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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

Pre-sessional working group
26-30 November 2007

**IMPLEMENTATION OF THE INTERNATIONAL COVENANT
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**List of issues to be taken up in connection with consideration of
the initial report of Kenya concerning the rights covered by
articles 1 to 15 of the International Covenant on Economic,
Social and Cultural Rights (E/C.12/KEN/1)**

I. General framework within which the Covenant is implemented

1. Please clarify why the provisions of the Covenant have not been incorporated into the domestic law of the State party to make them directly applicable in the Kenyan courts. Please provide examples of cases in which individuals have invoked economic, social and cultural rights before the Court of Appeal and the High Court. What steps are being taken to ensure that victims of violations of economic, social and cultural rights have access to effective judicial remedies, and that court orders and judgements are being enforced (paras.14, 16 and 28 of the report)?
2. Please provide information on the measures taken to eradicate corruption, including within the judiciary, and explain the reasons for the lack of prosecutions and convictions of high-level officials and return of assets, four years after the establishment of the Kenya Anti-Corruption Commission.
3. Please provide information on the financial independence of the Kenya National Commission on Human Rights, its compliance with the Paris Principles relating to the

Status of National Institutions (General Assembly resolution 48/13 of 20 December 1993, annex), and indicate whether the Commission's mandate covers all of the rights recognized in the Covenant, as well as information on the number of staff dealing with economic, social and cultural rights (para.17).

II. Issues relating to the general provisions of the Covenant (articles 1 – 5)

Article 2 (1) – States parties' obligations

4. Please provide information on the mechanisms to ensure that adequate safeguards are in place for the protection of economic, social and cultural rights of the most disadvantaged and marginalized individuals and groups (in particular the rights to work, favourable conditions of work, adequate standard of living, and health) when the State party negotiates trade, investment and economic agreements, including the Economic Partnership Agreement with the European Union and the Investment Agreement under the Common Market for Eastern and Southern Africa (COMESA). Please also provide information on the process of public consultation on such agreements, and indicate whether human rights impact assessments are conducted as part of the preparations for such negotiations.
5. Please provide a detailed assessment of the achievements and shortcomings of the international economic assistance and cooperation of the State party with other States and intergovernmental organizations to achieve progressively the full realization of the rights recognized in the Covenant during the period 2002-2007 (para.90).

Article 2 (2) – Non-discrimination

6. Please indicate whether the State party intends to relax its policy of requiring refugees to live in camps, and to issue work permits to all refugees and provide hospital services and education at the same rate to them as to nationals, and integrate special schools for children of refugees into the regular school system, with a view to ensuring their equal enjoyment of all economic, social and cultural rights (paras.23-25).
7. Please provide information on any special measures taken by the State party during the period 2002-2007 to protect the economic, social and cultural rights of internally displaced persons.

Article 3 – Equal rights of men and women

8. Please indicate the measures taken by the State party during the period 2002-2007 to prevent and combat discrimination against women in the areas of marriage, divorce, inheritance, property and citizenship (e.g., by repealing Sections 82 (4) and (6), 91 and 92 (2) of the Constitution). What measures are being taken to ensure that the right of women to the equal enjoyment of all economic, social and cultural rights is not compromised by discriminatory customary and religious laws and practices (paras.22 and 40)?

9. Please provide more detailed information on measures taken by the State party during the period 2002-2007 to increase the representation of women in Parliament and in senior government positions. Please indicate the number of women who have been appointed to the judiciary and to public service, both in the central Government and in provincial administrations (paras.39 and 54).

III. Issues relating to specific provisions of the Covenant (articles 6 – 15)

Article 6 – The right to work

10. Please provide more detailed information on any national programmes and policies to create employment, in particular in the formal economy, including for women. What measures are being taken to regularize the situation of workers in the informal sector (para.47)?
11. Please provide detailed statistical information on the number of persons with disabilities who found employment in full-time and part-time jobs during the period 2002-2007 (para.54).

Article 7 – The right to just and favourable conditions of work

12. What measures are being taken by the State party to reduce the significant wage gap between men and women?
13. Please provide information on the measures taken by the State party to increase and enforce minimum wages, with a view to providing all workers and their families with an adequate standard of living, in accordance with article 7, paragraph (a) (ii), of the Covenant (paras.57-59).
14. Please provide information on steps taken to address the poor working conditions, such as excessive working hours and low minimum wages, in Export Processing Zones (EPZ) and in the horticulture industry. What steps have been taken to extend the application of occupational health and safety regulations and collective bargaining agreements to the EPZ, as well as to ensure respect for trade union freedom in them (paras.62-63)?
15. Please explain why the Ministry of Labour inspectorates lack authority to inspect certain factories and work sites, indicate the measures taken to increase the number of labour inspections, which reportedly would need to be tripled to cover the entire State party, and provide information on the concrete results of such inspections in 2007.

