.

Civil society organizations have also been engaged in:

- Development and presentation of memoranda to engender /inform the following bills to CIC (Supreme Court Bill, Vetting of Judges & Magistrates Bill, Citizenship Bill, Political Parties Bill, National Police Service Bill, National Police Service Commission Bill, Independent Oversight Police Service Bill, the Electoral Bill, Anti Corruption And Ethics Bill, Freedom Of Information Bill, and Judicial Service commission Bill.
- Sensitization on gender, legislative & policy framework for political party officials. Leaders have also been sensitized on the new governance structure and Bill of Rights.
- Sensitization of women leaders on the Constitution to enhance their participation at the local government level.
- Advocacy for the enactment of an effective equality and anti-discrimination law.

## 8.2 Put in place effective measures to deal with violence against women

### Implementation by Government

Gender violence is prevalent and increasing in Kenya with 39% of women having been physically or sexually assaulted by their husband or partner during their lifetime.<sup>27</sup>

The legislative framework to effectively deal with gender based violence is somewhat lacking. Whilst the Family Protection Bill provides for protection Orders to be issued by courts, the Bill does not criminalize domestic violence, only describing it as “unacceptable behaviour”.<sup>28</sup> The Sexual Offences Act (No. 3 of 2006) has not been helpful in dealing with private acts of violence, such as domestic violence. The Act

<sup>26</sup> Federation of Kenya Women Lawyers (FIDA), Center for Rights Education and Awareness (CREAW), the League of Kenya Women Voters, Women in Law and Development in Africa (WILDFAF), Caucus for Women Leadership and Coalition on Violence against women

<sup>27</sup> 'Prevalence of Gender Based Violence in Kenya', FIDA Kenya, available through FIDA Kenya website <http://fidakenya.org/2011/01/prevalence-of-gender-based-violence-in-kenya/> (last accessed 26/04/11)

<sup>28</sup> Section 5(a) of the Family Protection Bill

also fails to create the offence of marital rape. This deliberate gap in the criminal law<sup>29</sup> has not yet been corrected.

While there has been an attempt to establish gender desks in some police stations, they have proved ineffective in dealing with cases of violence against women as they are not manned by skilled personnel. There are also no adequate gender based violence recovery centres throughout the nation, and the ones that exist are unable to provide effective redress to victims of gender based violence. In fact, services for victims of gender-based violence are mainly provided by non-state actors.

### Implementation by civil society

Some of the activities carried out by civil society in relation to the above include: developing an FGM Policy brief to support national advocacy and lobbying on the FGM Bill 2011 which has now been passed into law.

FIDA-K has produced a documentary on FGM/C “Beyond the Cut, Experiences of FGM in the Gusii Community”. The documentary will be used for campaigns on abandonment of FGM/C.

## 8.3 Improved access to reproductive healthcare services for women

### Implementation by Government

Article 43 of the 2010 Constitution explicitly includes the right to the highest attainable standard of health, the right to health care services, including reproductive health care and the right to emergency medical treatment. However, there are no timelines under the Constitution for implementation of these rights.

Despite temporary modern methods of contraception being offered in 96% of Government facilities,<sup>30</sup> many women do not know about family planning methods, while some are prevented from using them by their partners<sup>31</sup> or cannot afford them. Lack of family planning can result in large families where hunger, malnutrition and childhood diseases are prevalent.<sup>32</sup>

The 2010/2011 budget increased by 9.9% from 2009/2010 but health spending in real terms decreased from 7% in 2009/2010 to 6.5% in 2010/2011 due to high rates of inflation.<sup>33</sup> This budgetary allocation is less than half of the recommended 15% in the African Union’s 2001 Abuja Declaration. The 2010/2011 budget does increase funding for preventative healthcare<sup>34</sup> and provincial and district healthcare but there is a huge decrease in the development budget for rural health centres and dispensaries and health

<sup>29</sup> The offence of rape is explicitly excluded from applying to married couples in section 43(5) of the Family Protection Bill

<sup>30</sup> Although only in 83% of NGO or private facilities and 44% of faith based facilities: 'Kenya Service Provision Assessment Survey 2010 Preliminary Report', National Coordinating Agency for Population and Development, Ministry of Medical Services, Ministry of Public Health and Sanitation, Kenya National Bureau of Statistics and ICF Macro, August 2010, table 3.6, page 15

<sup>31</sup> 'It's babies until the wombs are empty', Joy Wanja, Daily Nation Newspaper, 23 January 2011 available through Daily Nation website [www.nation.co.ke](http://www.nation.co.ke) at <http://www.nation.co.ke/Features/DN2/Its+babies+until+the+wombs+are+empty+/-/957860/1094268/-/item/0/-/f2qc9pz/-/index.html> (last accessed 09/05/11)

<sup>32</sup> Ibid.

