



**KENYA: COMMON CORE DOCUMENT FOR THE PURPOSES
OF
STATE REPORTING UNDER VARIOUS HUMAN RIGHTS
INSTRUMENTS**

2011

GENERAL FACTUAL AND STATISTICAL INFORMATION ABOUT KENYA.

1. The Government of the Republic of Kenya has the honour and pleasure to submit this core document in line with the harmonized guidelines on reporting under the international human right treaties, HRI/MC/2005/3, including guidelines on a common core document and treaty- specific targeted documents. This will give a background to the different reports under the different human rights instruments that Kenya is a state party to.

A. DEMOGRAPHIC, ECONOMIC, SOCIAL AND CULTURAL CHARACTERISTICS OF KENYA

DEMOGRAPHIC AND SOCIAL CHARACTERISTICS

2. Kenya is an East African country that lies astride the Equator covering a total area of 582, 650 km² of which 560,250 km² constitutes dry land while water takes the rest of about 13,400km². Approximately 80% of the land area is arid or semi-arid, and only 20% is arable.
3. Kenya is a multi-racial, multi-ethnic, multi-cultural and multi-religious society. The national language is Kiswahili while the official languages are Kiswahili and English (though numerous other local languages are spoken). People of African descent constitute about 90% of the population; divided into 42 main ethnic groups. These groups belong to three linguistic families: Bantu, Cushitic, and Nilotic. The main groups comprise of: **Bantus** consist the Kikuyu (22%), Luhya (14%) Kamba (11%), Meru (6%), Embu (1.20%), Kisii (6%) and the Mijikenda (4.7%), Taita (0.95%), Pokomo (0.27 %), Banjuni (0.20%), Boni-Sanye (0.05%), Taveta (0.07%); Kuria (0.52%), Mbeere (0.47%) Basuba (0.50%) **Nilotes** include the Luo (13%), Kalenjin (12%), Turkana (1.32%), Teso, (0.83%), Samburu (0.50%), and the Maasai (1.8%); and the **Cushites**, include the Somali (0.21%), Oromo(0.21%), Rendile (0.12%), Boran (0.37%) Gabra (0.17%). It should be noted that these major groups are further grouped into many smaller sub tribes. Most Kenyans are bilingual in English

and Swahili. A large percentage speaks the mother tongue of their ethnic tribe.

4. The total population of Kenya is 38,610,097 (census results 2009) composed of 19,417,639 women and 19,192,458 men. These estimates explicitly take into account the effects of excess mortality due to AIDS; which can result in lower life expectancy, higher infant mortality, higher death rates, lower population growth rates, and changes in the distribution of population by age and sex than would otherwise be expected. 67.7 % of the population lives in the rural areas. Kenya has a big youthful population. The 2007 National Youth Policy defines youth as 'anyone aged between 15 and 30 years'. While the concept of being a youth is widely associated with transitions between childhood and adulthood, some definitions consider the onset of economic and socio-political productivity as the minimum marker. 51.2% or 4,006,888 of the youth are women while 48.8% or 3,877,758 are male.
5. 3.5 % of the population comprises persons with disabilities. 682,623 are female while 647,689 are male.). However, it should be noted that the census data gave this as a conservative figure, owing to the fact that only the traditional areas of disability were considered (physical, mental, hearing, visual and speech), and only 'conventional households' were asked this question. Of those with disabilities, 51 percent were female, while 49 percent were male. The largest proportion was physical and self-care disabilities (31 percent), followed by visual disabilities (25 percent) and hearing disabilities (14 percent).
6. However, it is important to note that other estimates do vary considerably across documentation and generally, there is lack of reliable data on the situation of persons with disabilities in Kenya. For example, according to the National Survey on Persons with Disabilities in Kenya (GoK, 2008), 3.6 percent of youth between ages 15 to 24 years had disabilities out of which visual and physical impairments had the highest prevalence at 1.1 percent each. Amongst persons aged between 25- 34 years, the prevalence of disability was 4 percent. In this group physical disabilities had the highest prevalence of 1.3 percent followed by visual disabilities at 1.1 percent.

7. The distribution of the population by broad age group is shown in the table below.

POPULATION BY BROAD AGE GROUP

AGE	0-14	15-64	65+
FEMALES	8,398,000	10,180,000	602,000
MALES	8,173,000	10,505,000	730,000

Source: Ministry of Planning, 2011

8. The distribution of population is generally uneven and varies from 67.2 persons per km² in high potential areas to 3 persons per km² in arid areas. Only about 20% consists of high to medium potential agricultural land, and supports 80% of the population. The remaining 20% of the population lives in the 80% of the land, which is arid and semi-arid. This reflects the uneven distribution of agricultural potential, and of employment opportunities. Other factors influencing the pattern of population distribution include historical policies on land settlement. The most densely populated areas are found in the urban kilo met and around Lake Victoria, the highlands and the coastal strip, which have fertile soils and well-distributed and reliable rainfall. The sparsely populated areas are found in the arid and semi-arid regions, which have poor soils and an inhospitable climate.
9. The country's population is characterized by high infant mortality rates, 53.49 deaths/1000 live births overall with female ones amounting to 50.63 deaths/1,000 live births; and male 56.28 respectively. Life expectancy generally is estimated at 58.82 years with females at 59.32 years, and males at 58.33 years respectively. The total fertility rate is estimated at 4.38. Kenya is also faced with a high dependency burden, with 42.3% of the population below 15 years (all 2009 estimates).
10. The major religious orientations include Christianity (78%), Islam (10%), African Traditional Religions (10%), Hinduism and Sikhism (1%). Religion is increasingly perceived by some minorities in Kenya as a major factor in the

determination of citizenship and the acquisition of citizenship entitlements. For example, some adherents of the Islamic faith argue that Kenya is governed as a Christian country. Those who adhere to the African traditional beliefs often complain that rights given under the English system of laws take precedence over those obtainable under customary laws which are intertwined with traditional religious convictions.

11. Kenya's education system consists of early childhood education, primary, secondary and college; it is an 8-4-4 system. In January 2003, the Government of Kenya announced the introduction of free primary education. As a result, primary school enrolment increased by about 70%. Secondary and tertiary education enrollment did not increase proportionally because payment is still required for attendance. In 2007 the government issued a statement declaring that from 2008, secondary education would be heavily subsidised, with the government footing all tuition fees.
12. Differences between females and males in the education sector increase as students progress up the education system. In 2008, primary school net enrolment rates (NERs) for males was 94.6 percent relative to female NERs which stood at 90.5 percent, with national NERs being 92.5 percent. This was up from 85.3 percent NERs for males and 83.8 percent NERs for females, and a national NER of 84.5 percent in 2004.
13. Secondary school NER for 2008 were significantly lower; for males it was found to be 29.8 percent; for females it was 27.9 percent. For both sexes this represents a significant drop from the primary level rates, though these figures do show an improvement from the figures as at 2004 when the NER for males was 19.7 percent while for females it was 19.1 percent. Actual transition rates from primary to secondary school level for between 2000 and 2008 are provided in the table below, by sex.

Primary to Secondary School Transition Rates by Sex (2000- 2008)

Year	Male	Female 1	Total
2000	43.5	42.6	43.3
2001	45.6	43.4	44.5

2002	44.5	42.5	43.4
2003	49.2	55.2	51.9
2004	51.9	47.2	49.6
2005	41.8	40.2	41.0
2006	47.2	44.5	46.0
2007	51.2	47.3	49.3
2008	54.6	50.0	52.4

Source: Ministry of Education, Science and Technology, 2009.

14. According to the Economic Survey of Kenya 2009, enrolment at university level (public and private), females made up 40.1 percent of students while males made up 59.8 percent. These rates were roughly the same in the previous year i.e. 2007/8. The same situation was found in technical institutions i.e. that male enrolment was higher; though by a smaller margin i.e. 51.5 percent for males and 48.4 percent for females.
15. For children with disabilities, the Ministry of Education (MoE) statistics indicate that the number of institutions offering education services to children with special needs increased from 926 in 2002, to 1,574 in 2008 (MoE, 2009). The enrolment of children with special needs peaked at 143,409 in 2008. However, 78 percent of these (111,995) were in Nairobi, with the other 22 percent spread among the other 7 provinces. Low access rates in the North Eastern Province has been of concern to the Government This is an indication that while progress may have been made at the national level, this is more applicable to urban settings, while many young persons in the rural and the marginalised areas may not be realizing the right to education.
16. Moreover, evidence seems to indicate that special needs education is only taking care of the 'traditional' areas of disability (mental physical, hearing and visual). Analysis of MoE statistics (MoE, 2009) indicates that of all the special needs institutions in Kenya in 2008, 41 percent catered for children with hearing challenges, 40 percent with mental, 11 percent with physical and 7 percent with visual disabilities. This leaves out many learners with high-

incidence disabilities like learning disabilities and behavioural difficulties as there are specialized institutions set for them.

ECONOMIC CHARACTERISTICS

17. Kenya's economy is market-based, with a few state-owned infrastructure enterprises, and maintains a liberalized external trade system. The Kenya Development Agenda is anchored on Vision 2030. The vision aims to transform Kenya into a newly industrializing, middle-income country providing a high quality life to all its citizens by the year 2030. It is founded on three key pillars namely: economic, social and political. The economic pillar aims to achieve an average economic growth rate of 10 per cent per annum by 2012 and sustain the same till 2030 in order to generate more resources to meet the MDGs and Vision goals. The social pillar seeks to achieve just, cohesive and equitable social development in a clean and secure environment. The political pillar aims for an issue-based, people-centered, results-oriented and accountable democratic system of governance.
18. The Vision 2030 is anchored on ten core foundations. The first seven of these foundations are closely linked to the economic and social pillars. These are: macroeconomic stability for long-term development; enhanced equity and wealth creation opportunities for the poor; infrastructure; energy; Science, Technology and Innovation (STI); land reform; and human resource development. Underpinning these seven socio-economic foundations are three further foundations that are closely linked to the political pillar of Vision 2030, namely: public service reforms; enhanced security; and deeper Governance Reforms.
19. Tourism is Kenya's largest foreign exchange earner, followed by flowers, tea, and coffee. Agriculture is the second largest contributor to Kenya's gross domestic product (GDP), after the service sector. The production of major food staples such as maize is subject to sharp weather-related fluctuations. Production downturns periodically necessitate food aid. Although Kenya is the most industrially developed country in East Africa, manufacturing still accounts for only 14 percent of gross domestic product (GDP). Industrial activity, concentrated around the three largest urban centers, Nairobi, Mombasa, and Kisumu, is dominated by food-processing industries such as

grain milling, beer production, sugarcane processing, and the fabrication of consumer goods, e.g. assembly of vehicles. The pattern of these economic activities has a great impact on access to employment.

20. The economy's heavy dependence on rain-fed agriculture and the tourism sector leaves it vulnerable to cycles of boom and bust. The agricultural sector directly and indirectly employs nearly 70 percent of the country's population. Half of the sector's output remains subsistence production. Poor governance and corruption have had a negative impact on growth, making it expensive to do business in Kenya. According to Transparency International, Kenya ranks poorly in the corruption perception index though there have been significant improvements in recent times. HIV/AIDS continues to pose a long term risk to the economy. The government has implemented awareness programmes to control its spread. Antiretroviral drugs are available at government subsidized rates.
21. Kenya is the regional hub for trade (imports and exports) and finance in East Africa. The economy has been characterised by stagnation in economic growth for a long time. Between 1997 and 2002, the economy grew by an annual average rate of only 1.5%, below the population growth estimated at 2.5% per annum, thus leading to a decline in per capita incomes. Its growth was greatly hampered by reliance upon several primary cash crops whose prices or pricing remained depressed globally. A severe drought from 1999 to 2000 compounded Kenya's problems, causing water and energy rationing and reducing agricultural, agrarian, fisheries and farming output. As a result, Gross Domestic Product (GDP) contracted by 0.2 per cent in 2000. The International Monetary Fund (IMF), which had resumed loans in 2000 to aid Kenya through the drought, again halted lending in 2001 when the state failed to institute several anticorruption (including cronyism and nepotism) measures.
22. Despite the return of strong rains in 2001, weak commodity prices or pricing, corruption and depressed investment put a ceiling on Kenya's growth of the economy to 1.2 per cent. This continued into 2002, at 1.1 per cent not only because of erratic rains, depressed investor confidence, minimal donor support, but also because this was an electioneering year.