Article 8 – Trade union rights

16. Please provide information on recent case law relating to collective bargaining between employers and trade unions and provide detailed information on the number, cause and outcome of strikes that took place between 2002 and 2007.

17. Please provide more detailed information on the provisions in Kenyan law and other obstacles preventing the ratification by the State party of International Labour Organization Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise (1948) and on the measures taken to remove such obstacles, with a view to ratifying the Convention (para.67).
18. Please provide more detailed information on the legal requirements for declaring a strike and on the judicial remedies available for appealing decisions of the Minister of Labour declaring a strike illegal (para.69).

Article 9 – Social security

19. Please provide more detailed information on the measures taken to ensure that social security schemes, such as the National Social Security Fund and the National Hospital Insurance Fund, are accessible and affordable for all categories of workers, including casual workers, workers in the informal economy and the self-employed, as well as for the unemployed. Please indicate whether the minimum amounts of social security benefits are sufficient to provide recipients with an adequate standard of living (paras.70-73).
20. Please describe any non-contributory schemes of social assistance in place, their coverage, and the types and minimum amounts of benefits. Please indicate whether such schemes make provision for the social protection of orphans, children without parental care, families headed by single mothers or children, widows, older persons, persons with HIV/AIDS, persons with disabilities, refugees, asylum-seekers and internally displaced persons and other disadvantaged or marginalized individuals and groups.
21. Please provide information on any bilateral agreements concluded by the State party dealing with the social protection and working conditions of Kenyan migrant workers abroad.

Article 10 – Protection of the family, mothers and children

22. Please provide information on the results of measures taken to prevent domestic violence, including spousal rape, such as special police patrols. Please explain why there are no criminal law provisions specifically criminalizing such violence or considering it as an aggravating factor. Please also provide information on the number of women killed or injured in the context of domestic violence during the period 2002-2007, the number of criminal proceedings and convictions, the sentences imposed on perpetrators of domestic violence, and the remedies provided to victims.
23. Please indicate the impact of measures taken to prevent and eliminate discriminatory customary practices such as “wife inheritance” and ritual “cleansing” of widows (for example, ensuring equal rights of women in marriage and divorce, mandatory training

of police, prosecutors and judges on the criminal nature of such acts, assistance and shelters for victims, and awareness-raising campaigns).

24. Please provide information on measures taken to combat female genital mutilation, such as ensuring the strict application of the law prohibiting it, promoting girls' education and women's economic empowerment, and conducting awareness-raising campaigns at the community level to discourage this culturally rooted practice (para.77).
25. Given that article 10, paragraph 2, of the Covenant protects a fundamental right, please indicate any obstacles that may prevent the State party from withdrawing its reservation to article 10, paragraph 2, and whether the State party intends to withdraw it in the near future.
26. Please describe the impact of measures taken to protect children against all forms of exploitation, in particular child labour which is likely to be hazardous or harmful to their health, education and development, including exploitative work in the agriculture sector (para.153).
27. Please provide detailed information on the measures taken to combat sexual exploitation of children, in particular of street children, including information on the number of children engaged in prostitution and on the number of police and social welfare officers specifically tasked to prevent and rehabilitate the victims of such exploitation.
28. Please indicate whether there is legislation specifically prohibiting sexual exploitation, forced labour and trafficking in persons and provide updated statistical data on the reported number of persons trafficked to, from, and within the State party for purposes of sexual exploitation and forced labour.

Article 11 – The right to an adequate standard of living

29. Please provide more detailed information on the impact of programmes and policies aimed at combating poverty (such as the National Poverty Eradication Plan, the Economic Recovery Strategy, the Poverty Reduction Strategy Paper and the Medium Term Expenditure Framework), especially on female-headed households, individuals and families living in informal settlements, and refugees (para.85).
30. Please explain the components of the basic basket of goods and the methodology used to determine the official national poverty line in the State party. Please indicate how the extent of poverty is monitored by the State party.
31. Please provide information on the progress achieved in seeking an agreement between competing ethnic groups over water-sharing and access to pastures in the northern provinces of the State party.