<sup>33</sup> 'Estimated Government Spending 2010/11, Kenya Health Sector Budget Analysis', Stephanie Sealy and Kristian Rosbach, GTZ Health Sector Programme Kenya page 3

<sup>34</sup> Communicable disease control (65% increase in funding), malaria control (new funding) and vector borne disease control (new funding): Supra fn 300, page 10

education and limited prioritization of gender issues.<sup>35</sup> This affects the infrastructure required for reproductive healthcare.

### Implementation by Stakeholders

Civil society organizations have initiated a process of redrafting the Reproductive Health Rights Bill for presentation to the Kenya Law Reform Commission.

There is also an ongoing nationwide public inquiry on reproductive health being conducted by the KNCHR which seeks to establish the status of reproductive health policies and services in the country.

### 8.4 Emerging Issues

Several laws which seek to protect women's rights have been outstanding for a long time: the Family Protection Bill, the Marriage Bill, Equal Opportunities Bill and the Matrimonial Property Bill are yet to be enacted into law.

### 8.5 Recommendations

The Government should:

- Ensure implementation of constitutional provisions regarding the representation of women in Parliament.
- Develop nationwide emergency shelters to provide accommodation, medical care, counseling and advice for victims of gender-based violence.
- Ensure that there is a gender desk at each police station manned by a police officer trained on addressing gender based violence.
- Ensure sufficient allocation of funds towards reproductive health services for pregnant women.
- Amend the Sexual Offences Act to delete section 43(5) to allow for prosecutions of rape between married couples.
- Enact the Family Protection Bill and other gender bills by August 2012 (within one year). This is informed by the CEDAW concluding recommendations to Kenya that were published in February 2012 where the Committee requested the Kenyan Government to provide within two years, written information on steps undertaken to enact the Gender Bills.

<sup>35</sup> Ibid. pages 10 and 13

## 9 RIGHTS OF MINORITIES AND INDIGENOUS PEOPLES

### Introduction

The recommendations made to the State included: supporting the UN Declaration on the Rights of Indigenous People including through recognition of land and resource rights and effective political participation; devoting attention to the recommendation made by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People; implementation of recommendations and decisions of its own judicial institutions and the African Commission on Human and Peoples' Rights; ratification of ILO Convention 169; and the promotion and protection of the rights of indigenous communities and assisting them in their development initiatives.<sup>36</sup>

The Stakeholders expected that: the Government would implement the *Endorois* Decision<sup>37</sup> in accordance with the guidelines of the African Commission and report on its progress; put in place a plan of action on implementation of the recommendations by the Special Rapporteur on the Rights of Indigenous Peoples; and engage in active consultations with indigenous communities when designing and prioritizing affirmative measures and development programmes aimed at addressing their concerns.

The Stakeholders also expected that the State would invite the Special Rapporteur on the Rights of Indigenous Peoples for a site Visit to ascertain the status of implementation and accept offers of technical assistance on the same; invite the Independent Expert on Minority Issues for a site visit; and reconsider ratification of ILO 169 and the United Nations Declaration on the Rights of Indigenous Peoples as enhancements to the constitutional provisions on the rights of minorities and marginalized communities.

### 9.1 Implementation of the *Endorois* Decision

In February 2010, the African Commission on Human and Peoples' Rights found that the Government of Kenya had violated the rights of the *Endorois*, an indigenous community, by removing them from their ancestral lands. The Commission recommended that the Government of Kenya should recognise rights of ownership to the *Endorois* and reconstitute *Endorois* ancestral land; ensure that the *Endorois* community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle; pay adequate compensation to the community for all the loss suffered; pay royalties to the *Endorois* from existing economic activities and ensure that they benefit from employment possibilities within the Reserve; grant registration to the *Endorois* Welfare Committee; engage in dialogue with the complainants for the effective implementation of these recommendations. The Government was asked to report on the implementation of these recommendations within three months from the date of notification.

So far implementation is yet to happen and no report has been done.

<sup>36</sup> 101.114, 102.5, 102.6, 103.6 and 103.7

<sup>37</sup> Decision of the African Commission on Human and Peoples Rights in No. 276 / 2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya.