23. In December 2002 elections, a new opposition government took on the economic problems facing the country. After some early progress in eliminating corruption and encouraging donor support, the new government was rocked by high-level graft scandals in 2005 and 2006. In 2005, economic growth rate was 5.8%. In 2006, the World Bank (WB) and International Monetary Fund (IMF) delayed loans pending action by the state on corruption. The international financial institutions and donors have since resumed lending. The Post-election violence witnessed in early 2008, coupled with the knock-on effects of the global economic downturn on remittance and exports, reduction of Gross Domestic Product (GDP) saw a growth to 2.2 per cent in 2008, down from 7 per cent in 2007.

MACROECONOMIC INDICATORS

ITEMS	2005	2006	2007	2008	2009	2010
Real GDP growth rate (%)	5.9	6.3	7	1.6	2.6	5.6
Income per capita (KSh.)	40,292	44,899	49,204	54,371	57,887	57,887
Population growth rate (%)	2.6	2.8	3	3	2.9	2.5
Average annual Inflation rate (%)	9.87	6.39	4.27	16.27	9.37	9.2
Treasury bill rates (nominal) %	8.14	5.83	8.75	8.5	6.82	2.8
Public debt as % of GDP	51.9	46.8	44.6	48.5	48.1	51
Public external debt as % of GDP	28.4	23.2	22.5	24.7	21.5	23.2
Public domestic debt as % of GDP	18.3	19.4	17.4	20.6	23.5	25.9
Source: Statistical Annex to the Budget Speech 2010/11; Central Bank of Kenya Monthly Economic Survey March 2010						

24. Poverty however remains a major impediment to both the fulfilment of basic needs and the realization of the full potential of many Kenyans, particularly

women and children. The population in absolute poverty was estimated at 46%, 49.1 % rural and 33.7% urban in 2009. This was a decrease from the previous percentages of the poor 52.9% (rural) and 49.2% (urban) in 1997 up from 46% (rural) and 29.3% (urban) in 1992.

25. Regional poverty estimates for Kenya reveal that poverty varies widely by region and its incidence is particularly high in semi-arid areas of the country. Poverty in Kenya is a multidimensional and includes; deprivation in knowledge, decline in life expectancy and in the quality of life. It relates to lack of material needs signifying deficiency of social, economic and cultural rights, which are important and vital for survival and or well-being especially for the ageing. The causes of poverty include high population growth rate, slow growth of economy, social exclusion, insecurity, and lack of control over productive assets. In terms of composition, the poor include those who are in old age, the landless, pastoralists, the handicapped, females-headed households, households headed by people without formal education, unskilled casual workers, AIDS orphans, street children and beggars.
26. The issue of poverty has been exacerbated by the large levels of unemployment estimated at 40% (2008). Unemployment is a major issue of concern in Kenya. Studies indicate that unemployment in Kenya has been made worse by factors such as declining economic growth, the rapid population growth, skills mismatch and information problems in the labor market, negative effects of the structural adjustment programs (SAP), political instability, and poor governance.
27. In the last two years, the Government of Kenya has shown commitment to dealing with unemployment by developing various policies that serve to offer a framework of tackling unemployment. The rationale behind these policies is that, if measures of improving the economy are implemented then there will more jobs created. Therefore, most of the policies developed are linked to the economic growth of the country. Since independence in 1963, there have been various Sessional papers that have been developed to tackle unemployment. These Sessional Papers have tried to address the challenges that face economic development by identifying certain measures that can be utilized in addressing the unemployment problem.

28. The Economic Recovery Strategy for Wealth and Employment Creation (ERS) 2003-2007, had a positive impact on employment. By 2007, Kenya reported a GDP growth of 7.1 per cent. According to the 2009 Economic Survey, there was an increase of the total employment outside small-scale farming and pastoralist activities in 2007. New jobs created were 485,500, an increase of 5.4 per cent. However, in 2008, the GDP growth dropped to 1.7 per cent. Analyst attributed the drop in GDP to the 2008 post election crisis, the global financial crisis, and the high fuel prices. Henceforth, total new employment in 2008 dropped by 4.9 per cent (467,300 jobs). There is a correlation in the employment status of a country to its economic performance and development. In Kenya, the post election crisis inhibited major development sectors of the country such as the tourism and transport sectors. As a result, the operations of hotels, restaurants, and transport systems were slowed down leading to low profits, which led to loss of employment.

CRIME IN KENYA

29. There is a high rate of crime in all regions of Kenya, particularly in the main cities of Nairobi, Mombasa and Kisumu. The trend of crime and insecurity can be linked to, among others, proliferation of small arms and light weapons from Kenya's war-torn neighbours, inequitable distribution of resources, organized crime, high unemployment rate, drug and substance abuse, high illiteracy levels and sophistication of technology. However most of the commonly committed offences are poverty related e.g. loitering, brewing, selling and/or consumption of the local brews or hawking wares on the streets without licenses from local authorities.

30. Today, Kenya's youth unemployment rate stands at 65 %. Significantly, youth are engaged in the informal sector, which is largely unregulated and workers are subjected to low earnings and long working hours, without any formal contracts. Suffering under a slow-growing economy, the youth, whether well educated or uneducated, have increasingly turned to crime and violence. The majority of the youth in urban settings reside in slums that are characterized by unemployment of youth, a filthy physical environment, poor housing, lack of sanitation facilities and general poverty situations. The youth in these areas do not have adequate education nor training; thus, have no prospects for

meaningful employment. They are therefore vulnerable to crime, drug abuse, HIV AIDS infection and prostitution. The post elections violence witnessed after the 2007 disputed presidential elections was carried out through the youth.

31. Every person in Kenya is a potential victim of crime. However, majority of the victims of gender based violence are women and children. Due to this reality, the Government in collaboration with development partners has established a one stop Gender Based Violence Recovery Center at the Kenyatta National Hospital. The center provides comprehensive medical care and psychosocial support for survivors of rape and gender violence by offering Emergency Post Rape medical care, Collecting and preserving forensic evidence, legal aid, creating awareness on gender based violence to staff and public as well as advocacy for behaviour change. It is hoped that such centers can be replicated throughout the country. In the meantime, the center sensitizes medical personnel entrusted with the provision of such services in other general Hospitals throughout the country.
32. The country is also in the process of drafting the Victims of offences Bill. This law is intended to operationalisze section 50 (9) of the Constitution of Kenya, 2010 on the protection , rights and welfare of victims of offences. The proposed law will provide for structures, processes and regulations for the rights of victims of offences and provision of psychological support.
33. At the time of compiling this document the criminal justice, system is under review under the Justice Law and Order Reform Programme. Reforming the judiciary and the entire judicial system is at the core of the initiatives. The Programme targets the entire criminal justice system and supports measures aimed at prison decongestion, the application of community service orders as an alternative to rehabilitating petty offenders, the strengthening of Kenya's public prosecutions function, supporting legal aid initiatives and strengthening the parole system through probation and aftercare services.
34. Through strengthening the justice system, better law and order will help reduce not only crime but the fear of crime. This includes greater emphasis on crime prevention. The reform programme also supports measures to improve the services of the police and other law enforcement agencies. This combines

the provision of equipment with changes in attitudes to law and order through various capacity building initiatives, including retraining of staff on work culture, attitude change and community policing initiatives. One of the goals under this sector is the launch of a national crime prevention strategy.

35. Although the absolute crime number went down between 2009 and 2010, the crime index for 2010 shows a high figure because of the population growth from 2009 and 2010 as the crime index is sensitive to population.

No.	OFFENCES	2009	2010	DIFFERENCE	% CHANGE
1	Homicide	1864	1800	-64	-4
2	Offences against Morality	3496	3972	476	12
3	Offences against persons	1767	1609	-158	-10
4	Robbery	2462	2305	-157	-7
5	Breaking ins	5933	5270	-663	-13
6	Stock theft	2414	1844	-570	-3
7	Stealing	10115	9876	-239	-2
8	Theft by servant	2292	2121	-171	-8
9	Vehicles, other thefts	1236	1124	-112	-10
10	Dangerous drugs	4633	4290	-343	-8
11	Traffic offences	2865	2633	-232	-9
12	Criminal damage	51	92	41	45
13	Economic crimes	1904	2169	265	12
14	Corruption	149	56	-93	-166
15	Offences on tourists	3	2	-2	-200
16	Offences police	50	30	-20	-67

17	Other penal code offences	4145	4059	-86	-2
18	TOTAL	61120	578227	-64	-4

Source: Kenya Police National Crime report, 2010

B. CONSTITUTIONAL, POLITICAL AND LEGAL STRUCTURE OF KENYA

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

Applicable Laws

The Constitution of Kenya, 2010

37. Under the Constitution of Kenya, 2010, the Constitution is the supreme law of the land. Its validity and legality is not subject to challenge by or before any court or other state organ. Any law, including customary law that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid.

- The general rules of international law and any treaty or convention ratified by Kenya shall form part of the law of Kenya.

38. Section 3 of the Judicature Act (Chapter 8 Laws of Kenya) enumerates the primary sources of Kenya laws and these include:

- The Constitution
- Acts of Parliament which also include subsidiary legislation, Specific Acts of Parliament of the United Kingdom cited in the schedule to the Judicature Act ;

- The Transfer of Property Act, 1882 of India as the procedural law applicable where the Registration of Titles Act, the Land Titles Act and the Government Lands Act are applied;
- English Statutes of General application in Force in England on 12th August 1897, applicable in Kenya in the form that they had at the reception date;
- The Substance of Common Law and Doctrines of Equity applicable to the Kenyan inhabitants in so far as the circumstances of Kenya permit;
- African Customary law applicable only in civil cases where one or more of the parties is subject to or affected by it, in so far as it is not repugnant to justice and morality or inconsistent with any other law; and
- Islamic Law applied in Kadhi's Courts, where all the parties profess the Muslim religion, on questions of Muslim law relating to personal status, marriage, divorce and inheritance issues.

The Government

39. This report describes the Government as provided for in the Kenya Constitution, 2010. There are three arms of the Government: the Legislature, Executive, and the Judiciary.

Composition of Parliament

40. Chapter Eight of the Constitution establishes the Parliament of Kenya, which consists of the National Assembly and the Senate. Section 94 provides that the legislative power of the Republic, which is derived from the people of Kenya, shall vest in the Parliament.

41. The National Assembly consists of two hundred and ninety members, each elected and representing a constituency; forty-seven women, each elected and representing a county; twelve members nominated by parliamentary political parties, according to their proportion of members elected to the National Assembly, to represent special interests including the youth, persons with disabilities and workers; and the Speaker, who is an *ex officio* member.

42. The Senate consists of forty-seven members each elected and representing a county; sixteen women members who shall be nominated by political parties according to their proportion of elected members of the Senate; two members, one man and one woman, representing the youth; two members, one man and one woman, representing persons with disabilities; and the Speaker, who shall be an *ex officio* member. According to the Constitution, elections of members of Parliament shall be held every five years.