32. Please describe the concrete results of the following policies and programmes: the Land Resettlement Reform Programme, the Special Rural Development Programme, the Rural Works Programme, and the District Focus for Rural Development Strategy (para. 9).
33. In the light of the 2002 Water Act and the recent privatization of water services, please provide more detailed information on the measures taken to ensure affordable access to adequate water and sanitation and to reduce waiting times for collecting water, in particular in rural areas and in informal settlements such as Kibera/Nairobi (para. 96 et seq.).
34. Please indicate the progress achieved by the State party in adopting guidelines and legislation strictly defining the circumstances and safeguards under which evictions must take place, in accordance with the Committee's general comment No. 7 (1997). Pending the adoption of such guidelines and legislation, please indicate whether a comprehensive resettlement plan has been adopted for persons forcibly evicted from informal settlements in Nairobi, forest areas, or elsewhere, or in the absence of such a plan, whether a moratorium has been imposed on forced evictions (para.132).
35. What mechanisms are in place to ensure that slum upgrading projects implemented between 2002 and 2007, such as the Kenyan Slum Upgrading Programme (KENSUP) for Kibera/Nairobi, give priority to the construction of social housing which is affordable and meets the expectations of inhabitants, that affected communities are effectively consulted and involved in the planning and implementation of such projects, and that inhabitants of informal settlements enjoy legal security of tenure (para.132)?
36. Please provide information on the measures taken to protect women from expulsion from marital lands and property in case of divorce or death of the husband, coercion into risky sexual behaviours by landlords, eviction or discrimination in case they have HIV/AIDS, and sexual violence, particularly in informal settlements and refugee camps where Kenya Police is reportedly absent.

Article 12 – The right to the highest attainable standard of physical and mental health

37. Please provide information on the programmes and health policies in place to ensure access to adequate health services, goods and facilities, in particular at the community level, and provide statistical data on trained medical personnel, disaggregated by rural and urban areas, including deprived urban areas, and by disadvantaged or marginalized individuals and groups.
38. Please provide more detailed information on the health protection available to persons with HIV/AIDS, including information on achievements and plans to provide equal access to adequate and affordable treatment and medication for these persons.
39. Please provide information on the impact of measures taken to reduce the high maternal mortality rate in the State party, and to eliminate discrimination against poor

women, older women and women with HIV/AIDS in access to maternal health care and to improve the quality of maternal health care (para.137).

40. Please indicate whether the State party intends to decriminalize other cases where an abortion, which is currently only permitted to save the life of a pregnant woman, might be indicated, with a view to reducing the high number of unsafe clandestine abortions. What measures are being taken to ensure post-abortion care without risk of criminal sanctions and to promote access to contraceptives and sexual and reproductive health services and education (para.76)?
41. Please indicate the impact of measures taken to reduce the high infant and under-five mortality rates, especially during the period 2002-2007.
42. What concrete measures has the State party taken during the period 2002-2007 to ensure adequate occupancy levels and medical treatment, access to adequate food and water, and the availability of voluntary testing and medical counselling services for prisoners, with a view to reducing the number of deaths, as well as the high incidence of HIV/AIDS and other infectious diseases among the prison population?
43. Please provide detailed information on the availability and types of mental health services, as well as on the number of psychiatric patients who are voluntarily and involuntarily institutionalized.

Articles 13 and 14 – The right to education

44. Please indicate why the State party has reduced the budget for primary education in 2006, and provide detailed information on the budgetary allocations for the construction of new classrooms and schools, as well as on the number of qualified teachers, including women, trained and recruited in 2006 and 2007, so as to ensure access to primary and secondary education across the State party, including in rural and deprived urban areas, in accordance with the Committee's general comment No. 13 (1999) (paras.162-163).
45. Please indicate the impact of measures taken to ensure that children and orphans affected by HIV/AIDS are enrolled and attend regular schools without discrimination and that they receive adequate material and emotional support for their education. In particular, please refer to measures taken to provide such children with financial assistance, free school uniforms, textbooks, transportation and midday meals, and adequate foster or other alternative care, monitor their school enrolment and attendance, combat discrimination by school officials, and support community-based organizations providing assistance to children and orphans affected by HIV/AIDS (para.160).
46. Please explain why only 36 per cent of the university students are women and indicate the measures taken by the State party to promote greater enrolment of women in higher education (para.158).

47. Please provide more detailed information on the measures taken to ensure that children with disabilities have equal access to educational institutions, especially regular schools (paras.30 and 168).

Article 15 – The right to take part in cultural life

48. Please provide detailed information on the measures taken to promote interaction among and favourable conditions for the different ethnic groups in the State party, including the Nubians and the Ogiek, to preserve, develop, express and disseminate their history, culture, language, traditions and customs (para.173).

49. Please provide information on school and professional education in the fields of culture and art in the State party (para.171).

50. Please provide information on concrete measures taken by the State party to ensure affordable access to the benefits of scientific progress and its applications for everyone, including for disadvantaged and marginalized individuals and groups.