## 9.2 Designing and Prioritizing Affirmative Measures And Development Programmes

### Implementation by Government

The Kenya Constitution 2010 for the first time recognizes minorities and indigenous peoples groups (even though not necessarily using the term indigenous directly in its definitional clauses). The Bill of Rights provides affirmative action for minorities. Minorities and marginalized groups are guaranteed special arrangements for improved access to water, infrastructure, education, health, and employment opportunities. They are also guaranteed the right to participate and be represented in governance and other spheres of life. These include recognition of their cultures. The Constitution further recognizes minority and marginalized groups' land rights. The land tenure system also recognizes community land.

It is too early to measure the impact of these provisions on the rights of Indigenous people as most of these provisions are yet to be implemented.

### Implementation by Stakeholders

During the 49th Session of the African Commission on Human and Peoples Rights in Gambia, Stakeholders through the KNCHR requested the State to speedily move towards the implementation of the *Endorois* decision. Efforts were also made to invite the Special Rapporteur on the Situation of Indigenous Peoples to come to Kenya. Stakeholders are still engaging with the Ministry of Foreign Affairs and Ministry of Justice, National Cohesion and Constitutional Affairs to expedite implementation of the decision and invite the Special Rapporteur.

Stakeholders have also prepared a road map for monitoring implementation of the Constitutional provisions.

## 9.3 Ratification of ILO 169

No progress has been made in this regard.

## 9.4 Recommendations

- The Government should immediately implement the African Union decision on the *Endorois* land rights and issue a report to the African Commission as required.
- The Government should also implement the recommendations made by the Special Rapporteur on Indigenous People in 2006.
- The State should ratify ILO Convention 169.

## 10 SEXUAL ORIENTATION AND GENDER IDENTITY

### Introduction

The Stakeholders' approach to this issue was to ensure non-discrimination on the basis of sexual orientation and gender identity. The Stakeholders called for decriminalization of same sex relations, the enactment of a comprehensive anti-discrimination law affording protection to all individuals through the inclusion of sexual orientation and gender identity as protected grounds and development of appropriate health policies to protect the health rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons including enhancing their access to HIV/AIDS prevention, care and treatment. The Stakeholders also called for the development of appropriate and specific policies to deal with transsexual and intersex conditions.

During the review, the State was urged to take concrete steps to provide for the protection and equal treatment of LGBTI persons; decriminalize same-sex relations between consenting adults; repeal all legislative provisions which criminalize sexual relations between consenting adults; decriminalize homosexuality by abrogating the legal provisions currently punishing sexual relations between consenting individuals of the same sex, and subscribe to the December 2008 General Assembly Declaration on Sexual Orientation and Human Rights.<sup>38</sup>

However, in its response, the Government only focused on the recommendation on decriminalizing same-sex unions and indicated that such unions were culturally unaccepted in Kenya. The Stakeholders' expectation was therefore that the Government would still deal with all the other recommendations on sexual minorities.

### Implementation by Government

#### 10.1 Enactment of a comprehensive Anti-Discrimination Law

The Government did not do this despite concerted efforts by the civil society to have a comprehensive anti-discrimination law affording protection to all individuals enacted. However, there are certain provisions in the Constitution that can give minimal redress for sexual minorities. The Bill of Rights ensures that persons are not detained for more than 24 hours when arrested if no charge has been filed against them. This has assisted in curtailing instances of arbitrary arrests of LGBTI persons as this group is usually faced with Human rights violations from law enforcers such as the police and city council askaris.

#### 10.2 Development of appropriate health policies to protect the health rights of sexual minorities

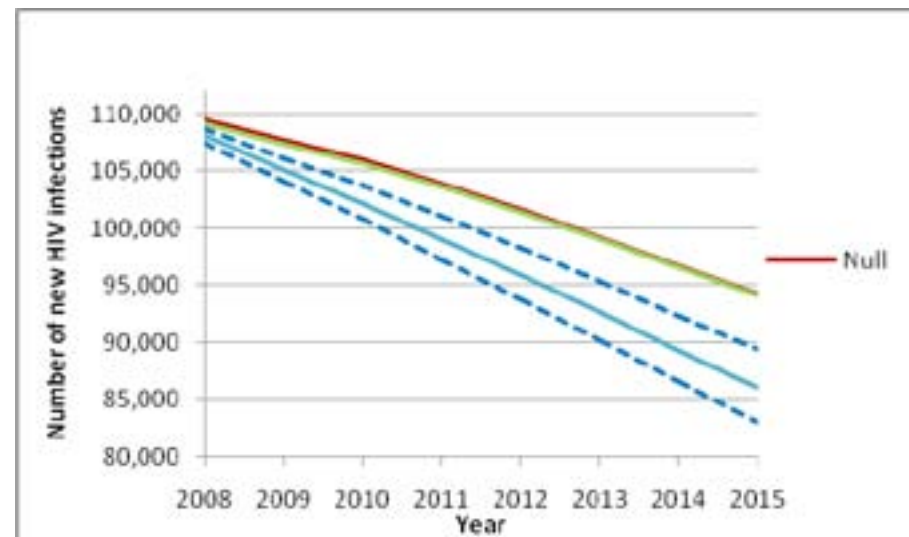
There has been recognition by the Government that any efforts to combat HIV/AIDS cannot be successful without identification of the Most at Risk Populations (MARPS). The Kenya National [HIV/AIDS] Strategic Plan 2009 -2013, recognizes that:

<sup>38</sup> Recommendation 103.5



*“homosexuality [is] illegal in Kenya, and attempts to de-criminalise [it has] faced significant religious and cultural resistance among the population. .... Programmes have been working with all these groups for many years, but under constraints”*

Removing these programming constraints, then, is an important condition for scaling up of health services. Indeed, providing HIV services to men who have sex with men (MSM), has beneficial effect on HIV spread among the heterosexual population, because it can lead reduction in new infections by up to 10,000 cases annually as can be seen in the figure below.



Source: The Global HIV Epidemics among Men Who Have Sex with Men, 2011<sup>39</sup>.

### 10.3 Development of appropriate policies to deal with the issues facing transgender and intersex persons

The Government has not taken any steps to even acknowledge or discuss the issues of transgender and intersex persons in Kenya. The absence of such a discussion impedes any meaningful engagement.

A further setback was the court decision in Richard Muasya versus the Attorney General Others<sup>40</sup>, where the High Court declined the request for a third gender (intersex) to be introduced in Kenyan law. Richard Muasya, an intersex person, was being held in a male prison where he had been sexually harassed by inmates and staff. Muasya was awarded 500,000 Kenyan shillings for inhuman and degrading treatment but the court refused to acknowledge intersex as a third gender, ruling that this would open the “floodgates” to homosexuality which is illegal in Kenya. The decision is currently being appealed.

<sup>39</sup> Chris Beyrer, et al., The Global HIV Epidemic among Men Who Have Sex with Men World Bank, 2011

<sup>40</sup> High Court of Kenya, Petition No. 705 of 2007, available at [http://kenyalaw.org/CaseSearch/view\\_nk=36332898579392624632894](http://kenyalaw.org/CaseSearch/view_nk=36332898579392624632894) preview1.php?li

### 10.4 Active prosecution of perpetrators of violence targeting LGBTI persons

While there has been no prosecution of perpetrators of violence against LGBTI persons, the police have in some instances protected LGBTI persons from targeted violence against them. The civil society has engaged in sensitization work with the police resulting in the reduction of targeted violence against LGBTI persons.

The civil society however continues to document and report on instances of violence, harassment and stigma against sexual minorities.<sup>41</sup>

#### Recommendations

The Government needs to look at the rights of sexual minorities more holistically, especially with regard to mental and reproductive health rights of sexual minorities. The sensitization exercises and policy formulation should be done collaboratively with sexual minority organizations. Specific recommendations in this regard are:

- Active education for better understanding of the terms and histories of sexual orientation & gender identity in the public.
- Enactment of legislation on equality and non-Discrimination with provisions on sexual orientation and gender identity as protected grounds.
- Decriminalization of same sex activity as a key factor in the programming of LGBTI health programs and legal processes.
- Development of comprehensive policy guidelines on the health rights of LGBTI persons and their access to HIV/AIDS prevention, care and treatment measures, well informed and unbiased mental health services, and provision of reproductive health services.
- Development of a policy on transgender and intersex conditions.

<sup>41</sup> “The outlawed amongst us” GALCK/KHRC, 2011

## 11 RIGHTS OF PERSONS WITH DISABILITIES

### Introduction

The recommendations made to the Government of Kenya with regard to persons with disabilities included securing employment for persons with disabilities, ratification of the Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD and extending an invitation to the Special Rapporteur on the Convention on the Rights of Persons with Disabilities (CRPD).<sup>42</sup>

The KSC-UPR identified key priority areas towards ensuring the promotion and protection of the rights of persons with disabilities as being: review of laws relating to persons with disabilities and their harmonization with the CRPD; the adoption of the National Disability Policy, the issuance of a first report before the CRPD committee and Ratification of OP-CRPD.