National Executive

43. The National Executive of the Republic comprises the President, the Deputy President and the rest of the Cabinet. The President is the Head of State and Government and exercises the executive authority of the Republic, with the assistance of the Deputy President and Cabinet Secretaries. The Cabinet consists of the President; the Deputy President; the Attorney-General; and not fewer than fourteen and not more than twenty-two Cabinet Secretaries. The President nominates and, with the approval of the National Assembly, appoints Cabinet Secretaries. A Cabinet Secretary shall not be a Member of Parliament. The composition of the National Executive shall reflect the regional and ethnic diversity of the people of Kenya.

The Judiciary

44. Chapter ten of the Constitution establishes an independent Judiciary. The Judiciary consists of the judges of the superior courts, magistrates, other judicial officers and staff. It provides that in the exercise of judicial authority, the Judiciary, shall be subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority. In addition, the office of a judge of a superior court shall not be abolished while there is a substantive holder of the office. The remuneration and benefits payable to or in respect of judges shall be a charge on the Consolidated Fund. The remuneration and benefits payable to, or in respect of, a judge shall not be varied to the disadvantage of that judge, and the retirement benefits of a retired judge shall not be varied to the disadvantage of the retired judge during the lifetime of that retired judge. A member of the Judiciary is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a judicial function.

45. The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts with the status of the High Court to hear and determine disputes relating to employment and labour relations; the environment and the use and occupation of, and title to, land.

The subordinate courts are the Magistrates courts; the Kadhis' courts; the Courts Martial; and any other court or local tribunal as may be established by an Act of Parliament.

THE ELECTORAL SYSTEM

46. The Constitution provides that every citizen is free to make political choices, which include the right to form, or participate in forming, a political party; to participate in the activities of, or recruit members for, a political party; or to campaign for a political party or cause. In addition, every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for any elective public body or office established under the Constitution; or any office of any political party of which the citizen is a member. Therefore, every adult citizen has the right, without unreasonable restrictions, to be registered as a voter; to vote by secret ballot in any election or referendum; and to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.

47. To give effect to these rights, the Constitution provides that, Kenya's electoral system, shall comply with the following principles: freedom of citizens to exercise their political rights; not more than two-thirds of the members of elective public bodies shall be of the same gender; fair representation of persons with disabilities; universal suffrage based on the aspiration for fair representation and equality of vote; and free and fair elections, which are by secret ballot; free from violence, intimidation, improper influence or corruption; conducted by an independent body (the Independent Electoral and Boundaries Commission) ; transparent; and administered in an impartial, neutral, efficient, accurate and accountable manner.

2. GENERAL FRAMEWORK FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

C. ACCEPTANCE OF INTERNATIONAL HUMAN RIGHTS NORMS

a) *Ratification of main international human rights instruments.*

48. Kenya is a state party to the following core human rights instruments :

- The International Covenant on Civil and Political Rights (ICCPR);
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The International Convention on the Elimination of all forms of Racial Discrimination (CERD);
- The Convention on the Elimination of all forms of Discrimination against Women (CEDAW);
- The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and
- The Convention on the Rights of the Child (CRC);
- The Convention on the Rights of Persons with Disabilities;

49. International instruments relating to International Humanitarian Law that Kenya is a state party to, include:

- Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949;
- Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 1949;
- Geneva Convention (III) relative to the Treatment of Prisoners of War 1949;
- Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva 1949;
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 1977;

- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 1977;

50. Other international instruments which Kenya is a state party to and which have implications for human rights include:

- The International Convention Against Corruption;
- The Convention Relating to the Status of Refugees;
- Refugee Protocol, 1967
- The Optional Protocol to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
- The Rome Statute of the International Criminal Court.
- Convention on Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 1968;
- Comprehensive Nuclear Test-Ban Treaty (CTBT)
- Chemical Weapons Convention, 1993;
- Ottawa Treaty, 1997;
- Convention Against the Taking of Hostages, 1979,
- Convention for the Suppression of the Financing of Terrorism, 1999;
- Convention for the Suppression of Terrorist Bombings, 1997;

51. The table below shows the ILO Conventions that Kenya has ratified and their status.

Convention	Ratification date	Status
C2 Unemployment Convention, 1919	13:01:1964	ratified
C5 Minimum Age (Industry) Convention, 1919	13:01:1964	denounced on 09:04:1979

C11 Right of Association (Agriculture) Conv, 1921	13:01:1964	ratified
C12 Workmen's Compensation (Agriculture) Convention, 1921	13:01:1964	ratified
C14 Weekly Rest (Industry) Convention, 1921	13:01:1964	ratified
C15 Minimum Age (Trimmers and Stokers) Convention, 1921	13:01:1964	denounced on 09:04:1979
C16 Medical Examination of Young Persons (Sea) Convention, 1921	09:02:1971	ratified
C17 Workmen's Compensation (Accidents) Convention, 1925	13:01:1964	ratified
C19 Equality of Treatment (Accident Compensation) Convention, 1925	13:01:1964	ratified
C26 Minimum Wage-Fixing Machinery Convention, 1928	13:01:1964	ratified
C27 Marking of Weight (Packages Transported by Vessels) Convention, 1929	09:02:1971	ratified
C29 Forced Labour Convention, 1930	13:01:1964	ratified
C32 Protection against Accidents (Dockers) Convention (Revised), 1932	13:01:1964	ratified
C45 Underground Work (Women) Conv, 1935	13:01:1964	ratified
C50 Recruiting of Indigenous Workers Convention, 1936	13:01:1964	ratified
C58 Minimum Age (Sea) Convention (Revised), 1936	13:01:1964	denounced on 09:04:1979
C59 Minimum Age (Industry) Convention (Revised), 1937	13:01:1964	denounced on 09:04:1979

C63 Convention concerning Statistics of Wages and Hours of Work, 1938	13:01:1964	ratified
C64 Contracts of Employment (Indigenous Workers) Convention, 1939	13:01:1964	ratified
C65 Penal Sanctions (Indigenous Workers) Convention, 1939	13:01:1964	ratified
C81 Labour Inspection Convention, 1947	13:01:1964	ratified
C86 Contracts of Employment (Indigenous Workers) Convention, 1947	13:01:1964	ratified
C88 Employment Service Convention, 1948	13:01:1964	ratified
C89 Night Work (Women) Conv, (Revised), 1948	30:11:1965	ratified
C94 Labour Clauses (Public Contracts) Convention, 1949	13:01:1964	ratified
C97 Migration for Employment Convention (Revised), 1949	30:11:1965	ratified
C98 Right to Organise and Collective Bargaining Convention, 1949	13:01:1964	ratified
C99 Minimum Wage Fixing Machinery (Agriculture) Convention, 1951	09:02:1971	ratified
C100 Equal Remuneration Convention, 1951	07:05:2001	ratified
C105 Abolition of Forced Labour Convention, 1957	13:01:1964	ratified
C111 Discrimination (Employment and Occupation) Convention, 1958	07:05:2001	ratified
C112 Minimum Age (Fishermen) Convention, 1959	09:02:1971	denounced on 09:04:1979
C118 Equality of Treatment (Social Security)	09:02:1971	ratified

Convention, 1962		
C123 Minimum Age (Underground Work) Convention, 1965	20:06:1968	denounced on 09:04:1979
C129 Labour Inspection (Agriculture) Conv, 1969	09:04:1979	ratified
C131 Minimum Wage Fixing Convention, 1970	09:04:1979	ratified
C132 Holidays with Pay Conv (Revised), 1970	09:04:1979	ratified
C134 Prevention of Accidents (Seafarers) Conv, 1970	06:06:1990	ratified
C135 Workers' Representatives Convention, 1971	09:04:1979	ratified
C137 Dock Work Convention, 1973	09:04:1979	ratified
C138 Minimum Age Convention, 1973	09:04:1979	ratified
C140 Paid Educational Leave Convention, 1974	09:04:1979	ratified
C141 Rural Workers' Organisations Conv, 1975	09:04:1979	ratified
C142 Human Resources Development Conv, 1975	09:04:1979	ratified
C143 Migrant Workers (Supplementary Provisions) Convention, 1975	09:04:1979	ratified
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	06:06:1990	ratified
C146 Seafarers' Ann Leave with Pay Conv, 1976	14:09:1990	ratified
C149 Nursing Personnel Convention, 1977	06:06:1990	ratified
C182 Worst Forms of Child Labour Convention, 1999	07:05:2001	ratified

(Source: ILOLEX 2011)

52. At the regional level, Kenya has ratified the following instruments:

- African Charter on Human and Peoples' Rights;
- the African Charter on the Rights and Welfare of the Child;
- the OAU Convention Governing Specific Aspects of Refugee Problems in Africa;
- the OAU Convention Against anti-Corruption; and
- The Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples Rights.
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).
- African nuclear-Weapon Free Zone Treaty (The treaty of Pelindaba)
- OAU Convention on the Prevention and Combating of Terrorism.

(b) Reservations and declarations.

53. Out of the UN human rights instruments that Kenya is a state party to, only one reservation under Art. 10 (2) of the ICESCR has been entered. The state felt that this was a matter for negotiation between employers and employees especially to determine what special protection under different circumstances would entail; what a reasonable period before and after childbirth would entail depending on the circumstances of each employment contract and the sector. This is in line with the freedom of association and the avoidance of undue Government interference with different private sectors. This is in line with Kenya's Constitution and the labour laws.

D. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED AT THE NATIONAL LEVEL

a) Constitutional protection and incorporation

54. Article 19 of the Kenya Constitution 2010 states that the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies. It also states that the purpose of recognising

and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.

Application of the Bill of Rights

55. The Constitution provides that the Bill of Rights applies to all and binds all State organs and all persons. Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom. Therefore, it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. The State is obliged to take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the social and economic rights guaranteed under Article 43 of the Constitution.

56. All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities. In this respect, the state is obliged to enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.

b) Authority of courts to uphold and enforce the Bill of Rights

57. Section 23 of the Constitution provides that the High Court has jurisdiction to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights. In addition, the Constitution gives power to Parliament to enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

c) Remedies available for violations of human rights

58. Where an individual claims that a right has been violated, a court may grant appropriate relief, including: a declaration of rights; an injunction; a conservatory order; a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under the limitations recognized under the Constitution; an order for compensation; and an order of judicial review. Where the State has been found liable for a human rights violation, a system of compensation exists.
59. The Judiciary has also published the Litigants' Charter, which is designed to promote understanding by the litigating public of the processes of the court and their rights and obligation in the courses of litigation. The Charter disseminates information on the court, its processes and methods of approaching it all in a simple language. In addition, plans are at an advanced stage to computerize court proceedings in order to avail electronic versions of case law and statutes for reference by lawyers, judicial staff and the public.

d) Enforcement of the Bill of Rights

60. The constitution of Kenya recognises all the generations of human rights including the social, cultural and economic rights. In addition, the constitution provides that any treaty or convention ratified by Kenya and the general rules of international law shall form part of the law of Kenya under the constitution. Due to this, the provisions of the various human rights instruments can be, and have been, invoked before, or directly enforced by, the courts, other tribunals or administrative authorities, and need not be incorporated into domestic laws or administrative regulations in order to be enforced.
61. Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. In addition to a person acting in their own interest, court proceedings may be instituted by: a person acting on behalf of another person who cannot act in their own name; a person acting as a member of, or in the interest of, a group or class of persons; a person acting in the public interest; or an association acting in the interest of one or more of its members.

62. To facilitate these proceedings, the Chief Justice is mandated to make rules providing for the court proceedings which shall satisfy the criteria that: the right to institute proceedings other than as an individual are fully facilitated; formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation; no fee may be charged for commencing the proceedings; the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court. The absence of rules does not limit the right of any person to commence court proceedings and to have the matter heard and determined by a court.