### 11.1 Promotion and Protection of the Rights of Persons with Disabilities

#### Implementation by the Government

The National Development Fund for Persons with Disabilities, which was established under the Persons with Disabilities Act (No. 14 of 2003), was operationalized in 2010 and has begun to disburse funds to persons with disabilities, and organizations and institutions that provide services to persons with disabilities. In 2009-2010 the Government allocated Kshs. 200 million to the Fund.

The Government through the Ministry of Gender, Children and Social Development also began the Economic Empowerment Project in the year 2010. Through the project, the Government is disbursing funds on a continuous basis directly to groups of persons with disabilities for promoting the economic independence of persons with disabilities.

Furthermore, the Ministry of Gender, Children and Social Development began a cash transfer system for persons with severe disabilities in every electoral constituency. The programme started in April 2011 targeting ten households in every constituency. Persons with Disabilities are also exempted from the payment of income tax. To this end, the National Council for Persons with Disabilities facilitates the exemption of persons with disabilities registered with the Council from the payment of income tax.

The Special Needs Education Policy was finally passed in 2010. It makes provisions and proposals for inclusive education for children with disabilities in Kenya. There is also a Disability Policy which has however never been finalised. There are also currently attempts to amend the Persons with Disabilities Act. The Government through the Ministry of Gender is also currently preparing the initial State Report to the Committee established under on the CRPD.

The 2010 Constitution contains a number of provisions on the promotion and protection of the rights of persons with disabilities. These include the right to be treated with dignity and respect, access to educational institutions and facilities, reasonable access to all places, public transport and information,

<sup>42</sup>Recommendations 102.7 and 102.8

appropriate communication formats including Sign Language and Braille; and access to materials and devices to overcome constraints arising from disability. Disability is also included as one of the grounds for non-discrimination. Article 54(2) of the Constitution further provides that the State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities. The Constitution also provides for political representation of persons with disabilities<sup>43</sup> and ensures that adequate and equal opportunities in the public service are afforded to persons with disabilities.<sup>44</sup> Despite these Constitutional guarantees, benefits will only result from implementation of the Constitutional provisions.

#### Implementation by Stakeholders

Organisations of and for persons with disabilities have been collaborating with the Government in its Economic Empowerment Project to disburse funds released by the Government to groups of persons with disabilities.

Civil society organisations have also come together to form the Platform for Social Protection. This Platform was set up for outsourcing funds and implementing projects for the protection of vulnerable groups such as persons with disabilities, children and women.

The Disability Caucus on the Implementation of the Constitution (DCIC) was established by a coalition of organizations of persons with disabilities. The immediate concern of the DCIC is to ensure the implementation of the provisions of the Constitution and to promote the interests of persons with disabilities in the new constitutional dispensation.

Further, disability organisations are collaborating with the Communications Commission of Kenya to set up a web portal that will be a one stop shop for persons with disabilities to access information on services for persons with disabilities in Kenya.

### 11.2 Recommendations

- The Persons with Disabilities Act should be amended to conform to the CRPD and the Constitution of Kenya 2010. Key areas include education, employment, transport, health and communication.
- The Disability Policy should be finalised.
- The provisions of the Constitution on the rights, affirmative action and inclusion of persons with disabilities in political and appointive positions need to be implemented and actively lobbied for.

<sup>43</sup> Article 81, Article 97(1)(c), Article 98(1)(b)-(d), Article 177(1)(b), Article 100

<sup>44</sup> Article 232(1)



## 12 Citizenship

The recommendation in this regard was that the State should pass comprehensive legislation on citizenship in line with the provisions of the Constitution which outlines the rights, privileges and entitlement to citizenship.<sup>45</sup>

### 12.1 Implementation by Government

The Government set up an interdepartmental taskforce to review the existing laws relating to citizenship and refugees and to give recommendations on the legislation to give effect to Chapter 3 of the Constitution. Various civil society organizations engaged with the taskforce on the draft bill that they developed. The draft was subsequently reviewed by the Kenya Law Reform Commission and has been passed as the Citizenship and Immigration Act, 2011. It is however still too early to measure the impact of this on the groups of people who have over the years been denied citizenship.

Other related laws (The Births and Deaths Registration Bill, The Identification and Registration of Citizens Bill and the Refugee Bill) are yet to be enacted hence a holistic assessment of the legal framework is not possible at this stage.

<sup>45</sup> Recommendation 101.40

## 13 ECONOMIC, SOCIAL AND CULTURAL RIGHTS

### Introduction

The recommendations with regard to economic, social and cultural (ECOSOC) rights that the Government of Kenya accepted during the UPR centered around intensifying and implementing national anti-poverty programmes, policies and strategies.<sup>46</sup>

The key priority areas as outlined in the KSC-UPR Outcomes Charter were ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), progressive realization of the right to food and water and enhancement of anti-poverty programmes in the country.

### Implementation by Government

#### 13.1 Progressive realization of the right to food and water

The Constitution of Kenya 2010 recognizes economic, social and cultural rights by enshrining them in the Bill of Rights. The implication of this right is that the Government recognizes its obligation in meeting these rights for its citizens. To meet its obligations the Government needs to recognize ECOSOC rights in laws, policies, and development plans.

About a third of Kenya's population is food and nutrition insecure, and this is closely linked to poverty. Currently, 2.4 million people receive food aid across Kenya. Up to 3.5 million people are affected by recurrent drought and their plight is worsened by high food prices resulting from both local and global factors.

#### 13.2 Policy formulation to realize the right to food

The policy institutional framework guiding the Ministry of Agriculture is the Sector Development Strategy (ASDS 2009-2020) reflecting the aspirations of the Kenya Vision 2030 framework which aims at improving prosperity of Kenyans through economic development programmes, and also ensuring enhanced agricultural strategies focusing on food security. The National Food and Nutrition Policy is currently being reviewed to reflect requirements of the Constitution of Kenya 2010. The water and irrigation sector is also finalizing the Irrigation and Drainage Policy.

The Government has also put in place various programmes that focus on reduction of food insecurity. These include the Njaa Marufuku Kenya Programme and the National Accelerated Agricultural Input Access Programme (NAAIAP). However, these programs have not had adequate impact on the food situation in Kenya, which has reached catastrophic levels.

Institutions like Kenya Institute for Public Policy Research and Analysis (KIPPRA) have been involved in assisting the Government in reviewing of policies to ensure they focus on food security.

<sup>46</sup> Recommendations 101.97- 101.113.

In responding to the severe drought situation in Northern Kenya, an initiative was launched by citizens dubbed the “Kenyans for Kenya” Initiative which raised funds to provide food and medical supplies to the hardest hit regions in Northern Kenya.

### 13.3 Right To Water

#### Policy formulation to realize the right to water:

Fresh water per capital stands at 647 cubic meters and is projected to fall to 235 cubic meters by 2025 if supply does not keep up with demand. An emerging issue for the environment, water and irrigation sector is enshrining the rights to clean and safe water in adequate quantities and also to reasonable standards of sanitation<sup>47</sup>.

The challenges that have been experienced in the country include water scarcity- renewable fresh water has been projected to reduce drastically by 2025<sup>48</sup>. To assist in realization of the right to water, the sector is finalizing the Water Harvesting and Storage Policy. The policy will guide water resource management and storage to increase availability of sustainable water resources through effective management and protection of water sources. The Government has allocated funds for provision of water for agricultural purposes in all constituencies; and construction of water pans in needy constituencies. Through the Ministry of Education the Government is expanding access to safe drinking water in the schools within each constituency.

Despite these efforts, the right to water is not enjoyed by all Kenyans. There are disparities between the rich and poor when it comes to accessing adequate and safe drinking water. Formal settlements have access to water although sometimes they face water rationing and disruption. However, residents in informal settlements have limited and/or no access to adequate and safe drinking water. In addition, inadequate management of the country’s watersheds has led to excessive soil erosion, increased cost of water treatment and rapid siltation of reservoirs.

### 13.4 Enhancement of Anti-Poverty Programmes in the Country

One of the ways of tackling poverty was the establishment of the Equalization Fund under the Kenya Constitution 2010.<sup>49</sup> This fund is meant to provide basic services including water, roads, health facilities and electricity to marginalized areas. This Fund however, is yet to be established.

Over the years, the Government has put in place various programmes to address economic growth and poverty in the country. These have targeted various sectors and have included: The Constituency Development Fund (CDF), Constituency Bursary Fund, Free Primary Education Fund, Local Authority Transfer Fund (LATF), Poverty Eradication Loan Fund, and The National Development Fund for Persons With Disabilities (PWDs). Other funds include the women’s enterprise fund and the youth enterprise development fund.

<sup>47</sup> Environment, Water and Irrigation sector Report, January 2011: Medium term Expenditure Framework 2011/12-2013/14.

<sup>48</sup> Environment, Water and Irrigation sector Report, January 2011: Medium term Expenditure Framework 2011/12-2013/14.

<sup>49</sup> Article 204

Flagship projects for the vulnerable groups include: the establishment of a consolidated social protection fund for cash transfers mainly for the orphans and vulnerable children and the elderly to reduce poverty in the communities; and the implementation of the disability fund.

Youth flagship projects focus on increasing allocation to secondary and tertiary level bursary programmes in order to increase opportunities for destitute young people to continue with education; the youth enterprise development fund is to assist the youth engage in economic activities; and the roads 2000 labour intensive public projects to create short term labour intensive employment.

Budget allocation for the poverty alleviation programmes was increased during the 2011/12 financial period. To promote rural development for employment and poverty reduction, the Government increased provisions for the Economic Stimulus Program (ESP) projects to ensure they were fully completed and initiate new projects. ESP projects were in health, education, fish enterprise development, agriculture, irrigation, youth employment and support for ASALs using devolved funds. 19 billion Ksh. was allocated for CDF projects for rural development. This entailed about 90.5 million per constituency; a conditional grant of 3.7 billion (17.8 million per constituency) also extended to the CDF towards completion of on-going projects under education, health, water and sanitation. This was the highest ever direct allocation to CDF amounting to 108.3 million per constituency. 17.3 billion was also allocated to LAFT for grass-root level development.

The Youth Enterprise Development Fund was also enhanced with 385 million. The Women’s Enterprise Fund was allocated 440 million. In addition, 1 billion was allocated to boost the Small and Medium Enterprise Fund (SME Fund), which is yet to be implemented. In the education sector poverty alleviation has been tackled through free primary and secondary education fund, constituency bursary funds and free school feeding programs in the arid and semi arid lands. These programmes also saw increased funding in the 2011/12 financial year<sup>50</sup>.

In addressing rural poverty, unemployment and food insecurity, the Government’s top priority lay in the development of the agricultural sector. Projects that were allocated funds included: water and irrigation; water harvesting and storage; and the establishment of a livestock fund. Building on the progress achieved under the ESP irrigation program, the Government initiated a country wide irrigation expansion program intended to cover 1.7 million acres to make the country food secure and net exporter of food<sup>51</sup>.

Despite the various funds and projects initiated by the Government the marginalized communities still do not receive the basic services and if they do it is of low quality. Plans have been developed but rarely implemented due to corruption practices at all levels of service delivery. The recent World Bank Forensic Audit Report on the Arid Lands and Resources Management Project in Northern Kenya linked the current hunger in the region to fraud. The report stated that up to 30% of the USD 124 million for the project was unaccounted for. The project ended last year, 2010, and was under the Ministry of Northern Kenya and

<sup>50</sup> 8.25 billion was allocated towards the provision of free primary education to improve enrolment and transition rates and equity in access to education; 18.5 billion for free day secondary education; 1.67 billion for free school feeding programmes mainly in the ASAL; and 840 million for scaling up of the bursary program with special focus on OVC and poor needy children.

<sup>51</sup> Areas where the irrigation programmes have been and are still being implemented are: Nyanza, Busia, Ahero, West and South West Kano, Northern Kenya (Isiolo, Bura, Hola, Garissa, Wajir, and Mandera), Turkana, North Meru, Kirinyaga, Mwea, Embu, Kibwezi, Makueni, and Kitui. Resources were allocated to the National Irrigation Board and the Ministry of water and irrigation for both large and small irrigation projects

Other Arid Lands, and was meant to reduce incidents of hunger by providing money for water, food and restocking of livestock. Tight anti-corruption measures and effective monitoring and evaluation plans must be implemented to ensure development funds are used effectively and results achieved. There is delay in relaying feedback to individuals applying for the various funds. Processing the request forms takes a long time and feedback to the individuals on whether they have qualified for the funds is slow and sometimes no feedback is given.

The “Kazi kwa Vijana” programme aimed to reduce vulnerability of unemployment has also yielded fewer tangible results than was anticipated.

Effective assessment of these programmes requires the documentation and publishing of the Government’s poverty alleviation strategies. However, the Government has failed to adequately monitor and document the effectiveness of these strategies.

### 13.5 Ratification of the Optional Protocol to the International Covenant On Economic, Social And Cultural Rights (OP-ICESCR)

Ratification of the Protocol is very important because the Government will be legally bound and obligated to meet the ECOSOC rights, failure to which communications on violation of the rights could be reported to the Committee on ESCR. So far ratification of treaties is in abeyance awaiting passing of ratification legislation.

### 13.6 Recommendations

- The Government should review the food situation analysis and assessment tools in order to adopt effective indicators that would capture the accurate food situation. Further, before food is imported into the country, the government must conduct quality assessment tests. Food failing the tests must be rejected;
- The Government should implement rights based approach to poverty reduction strategies and programmes/projects;
- The Government should also establish effective documentation, monitoring and evaluation systems that will monitor implementation and impact of these development programmes.