Limitation of Rights

63. In Kenya, the rights and fundamental freedoms in the Bill of Rights, belong to each individual and are not granted by the State; do not exclude other

rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are inconsistent with the Constitutional provisions; and are subject only to the limitations provided for in the Constitution. In this regard, the Constitution provides that a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:

- the nature of the right or fundamental freedom;
- the importance of the purpose of the limitation;
- the nature and extent of the limitation;
- the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others;
- the relation between the limitation and its purpose and
- whether there are less restrictive means to achieve the purpose.

64. Specifically, the Constitution provides for the possibility of limiting the application of the following rights or fundamental freedoms in respect persons serving in the Kenya Defence Forces or the National Police Service:

- Privacy;
- Freedom of association;
- Assembly, demonstration, picketing and petition;
- Labour relations;
- Economic and social rights; and
- Rights of arrested persons.

Legal aid

65. The Kenyan legal system poses a number of challenges to its users. These challenges vary widely: some revolve around the nature of the system itself and its context while others relate to the nature and status of the people it serves. These include:

- law that is written in a ‘foreign’ and difficult, technical language, inaccessible statute books, and judicial institutions which are physically far from a majority of the citizens, are costly, inefficient and corrupt.
- The second set include: general and legal illiteracy among the citizens, lack or inadequacy of resources, negative attitudes towards the institutions among the citizens and marginalisation of certain sections of the citizenry, particularly women, children and persons with disabilities, through insensitive laws, legal procedures and institutional and general social practice. Besides, advocates who may assist citizens to use the institutions effectively are concentrated in the major urban areas and are expensive to retain.

66. Historically, challenges relating to the judicial system have been addressed on the basis of philanthropy. This has been done through the *pauper brief* system and limited *pro bono* services offered by public-spirited members of the legal profession. Increasingly, however, a different approach is being adopted in addressing the challenges posed by the judicial system. This approach is anchored on the concept of *access to justice*. This is enshrined in the Constitution of Kenya 2010. The constitution provides that the State shall

ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.

67. The concept of access to justice revolves around the ease with which ordinary citizens are able to make use of the law, legal procedures and legal institutions to sort out their problems in general, and to get their rights in particular. Some of its essential components include: laws that are fair and are accessible to the citizens in their form and language; the availability of a variety of, and easily accessible, mechanisms for resolving disputes; simple and cheap procedures for achieving justice, fairness in the results of dispute resolution processes; and, above all, citizens who have knowledge and can easily use the law, and legal institutions and procedures.

68. It is on this basis that the Government has developed the National Legal Aid and Awareness Programme, which has started as a co-ordinated piloting process under government supervision, to inform the design of a national legal education and aid scheme and appropriate legislative framework. This initiative is taking place against the backdrop of ongoing legal sector reforms. There are also broader reform programmes such as poverty alleviation, which inform the context within which legal reforms are taking place. The Legal Education and Aid Programme cannot take place in isolation from these other reform initiatives. The introduction of High Court Divisions, small claims courts and new procedures in Children's Courts, and the reorganisation of registries provide opportunities for tackling the need for Access to Justice in an integrated manner.

69. The Pilot projects are:

- The Nairobi High Court Family Division Pilot Project. The pilot project is facilitated by the Law society of Kenya (LSK) and the Federation of Women Lawyers (FIDA) Kenya. It handles cases of family nature relating to divorce, disputes over matrimonial property, administration of estates of the deceased and interdicts to stop or prevent family violence. Its services include legal aid (advice and representation), family mediation and legal education.
- The Nairobi Children's Court Pilot Project. The project is facilitated by the Law Society of Kenya (LSK) and the Children's Legal Action

Network (CLAN). The cases targeted in the project include those of children in conflict with the law and those in contact with the law as victims or witnesses. The services provided include legal education, legal aid and advice, and litigation.

- The Mombasa Capital Offences Pilot Project. The project is facilitated by Christian Legal Education Awareness and Research (CLEAR), LSK Coast Branch and the High Court. It handles capital offences, especially robbery with violence, taken before the courts within the coast region. Services provided include counseling and legal advice, assistance and representation.
- Kisumu-Paralegal Advise Office Pilot Project. The project is facilitated by the Kenya Community Paralegal Association and LSK West Kenya Branch and handles cases in which the interests of the poor are affected. The services provided include legal education, legal aid (advice and representation), and mediation.
- The Nakuru Children's Justice Pilot Project. The children's justice pilot project is being facilitated by the LSK Rift Valley Branch and handles children in conflict with the law and children in contact with the law. The services provided include legal education, legal aid (advice and representation), mediation, and family finding and counseling.
- The Moi University Law Clinic (Eldoret) Pilot Project. The project is facilitated by LSK North Rift Branch and Moi University Law clinic Eldoret. It does not focus on any particular kind of matter but seeks to provide a broad range of services while remaining focused on serving poor, vulnerable and marginalized clients. The services provided include legal aid, legal education, referrals for litigation and mediation.

C) Institutions with responsibility for overseeing the implementation of human rights

70. **The National Human Rights Institution:** Parliament has established institutions to monitor the respect, fulfilment, promotion and protection of human rights. The Kenya National Commission on Human Rights (KNCHR) is a statutory body established under an Act of Parliament, the Kenya National Commission on Human Rights Act, 2002 and in conformity with the

Paris Principles. It has a geographical jurisdiction that covers the whole of Kenya. It is vested with both human rights promotion and protection competence. It has a broad mandate and its Act interprets human rights to mean “the fundamental rights and freedoms of any individual protected under the Constitution and any human rights provided for in any international instrument to which Kenya is signatory”.

71. **Promotion of Gender Equality:** The National Commission on Gender and Development (KNCGD) established under the National Gender and Development Act has the mandate to co-ordinate, implement and facilitate gender mainstreaming in national development. The Commission plays a strategic role through the formulation of laws, practices and policies which eliminate discrimination against women and the institutionalization of mechanisms that promote gender equity and equality particularly, access to and benefits in education, healthcare, nutrition, shelter, employment and control of economic and national resources. Although the Commission is mandated to carry out investigations on gender-based rights and violations and make recommendations to relevant authorities, it has neither an enforcement role nor the power to hear complaints.
72. **Protection of Children’s Rights:** The National Council for Children Services (NCCS) is a semi-autonomous Government agency established under the children Act 2001. It has the mandate to plan, regulate and coordinate children rights and welfare activities in Kenya.
73. **Protection of the rights of persons with disabilities:** The National Council for Persons with Disabilities has the mandate to reserve five percent of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disabilities. The Council also has the following mandate to enforce the following: in education, learning institutions are obliged to take into account the special needs of persons with disabilities in a number of aspects of education including admission requirements and curriculum. In sports and recreation, all persons with disabilities are entitled, free of charge, to the use of recreational or sports facilities owned or operated by the Government during social, sporting or recreational activities.
74. Other obligations that the Council has to enforce relate to the duty to provide reasonable accommodation in respect of access to public buildings and public

service vehicles. In addition to enforcement activities, the National Council for Persons with Disabilities is also charged with promotional, educational and policy responsibilities and has the mandate to formulate and develop “measures and policies designed to achieve equal opportunities for persons with disabilities”

75. Protection against official maladministration: **The Public Complaints Standing Committee (PCSC)** was established in Kenya in June 2007 with a mandate to receive, register, sort, classify and document all complaints against public officers in Ministries, Parastatals/State Corporations, Statutory Bodies or any other public institution. In addition, the PCSC is mandated to enquire into allegations of misuse of office, corruption, and unethical conduct, breach of integrity, maladministration, delay, injustice, discourtesy, inattention, incompetence, misbehaviour, inefficiency or ineptitude in the service to the citizens.
76. **The National Cohesion and Integration Commission**, established by an Act of Parliament, has the mandate to facilitate and promote equal opportunities, good relations, harmony and peaceful co-existence between different ethnic and racial communities of Kenya. Any aggrieved person can lodge a complaint regarding violations under the Act to the Commission. The Commission also has powers to investigate complaints of ethnic or racial discrimination and make recommendations to the Attorney General, the Kenya National Human Rights Commission or any other relevant authority on the remedial measures to be taken where such complaints are found to have merit. Moreover, the Commission also has the mandate to promote and monitor public awareness on ethnic and racial harmony and make regular reports to the National Assembly.
77. **The Kenya Human Rights and Equality Commission:** Under the Constitution of Kenya, 2010, the roles of the Kenya National Commission on Human Rights (KNCHR), the National Commission on Gender and Development (KNCGD) and the Public Complaints Standing shall be carried out under the Kenya National Human Rights and Equality Commission. Under the Constitution the mandate of the Commission shall be: to promote respect for human rights and develop a culture of human rights in

the Republic; to promote gender equality and equity generally and to coordinate and facilitate gender mainstreaming in national development; to promote the protection, and observance of human rights in public and private institutions; to monitor, investigate and report on the observance of human rights in all spheres of life in the Republic, including observance by the national security organs; to receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated.

78. The Commission also, on its own initiative or on the basis of complaints, can investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs; act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights; investigate any conduct in state affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice; investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct; report on any complaints investigated and take remedial action. An Act of Parliament may also confer other functions.

79. **Department of Refugee Affairs:** The Government of Kenya established the Department of Refugee Affairs as a public office responsible for all administrative matters concerning refugees in Kenya and in that capacity, coordinates activities and programs relating to refugees. These include their recognition, protection and management of asylum seekers and refugees. In liaison with the United Nations Agencies, led by UNHCR, and other partners, the Department ensures that there is provision of adequate facilities and services for the Protection, Reception and Care of Refugees within Kenya. The Department is also responsible for promoting, as far as possible, the durable solutions for refugees granted asylum in Kenya. These include Voluntary Repatriation to countries of origin when situations permit return, resettlement to third countries and local integration. The Department is further responsible for initiating, in collaboration with development partners, projects that promote peaceful and harmonious co-existence between the host communities and refugees.

It is also responsible for ensuring that refugees' economic and productive activities do not have a negative impact on host communities, natural resources or the environment.

80. **Protection of the rights of internally displaced persons (IDPs):** The Ministry of State for Special Programmes has the mandate to resettle and mitigate the circumstances of IDPs in Kenya. The Government of Kenya (GoK) uses the UN Guiding Principles on Displacement to define an Internally Displaced Person (IDP). Internal displacement in Kenya is attributed to five key factors:

Politically influenced violence; natural disasters (floods, landslides, drought); cultural inter-clan conflicts; Social/Communal tensions; and Climate-Change induced displacement.

81. The announcement of the Presidential election results in December 2007 led to widespread violence across Kenya. The violence, which took on an ethnic dimension lasted for nearly two weeks and left Kenya facing an unprecedented level of displacement of its own people. The Ministry of State for Special Programmes, states that 663,921 people were displaced from the orgy of violence. Of that number, 313, 921 IDPs fled to host communities and integrated within those communities for months to come. The other 350, 000 internally displaced persons sought refuge in 118 camps. An estimated 78, 254 houses were burnt countrywide. At the time of compiling the document, slightly more than 16,000 IDPs were still not settled.

82. **Protection of Older Persons:** The Department of Gender and social services, under the Ministry of Gender, children and Social development has the mandate to develop and implement policies that promote the rights and welfare of the older persons. Kenya is a signatory to the International Plan of Action on Ageing adopted in 1982 in Vienna, Austria during the first World Assembly on Ageing (WAA). Since then, the government has been committed to the UN principles, which stipulate the rights of the older persons to independence, participation, care, self-fulfilment and dignity.

83. The country, through the Ministry of Gender, Children and Social Development, has facilitated formulation of a draft National Social Protection Policy document that is currently waiting cabinet approval. The policy provides the Government's intent of putting in place a National Social

Protection Program focused on improving the lives of the poor and vulnerable. The formulation of the policy has been informed by both local and International experiences. Kenya ratified The Universal Declaration of Human Rights which states that Social Protection is a fundamental human right for all citizens; Articles 22- 26 specifically focus on social protection. The Commission for African Union identified social transfers, as a key tool in tackling extreme poverty in sub-Saharan Africa. Kenya is a signatory to the Livingston Declarations of 2006. The Conference committed Governments under the auspices of African Union (AU) to improve on the implementation of Social Protection Programme. In the Livingstone Call for Action, the African Governments then agreed to integrate social transfers within the National Development Plans and Budgets within the next 2 – 3 years after the 2006 meeting.

84. The National Social Protection Steering Committee was formed (2007) under the chair of the Permanent Secretary, Ministry of Gender, Children & Social Development. The National Committee is in the process of developing a National Social Protection Strategy in line with the policy document. In 2009, the Government launched a Social Protection Programme, where the older persons of 65 years and above receive a monthly cash transfer of Ksh 1,500/- per household. The programme is one of the instruments that the Ministry of Gender has put in place to address some of the needs of the vulnerable older persons in the society. The cash is aimed at strengthening their capacities to improve their livelihood by reducing integrated poverty through sustainable social protection mechanisms.

KENYA'S ACCEPTANCE OF THE JURISDICTION OF REGIONAL HUMAN RIGHTS MECHANISM

85. Kenya submits itself to the African Commission on Human and Peoples Rights. Although a few communications have been filed against Kenya at the Commission, only one has been concluded. In this particular case, the Kenyan government was accused of having evicted the Endorois people, a traditional pastoralist community, from their homes around Lake Bogoria in central Kenya in the 1970s, to make way for a national reserve and tourist facilities. The Commission found that this eviction had minimal compensation and

violated the Endorois' right as an indigenous people to property, health, culture, religion, and natural resources. It ordered Kenya to restore the Endorois to their historic land and to compensate them. At the time of compiling this report, consultations are on going on the best way of implementing the Commission's decision.

86. As stated elsewhere, Kenya is a state party to the African Charter on the Rights and Welfare of the Child. The African Committee of Experts on the Rights and Welfare of the Child monitors the implementation of the African Charter. The Committee is currently the only child rights treaty-monitoring body in the world that receives complaints against State parties. Kenya submits periodic reports to the Committee on the measures that it has taken to fulfil the provisions of the Charter. In 2009, in a communication, *Nubian Children in Kenya v Kenya* was filed before the Committee. The hearing and subsequent ruling were part of the Committee's deliberations during its 17th ordinary Session held in Addis Ababa from 21-25 March 2011. Kenya was found in violation of the rights of Nubian children to non-discrimination, nationality and protection against statelessness. At the time of compiling the report, the Committee had not yet issued its detailed and reasoned report in which it promised to recommend remedies it deems appropriate in order to promote, protect the best interests of Nubian children in Kenya.

87. Kenya is also a signatory to the Protocol to the African Charter on Human and Peoples Rights on the Establishment of An African Court on Human and Peoples' Rights. The African Court on Human and Peoples' Rights complements the protective mandate of the African Commission on Human and Peoples' Rights. The Court has the competence to take final and binding decisions on human rights violations.

E: GENERAL FRAMEWORK WITHIN WHICH RIGHTS ARE PROMOTED AT THE NATIONAL LEVEL

a) Provincial Administration

88. The Provincial Administration Services is one of five departments in the Ministry of State, Internal security & Provincial Administration, Office of the President. The Ministry's functions have evolved over time to address emerging issues.

It is decentralized to the grassroots in order to provide a framework for quick interpretation, dissemination and implementation of Government policies. Since 2002, Provincial Administration has been restructured to accommodate more professionally trained staff with an expanded mandate that now includes disaster and emergency response, ensuring the protection of human rights especially the right to education, health, property and a clean environment. The Service has particularly been instrumental in fight against gender-based violence, child marriages and female genital mutilation.

b) The Role of parliament and National human rights institutions.

89. Nationally, the human rights commissions have a key role to play in the promotion and protection of human rights throughout Kenya; this being one of their central responsibilities. The specific parliamentary Committees also make a key contribution. By scrutinising the work of Government and consequently, holding the executive to account they provide a competent system of checks and balances.

90. The Institutions discussed under paragraphs 58-67 in this report have played a major role in promoting the different rights under their mandate. Under the Kenya Constitution 2010, Parliament shall allocate adequate funds to enable the Kenya Human Rights and Equality Commission, as shall be constitutionally constituted, adequate funds to enable it perform its functions and its budget shall be a separate vote. This is a great improvement from the scenario where the Kenya National Commission for Human Rights had its money channelled through the Ministry of Justice National Cohesion and Constitutional Affairs. As more safeguards for their independence, the Constitution provides that the remuneration and benefits payable to or in respect of a Commissioner shall be a charge on the consolidated fund and such remuneration or benefits shall be varied to the disadvantage of that person during their respective terms of office.

c) Publication of human rights instruments.

91. There are various methods through which materials relating to international human rights instruments are disseminated throughout the country. Reports concerning compliance with international obligations under UN human rights instruments are both prepared with and made available to interested

bodies and members of the public. The individual government department responsible for oversight of implementation (and compliance with) UN **human** rights instruments also lead on their dissemination. The same principle applies in the case of national human rights legislation where the leading department will also be in charge of disseminating the content of the proposals.

92. Kenya has not had the practice of publishing and translating human rights instruments generally. Efforts however, have been made at publishing and translating into Kiswahili, which is one of the national languages, most of the Treaty body recommendations that have been given to the state. However, lot of civil society organizations develop simplified versions of extracts from different human rights instruments that have been used even by Government agencies to raise awareness on certain rights as contained in human rights instruments. The Government has published and translated the National Human rights policy into Kiswahili. Plans are underway to collaborate with grass root organizations for translation into local Languages.

d)Promotion of human rights awareness for public officers.

93. The passage of the Kenya Constitution 2010 was a significant event in the legal and constitutional history of Kenya. It made rights in the International Human rights instruments that Kenya is a state Party to directly enforceable in the courts and this requires a major training programme for all those working in the legal system and other public officials who have the duty to ensure that the citizenry realize their rights. At the time of compiling this report, the ministry of Justice, National Cohesion and Constitutional Affairs is spearheading the roll out of a national civic education on the constitution.
94. The Ministry of State for Public Service has the mandate of management and development of all public officers. In this regard, it has initiated programmes for different cadres of officers to ensure professionalism and honest service delivery for the Kenyan people. In collaboration with the Kenya National Commission for Human Rights most of the training programmes have a component on human rights. This is emphasized as a manifestation of professionalism.

95. The Kenya National Commission for Human Rights has contributed in promoting understanding and the gradual specialization of human rights into the public service in Kenya. The Commission has conducted many human rights education trainings to promote understanding and awareness of human rights among public officers. The Commission has targeted officers in the Judiciary, Police and Prisons departments, Government schools and institutions, the Ministries of Information, Planning, Health, Water, labour, Agriculture, Public Works and Roads. These were identified as institutions that have a great impact on the protection and enjoyment of human rights. Using the rights based approach to programming, the National Commission is empowering duty bearers within government and the civil society to mainstream human rights principles in the delivery of services to the public.
96. The Commission has also worked with Government to infuse human rights into curriculum and training manuals of government training institutions, including the Police and Prisons Training Colleges. With other actors, the Commission has contributed in raising public awareness and understanding of human rights by the public through agricultural shows forums, human rights clinics and public accountability forums, especially in marginal areas of the country. The National Commission in conjunction with the Kenya Police Service developed and produced over 100 billboards on the rights of arrested persons to inform citizens of their rights and duties at the time of, and subsequent to their arrest. The billboards are mounted in strategic locations where members of public and persons can access them.

d)Promotion of human rights awareness through the mass media.

97. The media in Kenya has been in the forefront of exposing human rights violations and therefore galvanizing action against them. The Government has recognizing that the media as part of the democratic institutions which are crucial in the inculcation of the democratic culture that respects human rights. For example, in keeping with international best practice, the Governance, Justice, Law and Order Sector (GJLOS) Reform Programme launched the Marekebisho Media Awards for Excellence. This is an important step in fostering partnership with the media in building a more informed and participative citizenry in the delivery and utilization of services provided by

participating institutions in the Governance, Justice, Law and Order Sector (GJLOS) Reform Programme.

98. The Awards aim to recognize and promote excellence in issue-focused journalism that helps build self-confidence in the public in utilizing services offered by GJLOS Ministries, Departments and Agencies, such as Civil Registration, the Police, Immigration, the Provincial Administration and the Judiciary. The awards are sponsored by the GJLOS Reform Programme and are implemented in collaboration with stakeholders in the media, journalism training institutions, international development partners and other GJLOS partner institutions.
99. During the process of developing Kenya's National Policy and Action Plan for Human Rights, the Ministry of Justice, national Cohesion and constitutional Affairs in collaboration with the Kenya National Commission for human Rights, supported by international development partners exhaustively used the press, radio and television, in publicizing the process and to raise awareness on human rights not only in the two official languages but also in local languages. The Government expects to translate the policy and action plan into as many local languages as possible in partnership with Civil Society.

(f) Role of civil society, including non-governmental organizations.

100. Civil society organisations and non-governmental organisations have a key role to play in the protection, promotion and advancement of human rights in Kenya. The Government values close working relations with them in the formulation of domestic human rights policy and in consulting them prior to Inter-Governmental meetings. They also play a key role in the provision of human rights training amongst Government officials and the public.
101. In Kenya, Civil society plays an important role in promoting good governance and socio-economic development. The country has many well-functioning civil society organizations, including the media and faith-based organizations, that provide leadership, mobilize resources, and coordinate support. They are especially active in promoting the rule of law in environmental management, delivering health, education, HIV/AIDS, and

water services, and advocating for the rights of women, children, and vulnerable groups. New Partnership for Africa's Development's (NEPAD's) APRM Kenya report considers Kenya's vibrant civil society as one of Kenya's strengths (NEPAD, 2006).

102. The legal and regulatory framework in Kenya for NGOs is the NGOs Co-ordination Act of 1990 and its Regulations of 1992. The intention of this law was to act as a single authority for registration and regulation of all NGOs in Kenya. The Act commenced its operations on 15 June 1992. Since the enactment of the Act, Kenya has experienced a general increase in the economic importance of NGOs as providers of health, educational, social, and environmental services. The NGO sector in Kenya employs almost half (43%) as many people as the entire public sector. (international Civil Society Law, 2008). Further, it accounted for \$270 million in expenditures as of 2000. The workforce (paid and volunteer) represents over 290,000 full time employees. This constitutes 2.1 percent of Kenya's economically active population.
103. In Kenya, the government has played a central role in defining the direction of civil society especially as relates to its vibrancy. However, Civil society, and in particular the NGO sector, has undergone fundamental changes in post-colonial Kenya. Soon after independence, Kenya faced many development problems, which could not be matched by its scarce resources. It is partly for this reason that NGOs and other civil society players with the encouragement of the state, took on largely a developmental role in the years 1964-1978. However, from 1978, many NGOs and civil society movements took on an added role of political activism and advocacy. Many have argued that the excessive authoritarianism and personalization of power by the government at this time partly explains the engagement of the organizations in oppositional politics and overall political advocacy. These were aided by the international community through increased funding to confront the Government on human rights observance and other governance issues.
104. In 1982, the constitution was amended to make Kenya a de jure one party state. Other amendments followed that culminated in Kenya having an authoritarian Government, which perpetrated many human rights abuses

likedetention without trial and torture. Since there was only one politicalparty, and no formal political organizations to provide checks and balances, NGOs and civil society became the only alternative voice. The increased pressure on the Government by these players eventually resulted in the amendment of the Constitution in December 1991 giving room for multi-party politics.