## 14 Ratification of International Instruments

### Introduction

Recommendations were made to the country to sign and ratify the following optional Protocols: The Optional Protocols to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC).

### The country was also urged to ratify:

- International Convention for the Protection of All Persons from Enforced Disappearance (CED)
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW);
- The Convention on the Prevention and Punishment of the Crime of Genocide;
- ILO Convention No. 169

### 14.1 Status of Implementation

Stakeholders’ expectations were that the state would comply and ratify/ accede to such instruments particularly since it had eventually committed to do so. The 2010 Constitution however ushered in a new era by providing that all treaties ratified by Kenya would form part of Kenya’s law. This meant that Kenya would henceforth be a monist state. It was necessary to embark on legislation to guide the ratification process. A Ratification of Treaties Bill was developed which was subjected to stakeholder discussions. KNCHR participated in these discussions and made input into the legislation which is currently at an advanced stage awaiting debate in parliament. Once this legislation is enacted into law, KNCHR will resume advocacy activities on ratification of various international instruments.

## CONCLUSION

The overall objective of the UPR, being improvement of the human rights situation on the ground, is only attained when commitments made by a country during the process are implemented; otherwise, the entire process is reduced to no more than empty promises, which eventually negate the protection and promotion of human rights.

The Human Rights Council does not have a monitoring mechanism to ensure all recommendations are implemented. Some countries have approached the process with zeal and indeed submitted their own mid-term reports to the Council indicating the progress they have made towards implementation. In the Kenyan case, while the Government indicated it would appraise the Human Rights Council on the progress of implementation, it is not yet clear whether the State will issue a mid-term report.

The Stakeholders acknowledge that in the absence of a monitoring mechanism, it is upon the human rights actors on the ground to check the country's implementation of the recommendations, a role that the Stakeholders intend to play by continuously monitoring and issuing progress reports regularly.

The overall conclusion from the findings in this report is that the Government has lagged in implementing the recommendations made to it during the review. Out of the 158 recommendations made to the country, and the 157 it committed to, implementation has begun for a few recommendations. In most cases, a situation of inaction prevails. Most of the recommendations for which implementation has begun have benefitted through implementation of constitutional provisions, and while this is appropriate and indeed commendable, it is important that the Government does not lose sight of the many recommendations which did not find expression in the 2010 Constitution.

This report serves as a pointer to the Government in identifying areas where immediate action is required. While we are aware that the Government has been in the process of developing a National Action Plan for implementation of recommendations, our assessment is that this plan has taken inordinately long to be developed. Out of the four years available for implementation, the Government has spent one whole year in developing an action plan at the expense of actual implementation. The Stakeholders remind the Government that time is of the essence, and it is crucial that the implementation process is approached consciously and earnestly carried out. It must be remembered that the UPR offers the chance for technical assistance, where required hence there is no excuse for failing to implement the recommendations.

The KNCHR and KSC-UPR remain committed to following closely the implementation of the recommendations, and to making relevant contributions which would assist the Government in implementing all the recommendations before the next review of Kenya.

## ANNEX 1: WOMEN IN THE JUDICIARY<sup>52</sup>

As at March 2011

	Total	Male	Male %	Female	Female%
High Court	44	26	<b>59</b>	18	<b>41</b>
Appellate Court	11	11	<b>100</b>	0	<b>0</b>

Magistrates in Kenya (inc. Kadhi Court, as at March 2011)

	Total	Male	Male %	Female	Female%
Nairobi	53	29	<b>55</b>	24	<b>45</b>
Nyanza	46	33	<b>72</b>	13	<b>28</b>
Western	32	18	<b>56</b>	14	<b>44</b>
North Eastern	7	7	<b>100</b>	0	<b>0</b>
Rift Valley	70	43	<b>61</b>	27	<b>39</b>
Central	50	26	<b>52</b>	24	<b>48</b>
Eastern	50	34	<b>68</b>	16	<b>32</b>
Coast	34	24	<b>71</b>	10	<b>29</b>
	342	214	<b>63</b>	128	<b>37</b>
Chief	20	8	<b>40</b>	12	<b>60</b>
Senior Principal	25	13	<b>52</b>	12	<b>48</b>
Principal	67	39	<b>58</b>	28	<b>42</b>

<sup>52</sup> All Statistics from Republic of Kenya Judiciary website available at [www.judiciary.go.ke](http://www.judiciary.go.ke) Profiles (last accessed 10/05/2011)