105. The first multi-party elections were held in 1992. These elections were deemed flawed by many observers. After this Kenyans felt that that the deepening of the democratic experience in Kenya could be neither achievednor secured within the existing constitutional and legal infrastructure. This gave rise to the emergence of networks and coalitions of likeminded organizations to clamour for change under a new Constitution. It is due to such coalitions and the coming to power of the NARC government that the Kenyans were able to realize a new Constitution in 2010.
106. The Civil Society has focused on democratization of the constitutional reform process, production of accurate and relevant information and providing intellectual leadership during the reform process. They have played a prominent role in the national debate on constitutional reform through thepublication of a model constitution, organisation of workshops and seminars, using (non)-interactive theatre to strengthen sectors of society, spearheading the Basic Rights Campaign, Civic Education and publication of many booklets, posters, pamphlets and other educational materials.
107. In its Sessional Paper of 2006, the Government of Kenya explicitly recognized that NGOs are potent forces for social and economic development, important partners in national development, and valuable agents in promoting thequalitative and quantitative development of the Gross Domestic Product (GDP). This Sessional Paper has come more than fifteen years after the enactment of the NGOs Coordination Act. As outlined in Sessional Paper No.1 of 2006, the NGO Sector Policy anticipates review of the NGO Coordination Act and the participation of NGOs in the review process.
108. In December 2008, the Government constituted a Working Group on Government and Civil Society Organizations (CSO) collaboration. The Group

comprises eight Government Ministries that work in close collaboration with NGOs and twelve NGOs. The Group is facilitated by a coordinating committee made up of the NGO Council, the Ministry of State for National Heritage and Culture, and Pact Kenya, an NGO.

109. Through a series of discussions, the Working Group has deliberated on the challenges to Government and CSO collaboration and developed principles for Government-Civil Society Organization Collaboration. The principles are expected to serve as guidelines that will empower GOK and CSO actors at all levels to pursue their collaborative initiatives. They form an important basis for the legislative process as they provide the main stakeholders- GOK and NGOs-with principles of engagement.
110. The Government recognises the fact that, Kenyan civil society organizations have had a long history of promoting and protecting the rights of the disadvantaged and vulnerable persons. Therefore, some organizations representing different thematic human rights issues are appointed members of the National Advisory, Consultative Committee on International Human Rights obligations. The mandate of this Committee is to advise Government on its human rights obligations under the Instruments that Kenya is a state party to and on the instruments to ratify.
111. In addition, several policies in Kenya now provide the framework and space for participation of CSOs generally and NGOs in particular in the broad development agenda. For example in order to encourage and deepen the engagement of non-state actors with government on developmental issues, the government negotiated and concluded the Non State Actors Support Programme. This is a democratic governance programme implemented by the Ministry of Justice, National Cohesion & Const. Affairs (MoJNCCA) with financing from the 9th European Development Fund of the European Union. The Programme aims to strengthen mechanisms, networks and capacity for deepening and broadening of NSAs (including cultural actors) involvement in development processes.

g) Budget allocations and trends towards human rights under the different instruments.

112. The launch of the Economic Recovery Strategy for Wealth and Employment

113. Creation (ERS) in early 2003 by the National Rainbow Coalition (NARC) Administration marked an important departure in socio-economic policy dispensation for Kenya. There was a deliberate focus on both economic prosperity and social sector growth, epitomized by the attention paid to both wealth creation strategies and poverty mitigation efforts of the Poverty Reduction Strategy Paper (PRSP) era. The new government was willing to make efforts to pursue revival of stalling economy, reinstate the collapsing infrastructure, improve quality of, and expand access to social services (mainly primary health care and basic education).
114. This report has briefly outlined Kenya's budget allocation trends towards the following basic rights: Health, Education, Water, Housing and food security. It is difficult at this point to get comprehensive gender disaggregated data. The concept of disaggregating data is just beginning to pick up.
115. In Kenya, budget allocations start with the Treasury setting expenditure ceilings for sector working groups (SWGs) of stakeholders who must agree on budget allocations within the group, keeping in mind the sector priorities from action plans and the national development plan. The presumption is that membership in these SWGs is broad enough to give voice to national and sub national priorities. In reality, however, information from the sub-sectors and the sub national level does not flow well to the SWGs, and the sub national agendas often are ignored. Consequently, sub-sectoral groups, which do not have strong political lobbies, are unlikely to influence SWG allocation decisions.

HEALTH

116. Kenya signed the 2000 Abuja Accord that encourages African heads of state and governments to allocate 15 percent of public spending to the health sector. To date, however, Kenya's health sector budget has never risen above 10 percent of total public spending. However, since then the total gross health budget has increased, but with fluctuations. Since 2003/04, the Ministry of Health's share has been less than half of the recommended Abuja Accord Goal of 15 percent. Similarly, the rate of per capita spending falls far below the World Health Organization's (WHO) recommended rate, which was US \$34 per person in 2007. Although Kenya's per capita spending rose from

2005/06 to 2007/08, it still was, only 40 percent of the WHO recommended rate in 2007/08. However, since the introduction of the Constituency Development Fund in 2003, most constituencies have developed and equipped local health facilities increasing citizens' access to health care. This increase translates into 16 health facilities per 100,000 persons and 11 health health centres per 1,000 square kilometres.

117. Recurrent expenditures have captured the largest share of the health budget, although that share has decreased falling from a high of 94 percent of the budget in 2002/03 to a low of 70 percent in 2007/08. At the time of compiling the report the per capita total health spending stands at about Ksh500 (or US\$6.2), showing that health spending remains far below the WHO recommended level of US\$34 per capita. It also falls short of the GOK commitment to spend 15% of the total budget on health, as agreed in the Abuja Declaration. The under-financing of the health sector has thus reduced the sector's ability to ensure an adequate level of service provision to the population.

EDUCATION

118. Kenya is moving very close to the benchmark set out in the Dakar Framework for Action (2000) that requires countries to target allocating up to 26% of their national budgets to education. The education sector in Kenya has been one of the top consumers of the national budget across the years. In the financial year 2005/2006, education was allocated 19% of the total Government budget, 18.5% in 2006/2007, 17.3% in 2007/2008, and 18.43 in 2008/2009 respectively. In the 2009/2010 budget, an additional KShs. 9.6 billion (US \$126 million) was given to the education sector. About 17% of the fund was allocated to recruit contract teachers to cope with increasing enrolment. In the 2011/2012 budget the Ministry of Education was allocated a lion's share of the Budget of about KShs. 200 billion up from KShs. 170 billion last year. While reading his Budget statement, the Minister for Finance said that the increase was necessitated by the fact that the Government is keen to improve enrolment and transition rates and equity in access to education.

119. For the first time in the education history, the Minister allocated Sh300 million towards provision of sanitary towels to needy primary school girls. Sanitary towels are often out of reach for many young girls and their families in rural Kenya given their relatively high prices and this makes them absent themselves from school, sometimes for as long as one week. Provision of sanitary towels provides the girls with an uninterrupted education and encourages cleanliness, which in turn promotes confidence and self esteem.

WATER

120. Kenya is classified as a “water-scarce” country, with water supply per capita below the global benchmark of 1,000 cubic meters and low rainfall. Today, only about 46% of Kenya’s rural population and 70% of urban residents have access to clean water. Considerable progress has been made in facilitating access to water since the enactment of the 2002 Water Act. The investment in the sector from 2006-2010 has been on a steady increase from 2006-2010. 8.5 billion was allocated for the financial year 2006/2007, 11.6 for 2007/2008, 18.2 for 2008/2009, 24.7 for the year 2009/2010, 50.35 billion 2010/2011 which rose to 56.9 billion for the year 2011/2012. Absorption of the allocated funds by the Ministry of Water and Irrigation has also improved. The average recurrent budget utilisation over the last 5 years is 89.4% while the average development budget utilisation over the 5 years is 69.06%. With the increase in spending, the amount available for investments (development budget) increased almost three-fold from KShs 140 per capita to KShs 391 (GOK, 2009).

HOUSING

121. In Kenya, current statistics indicate that over 47% of the urban dwellers seek shelters in informal settlements, which are poorly constructed and are in areas of high unemployment, high crime rates and increasing cases of HIV/AIDS. Life in these areas depicts conditions of abject poverty and yet they are the areas where majority of the older persons live in. Recognizing that decent housing contribute to the well being of any age group and more so to the elderly, the Government of Kenya has put in place programmes to improve housing in the informal sector settlements in urban areas. The budget for housing increased from KShs .2.97 billion in 2009/10 to KShs .3.4 billion in 2010/11. However, According to the 2010 Economic Survey (2010),

the housing sector's contribution to the GDP reduced slightly from 5.2% in 2008 to 5.1% in 2009. The housing sector's growth also reduced from 3.7% in 2008 to 3.0% in 2009.

FOOD SECURITY

122. Food security in Kenya has always been associated with maize availability, which is the most widely grown staple crop. However, majority of the rural population is under increasing threat of malnutrition due to high rates of protein deficiency. Over the years, the government has put in measures to enhance food security. A positive austerity measure under the 2009/2010 budgetary allocation and which has proved successful in improving food security, is the Economic Stimulus Package (ESP). The food component of the ESP was meant to increase food security through rehabilitation of irrigation schemes and hence stabilize the country's Strategic Grain Reserves (SGR). It also seeks to improve the availability of maize and rice to Kenyans while contributing to improved nutrition and health. The Ministries targeted under this component are: Agriculture; Water and Irrigation; Regional Development Authorities; Youth Affairs and Sports. Additional allocation has been given to food components in the financial years 2010/2011.
123. Irrigation, water harvesting and food security, received enhanced budgetary allocations in the 2011/2012 financial year, as the government moves to improve food security and tame increasing prices in the country. About Sh1.05 billion will be allocated towards construction of 15 water-harvesting pans (100,000 cubic metres for each non-arid and semi-arid lands (ASALs) at a cost of Sh1.5 million each. Only about 5 per cent of Kenya's land is under irrigation and is yet to realise the 30 per cent irrigable land capacity. Therefore KShs 1.3 billion was earmarked for expanding irrigation by 11,000 acres in existing schemes and KShs.4.3 billion to bring new irrigation schemes covering 16,000 acres and Sh600 million to design 91,000 new irrigation schemes.
124. To further improve on food security, Treasury allocated a further KShs.845 million for the purchase of two gunny bags per household each for farming in the informal settlements. This will mitigate the effects of un abated rising cost of food and fuel which, have largely contributed to rising inflation,

which in June, 2011, stood at 12.95 per cent against Central Bank of Kenya's target of 5 per cent.

125. Measures have also been taken to build the capacity of the the Ministries of agriculture, irrigation and Water by allocating funds for recruiting extension officers and the implementation of cold storage facilities in 120 constituencies to compliment the success realised when fish ponds were introduced in the 2009/2010 budget under the economic stimulus package. Under the 2010/2011 budget, these constituencies with fish ponds are to be increased to 140 .

h) Development Cooperation and Assistance in the Promotion and Protection of Human Rights.

126. Kenya has been a beneficiary of development cooperation and assistance in many developmental aspects including the area of human rights. Since independence, the country has many development partners whose work, especially in the area of human rights intensified after the coming of the new Government in 2002. The assistance runs into billions of shillings because some development partners not only contribute to sector-wide initiatives but also assist in other stand-alone projects and programmes.
127. In September 2007, the Government of Kenya, the donor community and civil society, in support of the Paris Declaration and donor aid signed, the Partnership Principles and launched the Kenya Joint Assistance Strategy (KJAS). The aim is to reduce the burden on the government of dealing with multiple donors, harmonisation, alignment and coordination of development cooperation and assistance. This was followed by the signing of a joint statement of intent in September 2010 as a recommitment to work on aid effectiveness. For example, The UN Development Assistance Framework (UNDAF) for Kenya for the period 2009-2013, aims to contribute to the realisation of national priorities, the advancement of human rights and the achievement of the principles and values embedded in the Millennium Declaration, and the Millennium Development Goals (MDGs). It also aims at a common agenda and framework for all development partners, the UN and the Government to work towards the achievement of these together and facilitates a holistic, nationally owned approach to the country's challenges.

128. The UN's overall strategy in pursuing these goals will be to work together to "Deliver as One". Under the coordination of the UN Country Team (UNCT), UN agencies will undertake joint programmes, common monitoring and evaluation (M&E) and ensure transparent and accountable use of resources. Building on the analytical work reflected in a Complementary Common Country Assessment, the UNDAF identifies a set of priorities aligned to the Government of Kenya's Vision 2030, which aims, by 2030, to transform Kenya into a prosperous, globally competitive middle income country over a succession of five-year planning periods. The UNDAF Outcomes correspond to the areas in which the UN has collective expertise and comparative advantage. Emphasis will be on the needs of the most vulnerable groups and creating equal opportunities, thus contributing to progressive realization of the rights of women, men and children. The UNDAF is based on three priority areas and three cross-cutting themes integrated across the priority areas and areas and outcomes :

- Improving governance and the realization of human rights: Democratic governance and human rights including gender equality progressively enhanced (UNDAF outcome anchored on the Vision 2030 Political Pillar1).
- Empowering people who are poor and reducing disparities and vulnerabilities: Increased equitable access and use of quality essential social services and protection services with a focus on marginal and vulnerable groups; Humanitarian impact and risk of natural and human made disasters reduced; Evidence-informed and harmonized national HIV response is delivering sustained reduction in new infections, scaled up treatment, care, support and effective impact mitigation (Vision 2030 Social Pillar2).
- Promoting sustainable and equitable economic growth for poverty and hunger reduction with a focus on vulnerable groups: Equitable livelihood opportunities and food security for vulnerable groups enhanced and sustained; Enhanced environmental management for economic growth with equitable access to energy services and response to climate change (UNDAF outcome anchored on Vision 2030's Economic and Social pillars).

- Cross-cutting themes include Gender equality; HIV/AIDS; migration and displacement; and climate change.
129. The Swedish development cooperation with Kenya is an example of the other model of focusing on specific thematic area. The Swedish strategy is based on the Kenya Joint Assistance Strategy, agreed by the Government of Kenya and its main development partners. The Swedish portfolio focuses on democratic governance and human rights (35%), natural resources and environment (54%), urban development (6%) and a continuous support to HIV/AIDS initiatives (3%). The rural roads support (2%).
130. The foreseen amount of Swedish development cooperation with Kenya is approximately SEK 350 million (KES 3, 5 billion) per year, all provided as grants. Sweden works with the Kenyan Government to promote institutional reform and with civil society in advocacy, dialogue and service delivery.
131. Swedish development cooperation also supports improved service delivery, income and job opportunities for the poor, water resources management, rural roads, and HIV/AIDS prevention and care. Swedish support to democratic governance focuses on institutional development and reform in
132. the justice and legal sector, improved public financial management, and a results-oriented public administration. Within natural resources and the environment, Swedish efforts focuses on support to land reform, securing access to water resources, clean water, increased productivity and the commercialisation of agriculture, and improved environmental management. For the urban sector, Sweden supports work to improve living conditions and strengthen the right of the urban poor to equal participation in decision-making as well as greater access to affordable housing.

Kenya's Cooperation and Development Assistance to Other Countries

133. Kenya's commitment to peace and security in the region has been exemplary. Kenya is a founding member of the Inter-governmental Authority on Development (IGAD), founded in Djibouti in 1986. The peace talks between the Sudanese government and the Sudan People's Liberation Movement/Army (SPLM/A) have all been carried out under the auspices of (IGAD). Kenya's President, is the chair of IGAD sub-committee on Sudan. In January

2005, the Comprehensive Peace Agreement was signed in Nairobi, Kenya. Since then, Kenya has carried out five years of shuttle diplomacy between Juba and Khartoum, the capitals of south and north Sudan, respectively, to keep both sides on track. Kenya has provided 35,000 primary school teachers to the south, which has suffered decades of neglect and fighting. In addition, Kenya has lent some of its best and tested civil servants to help Juba establish a professional civil service.

134. In Somalia, Kenya's natural involvement in Somalia peace process is partly due to the burden it has been carrying in regard to Somali refugees who are scattered in different refugee camps and towns in Kenya. Peace in Somalia is crucial for stability in Kenya and the region as the conflict has aggravated proliferation of small arms into the wrong hands. Kenya has supported peace processes that provide for full participation of interested parties and has hosted negotiation meetings and provided other logistical assistance to international actors in the Somalia peace process since 2001. This culminated in Somalia peace Agreement process in 2004, which resolved to establish a new national parliament in Somalia and begin the process of electing a president. After its formation, Kenya hosted the Transitional Federal Government Kenya for several months before they finally relocated to Somalia. Kenya remains committed to a lasting solution to the conflict in Somalia.

D). ROLE OF THE REPORTING PROCESS IN PROMOTING HUMAN RIGHTS AT THE NATIONAL LEVEL

a) Kenya's Reporting History

135. Kenya's reporting experience falls under two periods, pre-2003 and after 2003. In 1993, the Committee on Economic, Social and Cultural Rights considered the implementation of ICESR by Kenya without a state report. Due to this challenge, Kenya submitted an initial report (E/1990/5/Add.17), which the Committee considered at its 12th meeting on 9 May and, at its 28th meeting on 20 May 1994. Having considered the information contained in the initial report and the oral replies to questions raised, the Committee decided to request the State party to prepare a new comprehensive report in accordance with the Committee's guidelines on reporting. In this pre-2003

period, Kenya also managed to submit an initial report on the CRC in January 2000, although this had been due since 1992. The report presented covered the period 1990-1997. The country was also able to submit its first report on CEDAW in 1999 and its second in 2002. What is to be noted here is that, the reporting done during this period can largely be attributed to forces beyond the country and donor funding in the case of CEDAW and CRC. It was also useful that there are specific Government Departments that are responsible for Women issues and Children issues.

136. After 2003: After decades of authoritarian rule and the attendant human rights abuses, the Government of Kenya showed commitment to making a break with the past and creating the necessary enabling environment for the enjoyment of human rights by all without any distinction. The Government commenced the process of signing and ratifying all the relevant international and regional human rights instruments with a view to providing the citizens with the widest protection of their rights as possible. The Country's obligations under these instruments, including reporting, gained new focus. At the time of compiling this report, the country has made reports on the measures taken to implement the provisions of:

- The Convention on the Rights of the Child (CRC), 2nd report Jan, 2007
- The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), 5th and 6th combined report, July, 2007, 7th report considered at the Committee's 48th session 17 January – 4 February 2011
- International Covenant on Civil and Political Rights (ICCPR); March 2005, and has submitted the 3rd periodic report which is yet to be considered.
- The African Charter on Human and Peoples Rights (ACHPR) May, 2007
- International Covenant on Economic, Social and Cultural Rights, (ICESCR) and the Convention Against Torture (CAT) both considered in November, 2008.
- Kenya has submitted its initial report on the Convention Against Racial Discrimination which was considered at the Treaty Body's seventy ninth session in August 2011.

b) Participation of different stakeholders in State reporting

137. Kenya has a National Advisory/Consultative committee on International Human Rights obligations composed of Government departments, the Kenya National Commission on Human Rights, the National Commission on Gender and Development, the Council for Persons with Disabilities, a policy research institution and Civil society organizations representing the following rights: Children, Women, Civil and political rights and minority rights. This Committee identifies key stakeholders to spearhead the compilation of a national report on a specific human rights instrument. The stakeholders include those most affected by specific provisions of the treaty under consideration, including women, children and groups, such as, ethnic, indigenous, religious, and minorities, persons with disabilities, members of political parties and workers. Academic and research institutions are always invited.

138. Once the stakeholders are identified then the following steps are taken:

- An initial training on a particular instrument to understand the reporting obligations arising there from;
- Identification of the relevant data and information needed to compile the report and the sources of such;
- Compilation of data and assembly into a dummy report which, is used to compile the first draft; (this helps to identify information gaps)
- Circulation of the draft to Government departments responsible for the different obligations in the instrument and other stakeholders for additional comments;
- Finalization of the draft report;
- Validation and dissemination workshop; and
- Finalization of the report.

139. The different Government Departments which are primarily responsible for the different rights covered in the different human rights instruments have a primary role of collecting data and disseminating the contents of the relevant instrument and the state report to the relevant Treaty Body.

140. The following table identifies the Government Department that led the reporting process under the main UN instruments ratified by Kenya and the Universal Periodic Review (UPR).

UN instrument	Lead Government Department
ICERD	Ministry of Justice, National Cohesion and Constitutional Affairs (MJNCCA)
ICCPR	(MJNCCA)
ICESCR	(MJNCCA)
CAT	(MJNCCA)
CEDAW	Department of Gender
CRC	Department of Children Services
CRPD	Gender and social Development
UPR	(MJNCCA)

141. Civil Society organizations participate in the national and thematic group meetings designed for the provision of information for the State reports. To deepen their engagement, the Government not only encourages development partners to support the civil society but has even negotiated for the Non State Actors Fund with the European Union as an independent source of financing their engagement in governance issues which have a lot of bearing on the realisation of human rights.

142. The Government has partnered with civil society organizations for the latter to simplify and disseminate the State report through their extensive networks while relevant Government departments upload them on their websites. This approach has had its challenges. However, the Ministry of Justice, National Cohesion and Constitutional Affairs is exploring ways of wider reach, even through assistance from development partners.

143. There is consensus in Kenya that even as civil society participates as key stakeholders in state reporting it is their right and obligation to compile and submit alternative reports to the different treaty bodies. As the culture of

reporting gains roots in Kenya, this collaboration and co-existence has borne fruits. Many countries and organizations have hailed this as a best practice after Kenya's national report on the Universal Periodic Review. Since the Civil society is always aware of what is contained in the state report, the civil society is also increasingly becoming more open with the sharing of their alternative reports to treaty bodies with the Government.

Role of the The Kenya National Commission on human Rights on State Reporting

144. As elaborated elsewhere in this report, the Kenya National commission on Human Rights (KNCHR) is the chief Government advisor on human rights. The operations of the KNCHR are guided by the United Nations-approved Paris Principles on the establishment and functioning of independent national human rights institutions. The National Commission has been accredited by the International Co-coordinating Committee of National Human Rights Institutions (ICC), which is based in Geneva at the Office of the High Commissioner for Human Rights, as an 'A status' institution which means that the Commission has been found to be in compliance with the Principles. The KNCHR is also a member of the National Advisory/consultative Committee on International Human Rights Obligations. This makes it easy for it to monitor government reports to the treaty bodies and actively monitor the implementation of concluding observations/comments of treaty bodies at the national level.

J: OTHER RELATED HUMAN RIGHTS INFORMATION

a) National Policy and Action Plan for Human Rights

145. The Government of Kenya, under the leadership of the Ministry of Justice, National cohesion and and Constitutional Affairs and the Kenya National Commission on Human Rights, has developed a National Policy and Action Plan for human rights. This is a follow-up the 1993 United Nations Vienna World Conference on Human Rights that "*each State considers the desirability of drawing up a national action plan identifying steps whereby that state would improve the promotion and protection of human rights*". This followed an acknowledgement that there had been lack of commitment on the part of past governments to the protection and promotion of human rights, a situation

which is further compounded by absence of a clear plan outlining processes towards implementing and mainstreaming human rights in all aspects of National development.

146. For Kenya, the process of developing a national Policy and Action Plan on human Rights is premised on the following:

- Lasting improvements in human rights promotion and protection ultimately depend on the Government ;
- This is a consultative process; and The final outcome will not only provide direction to the government, but will also be a tool through which the Government will be evaluated and held accountable for the realization of human rights by all Kenyans. Consultations, both sectoral and regional were very important for purposes of ownership without which implementation of the NAP would be very challenging. The Kenyan process was all inclusive with government, civil society and private sector represented in all layers of the process. Regional hearings to collect public views were conducted in all provinces – at district levels and these enabled effective and direct public participation.

147. As human rights guiding document operationalising the Bill of Rights in the Constituion, the National Policy and Action Plan for Human Rights has the following purposes:

- It will be a tool for designing and evaluating the measures the country has taken to fulfil human rights.
- It will be used to audit the country's strengths, weaknesses, opportunities and threats in the protection, respect, fulfilment and promotion of human rights.
- Will be used to enable the government to rationally set human rights goals and priorities within achievable time frames – through the development of specific targets, activities, processes, strategies and reforms to realise them.
- It will be a tool for planning the allocation and management of resources in a manner that is consistent with the priorities identified

for the promotion, protection and fulfilment of human rights in Kenya. The National Policy and Action Plan for Human Rights will therefore clearly link human rights to the country's national planning and development agenda.

- It will be used to evaluate and monitor the country's performance with regards to international human rights obligations. It will seek to promote greater ratification and domestication of international and regional human rights instruments in line with Kenya's obligations.

b). UNIVERSAL PERIODIC REVIEW (UPR)

148. On 6th May, 2010, Kenya presented its National report for the Universal Periodic Review. The report was a result of a highly consultative process within Government, the Kenya National Commission on Human Rights, other National Institutions, Non Governmental Organisations, Civil Society organizations and other stakeholders including academic and policy analysis institutions. The final report was subjected to validation by different stakeholders. The process was spearheaded by the Multi-Stakeholders National Advisory /Consultative Committee on Kenya's International Human Rights Obligations and coordinated by the Ministry of Justice, National Cohesion and Constitutional Affairs.

149. During the interactive dialogue, 55 delegations made statements. 22 additional statements, which could not be delivered during the interactive dialogue owing to time constraints were posted on the Extranet of the universal periodic review. One hundred and fifty recommendations (150) were made to Kenya. out of which Kenya accepted 149. The recommendation to decriminalise same sex unions did not enjoy the support of Kenya. However, it should be noted that in the provision of all services , no one is required to state their sexual orientation. All persons are entitled to all government services and protection.

Follow-up to international conferences

150. Through out the report, linkages have been made between measures that Kenya has taken and the international resolutions and commitments that these are intended to fulfil. Examples of these are: World Conference on Human Rights 1993 and Kenya's decision to develop a National Policy and

Action Plan for Human Rights; Fourth World Conference on Women 1995 and the gains that Kenya continues to see in terms of women's advancement; World Summit for Children 1990 and the measures that Kenya has taken towards the promotion, protection and fulfilment of children's rights, and Millennium Summit 2000.

151. The Millennium Summit 2000 has had the greatest impact on the realization of human rights in Kenya. Having signed the Millennium Declaration, Kenya initiated its MDGs implementation process in 2002. Since then, Kenya and her development partners have committed substantial resources towards meeting Kenya's MDGs. The Government has prioritised funding of MDGs by increasing funding to sectors that are directly related to the MDGs. Kenya's Vision 2030 was developed with a MDG background.
152. Since starting the implementation process, Kenya has produced MDGs status report on a regular basis; 2003, 2005, 2007 and 2009. These reports highlight the key achievements as well as the challenges faced in the achievement of the MDGs in Kenya. Some of the achievements are highlighted below.

Universal primary education: Gross enrollment ratios have risen from 82.2% to 110% in 2009. Primary school completion rate improved from 62.8% in 2002 to 83.2% in 2009. The primary to secondary schools transition rates increased from 59.9 % in 2008 to 64.1% in 2009. There is also a near gender parity of the enrollment figures for both girls and boys. These improvements are attributed to the free primary education, introduction of free tuition in secondary education and continued investment in basic primary schools infrastructure.

Access to clean water: This increased from 57% in 2006 to 60.4 % in 2009. However, the proliferation of informal settlements remain a challenge that the Kenya Slum Upgrading Project aims to address.

Infant mortality rate. This decreased from 77 per 1,000 live births in 2003 to 52 per 1,000 live births in 2009. Full immunisation coverage has risen to 77.4% in 2009 from 56.8% in 2003. The maternal mortality ratios remain a challenge despite the increase in the proportion of births attended by trained health personnel from 42% in 2003 to 43.8% in 2009.

K IMPLEMENTATION OF SUBSTANTIVE HUMAN RIGHTS PROVISIONS COMMON TO ALL OR SEVERAL TREATIES

a). Measures taken to eliminate discrimination and guarantee equality

153. The Kenya Constitution, 2010 provides that every person is equal before the law and has the right to equal protection and equal benefit of the law. Equality includes the full and equal enjoyment of all rights and fundamental freedoms. Women and men have been accorded the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated above. To give full effect to the realisation of the rights guaranteed under this provision, the Constitution mandates the State to take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.
154. In addition, the Constitution provides that the national values and principles of governance include: human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised. Therefore all State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.
155. These provisions are important because, inequalities in Kenya are manifested in different forms. Differences in the share of income and social services are observed across regions, genders and even specific segments of the population. Inequality is also related to human rights and democratic governance in that certain forms of inequalities constitute discrimination. This partly results from weak accountability mechanisms and lack of knowledge among excluded and vulnerable groups on the right to how to

make their voices heard in decisions that affect them. This is exacerbated by the inequality between men and women, persons with disabilities and others especially due to insensitive formal and informal legal structures. This inequality is officially acknowledged in Kenya and its redress has been at the heart of first, the Economic Recovery Strategy 2003-2007 and secondly the Vision 2030, which seeks to create an equitable and just society and therefore promote equality by eliminating discrimination.

Discrimination Against Women

156. In Kenya, there has been increasing recognition of the significant role that women play in the socio-economic and political development of society. However, the full participation of women in development continues to be hampered by a number of obstacles. These challenges essentially put women at a disadvantaged position (relative to men) in so far as realising their full potential and freedoms is concerned. According to the Kenya economic survey, 2011, whilst Kenya has a relatively high literacy rate across the board (85.1%), estimates show that significantly more men (90.6%) than women (79.7%) are literate. Although women are legally equal to men when it comes to property ownership, customary law still dictates that men ought to either take over or to act as custodians over their wives' property. Women own only 4% of the country's land.
157. Before 2010, Kenya had made several attempts at introducing laws to address discrimination against women without much success. In August 2010, 66% of Kenyans voted for a new Constitution. This Constitution if fully implemented has many gains for women including:
 - Explicit prohibition of all forms of discrimination including violence against women
 - Right to own and inherit land
 - Protection of matrimonial property during and after termination of marriage
 - Elimination of discrimination in laws, customs and practices related to land and property in land
 - Recognition of equality in marriage.
 - Guaranteeing of Women's political representation
 - Right of women to pass on their citizenship to their foreign spouses or children born outside the country
 - Equal parental responsibility of the mother and father to provide for the child

- Increased numbers of women in all decision making organs including the government; not more than two-thirds of the members of elective public bodies shall be of the same gender.

LEGISLATIVE MEASURES AGAINST DISCRIMINATION

158. The list below summarises important legislation in Kenya to guarantee equality before the law, equal protection under the law and anti-discrimination. Legislation generally prohibits direct discrimination, indirect discrimination, victimisation and harassment. It prohibits discrimination on the grounds set out in the Constitution in the areas of employment (and employment-related areas), education in schools, the provision of goods, facilities and services, political parties and the exercise of public functions.
159. The legislation also imposes positive obligations on public authorities to promote equality of opportunity on grounds of ethnic diversity, disability and gender. This requires public authorities to proactively root out discrimination and to promote equality of opportunity in the design and delivery of policies and services, and in their capacity as employers. The duties may require positive action to address disadvantage and to integrate equality into all areas of a public authority's work.
- National Cohesion and Integration Act (No. 12) of 2008 which outlaws discrimination on ethnic grounds. Ethnic grounds is defined in the Act to mean any of the following grounds, namely colour, race, religion, nationality or ethnic or national origins.
 - The Persons with Disabilities Act also forbids discrimination by employers and other people based on "any ethnic, communal, cultural or religious custom or practice".
 - The National Commission on Gender and Development Act, 2003 to also fight gender based discrimination. This commission, under the Constituion of Kenya, 2010, will become the Gender and Equality Commission.
 - The Children Act makes provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children; to make provision for the administration of

children's institutions; to give effect to the principles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and for connected purposes. It provides that no child shall be subjected to discrimination on the ground of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or local connection.

- The Political Parties Act; Promotes regional and ethnic diversity, gender balance and representation of minorities and marginalised groups.
- The Refugees Act of Kenya 2006, prohibits discrimination of any refugee and/or asylum seeker by making provisions for adequate enjoyment of human rights without undue discrimination..
- The Employment Act, to promote equality of opportunity in employment in order to eliminate discrimination in employment; and to promote and guarantee equality of opportunity for a person who, is a migrant worker or a member of the family of the migrant worker, lawfully within Kenya; to promote equal opportunity in employment and to eliminate discrimination in any employment policy or practice; to prohibit discrimination directly or indirectly, against an employee or prospective employee or harassment of an employee or prospective employee on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status.
- HIV and AIDS Prevention and Control Act, 2006 which establishes the HIV/AIDS tribunal which has the mandate to summon witnesses, take evidence, and recommend action to be taken on anyone who is found guilty of discriminating against people on the basis of their HIV/Aids status.

160. The Kenya Constitution , 2010 has provided for far reaching measures to ensure equality not only targetted at different at different people but also at groups and regions. This is in line with Kenya's blue print for development the Vision 2030.

In order to give full effect to equality and freedom from discrimination as envisaged in the Constitution, the Constitution mandates the State to amend the existing laws, enact new laws and take other measures including the following:

- i. The Kenya National Human Rights and Equality Commission, within one year of the Constitution coming into force. Art.59
- ii. Legislation to fulfil Kenya's international obligations in respect of human rights and fundamental freedoms. Art. 21 (4)
- iii. Legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. Art. 27 (8)
- iv. Legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the socio-economic rights. Art. 21 (2) and Art. 43
- v. Legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination. Art. 27 (6)
- vi. Measures to 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. Art.54 (2)
- vii. Affirmative action programmes designed to ensure that minorities and marginalised groups participate and are represented in governance and other spheres of life; are provided special opportunities in educational and economic fields; special opportunities for access to employment; develop their cultural values, languages and practices; and have reasonable access to water, health services and infrastructure. Art. 56, Arts. 54 (d) Art. 7 (3) (a) (b)
- viii. Legislation to vest Community land to Communities identified on the basis of ethnicity, culture or similar community of interest. Art. 63
- ix. Legislation for the registration, regulation and funding of political parties, provides that all political parties shall respect the right of all persons to participate in the political process, including minorities and marginalised groups gender equality and equity; and shall not be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis. Art. 92
- x. Legislation to promote the representation in Parliament and County assemblies of women; persons with disabilities; youth; ethnic and other minorities; and marginalised communities. Art. 100
- xi. Provision for the equitable sharing of nationally raised revenue among national and county governments, taking in to account among others,

- economic disparities within and among counties and the need to remedy them; and the need for affirmative action in respect of disadvantaged areas and groups. Art. 202, and 203
- xii. Establishment of Equalization Fund Art. 204 The national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible .