

**Human Rights Council  
Universal Periodic Review  
21<sup>st</sup> Session (January-February 2015)  
UPR of Kenya**



Joint Submission of Stake Holders Report by the coalition of 21  
Kenyan NGOs and three International NGOs  
Edmund Rice International, Franciscan International  
and Pax-Romana

## Introduction

- 1) The organizations listed below present this joint submission concerning the human rights situation in Kenya for consideration by the UPR Working Group at its 21<sup>st</sup> session, January-February 2015.
- 2) Pax Romana was founded in 1921 and is an international non-governmental organization that has a consultative status with the UN Economic and Social Council (ECOSOC) since 1949. Pax Romana is an umbrella organization of Pax Romana IMCS (International Movement of Catholic Students) and the Pax Romana ICMICA (International Catholic Movement for Intellectual and Cultural Affairs), working for the promotion of a Culture of Peace, Human Dignity and the promotion and protection of Human Rights for all. Kenya Movement of Catholic Professionals (KMCP) is the local Chapter of Pax Romana - ICMICA in Kenya.
- 3) Franciscans International (FI) was founded in 1989 and has a General Consultative Status with the ECOSOC since 1995. FI supports Franciscans and partners working at the local and national levels and assists in bringing their concerns and expertise to the UN to address structural causes of human rights violations. FI works with the Franciscan Family Association in Kenya and with its office of Justice Peace and Integrity of Creation Franciscans Africa.
- 4) Edmund Rice International (ERI) is an international non-governmental organization, founded in 2005 and with consultative status with ECOSOC since 2012. ERI is supported by two Catholic Religious Congregations, the Christian Brothers and the Presentation Brothers. It works with networks of like-minded organizations and in the countries where the two congregations are present. ERI has a special interest in the rights of the child, the right to education and in eco-justice.
- 5) Other local organizations that participated in the drafting of this report include:  
  
Africa Community Development Media; Cancer Awareness Centre of Kenya; Catholic Justice and Peace-Bungoma; Centre for Minority Rights and Development; Centre for Rights Education and Awareness; Development Through Media; End Poverty with Justice Initiative; Gaplink International; Human Life International Kenya; Human Rights Concern; International Centre for Education and Talent Development; International Movement of Catholic Students – Kenya; JPIC Franciscans Africa; Kenya Conference of Catholic Bishops-Youth Council; Kenya Movement of Catholic Professionals; Kituo Cha Sheria; Pastoralist Development Network of Kenya; Protection International; Refugee Consortium of Kenya; The Caucus for Women's Leadership; and Users and Survivors of Psychiatry-Kenya.
- 6) This report is based on the evaluation of the commitments made by Kenyan Government to implement recommendations accepted during its previous UPR (in May 2010). The data and information obtained for this submission came from various

sources, including first-hand information from Pax Romana national movements in Kenya and its partners, Franciscans, ERI and national and local organizations serving individuals and particular groups affected by human rights abuses in Kenya.

- 7) The methodology for the drafting of this report has been participatory and included the following steps: Firstly, informal consultations; on one week workshop with 21 Civil Society Organizations (CSO) & Faith Based Organizations (FBO) and their partners to analyze the current national context, to collect information, and evaluate Kenya's commitments to implement recommendations from the first UPR as well as formulate new recommendations for the second UPR review; Secondly, a wide consultation with other CSOs and FBOs to ascertain their views and recommendations, and finally a workshop organized for all stakeholders to accept and validate the final report of this joint submission.

## **Main Aspects of the Report**

- 8) This report addresses the human rights situation in Kenya since 2010, with a particular focus on some Economic and Social Rights that affect a majority of its population and the situation of vulnerable and marginalized groups in Kenya. These include, *inter alia*: (I) Right to Food (II) Rights to Water and Sanitation (III) Right to Health (IV) Right to Education (V) Rights of Internally Displaced Persons and (VI) Rights of Indigenous Peoples and Minorities.

### **I RIGHT TO FOOD**

#### *A. First-cycle UPR Recommendations*

- 9) There was only one recommendation relevant to the right to food and accepted by Kenya at the first cycle of UPR for Kenya in 2010.<sup>1</sup>

#### *B. Legal and Institutional Framework*

- 10) Kenya has enacted a Constitution that safeguards the Right to Food. It also passed the Agriculture, Livestock, Fisheries and Food Authority Act (2013), the Crops Development Act (2012), the Agricultural and Livestock Research Act (2012), and the National Food and Nutrition Security Policy (2011) to address food production and distribution. The State is to be commended for improving the policy and legislative framework on the Right to Food.

- 11) Kenya has taken positive steps towards investing more into agricultural development

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<sup>1</sup> The Government of Kenya accepted one recommendation relevant to the right to food at the first cycle of UPR for Kenya in 2010 that is to 'Ensure the equitable distribution of water and food to the entire population, especially during times of drought'.

under the Ministry of Agriculture, Livestock and Fisheries. The State also successfully prioritized Development Expenditure over Recurrent Expenditure. However, this still falls short of the Maputo Declaration recommendation of a minimum budgetary allocation to agriculture development at 10% of total budget. In the financial year 2013-2014, Kenya allocated only 2.4% of its budget to its core ministry dealing with agriculture development, the Ministry of Agriculture, Livestock and Fisheries<sup>2</sup>.

### *C. Promotion and Protection of Human Rights on the ground*

- 12) The State has had some success in irrigated agriculture and has begun to implement an irrigation scheme targeted at 1 million hectares of land in Kulalu-Galana<sup>3</sup>. The problem of extreme hunger however still persists as evidenced by continued food shortages. The Northern, Eastern and Coastal regions of Kenya, which comprise approximately 80% of the country, are affected by cyclical drought. The number of people facing extreme hunger increased from 0.85 million in August 2013 to 1.3 million in February 2014<sup>4</sup>. Food prices shot up by 10.4%, overall inflation by 7.2% and beneficiaries of World Food Program (WFP) rose from 20% to 40% between May 2012 and May 2013<sup>5</sup>. There are therefore serious gaps in both food production and food distribution that require addressing.
- 13) Starvation prone areas are characterized by low population densities and extensive geographical dispersion, with long distances between service delivery points. Further, the national road grid is under-developed<sup>6</sup>
- 14) The State has attempted to harness over-production in food basket areas by implementing the Strategic Grain Reserve Relocating Programme; a programme that shifts food reserves to strategic depots in 23 vulnerable counties<sup>7</sup>. This programme will need to be sustained as counties shift into self-reliance.
- 15) Extreme hunger is inextricably linked to the failures within governmental institutions like Kenya Meat Commission (KMC), Agricultural Finance Cooperation (AFC) and the National Land Commission (NLC). Corrupt officials who, through cartels,

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<sup>2</sup> Institute of Economic Affairs, 2013. *Budget Guide 2013/2014*, Table 3 at Page 7. Available at <[http://www.ieakenya.or.ke/publications/cat\\_view/1-publications/3-bulletins-briefs/13-budget-guide](http://www.ieakenya.or.ke/publications/cat_view/1-publications/3-bulletins-briefs/13-budget-guide)> [Accessed 24 May 2014]

<sup>3</sup> Government of Kenya, 2013. *Budget Statement for the Fiscal Year 2013/2014*, at Page 10. Available at <[http://www.parliament.go.ke/plone/national-assembly/news/budget-statement-for-the-fiscal-year-2013-2014-1st-july-2013-30th-june/at\\_download/file](http://www.parliament.go.ke/plone/national-assembly/news/budget-statement-for-the-fiscal-year-2013-2014-1st-july-2013-30th-june/at_download/file)> [Accessed 24 May 2014]

<sup>4</sup> Famine Early Warning Systems Network, 2014. *Food Security Outlook Update*, March 2014. Available at <<http://reliefweb.int/sites/reliefweb.int/files/resources/Kenya%20-%20Food%20Security%20Outlook%20Update.pdf>> [Accessed 24 May 2014]

<sup>5</sup> United Nations World Food Program, 2013. *Food Security and Outcome Monitoring Consolidated Report May 2013*, at Page 2. Available at <<http://www.wfp.org/content/kenya-food-security-and-outcome-monitoring-2013>> [Accessed 24 May 2014]

<sup>6</sup> Kenya is in the process of implementing the Lamu Port Southern Sudan-Ethiopia Transport (LAPSSET) corridor project, which is expected to open up these marginalized regions with both a road and rail network.<sup>6</sup>

<sup>7</sup> Ministry of Agriculture, Government of Kenya, 2014. *Food Security Situation In The Country*. Available at <[http://www.kilimo.go.ke/index.php?option=com\\_content&view=article&id=743:food-security-in-the-country&catid=215:reports](http://www.kilimo.go.ke/index.php?option=com_content&view=article&id=743:food-security-in-the-country&catid=215:reports)> [Accessed 24 May 2014]

manipulate the amount paid to farmers that sell their livestock to them incapacitate KMC<sup>8</sup>. On the other hand, the AFC suffers from a lack of sufficient extension officers to carry out its functions at grass root level<sup>9</sup>. NLC, which is the institution mandated to manage land, suffers from a lack of independence from its mother ministry, the Ministry of Lands due to an ambiguous legislative framework<sup>10</sup>.

- 16) There is an over-reliance on maize and potatoes for food security, which are especially vulnerable to environmental and disease vagaries. Farmers have been resistant to shift focus from the cultivation of maize and potatoes to indigenous crops because they are not considered commercially viable, the seeds are not readily available and because free Government advisory services focus on maize, wheat and potatoes<sup>11</sup>.
- 17) The State has often been found unprepared by incidents of mass starvation which occur within arid and semi-arid regions on multiple occasions. This is indicative of a failure of early warning mechanisms and the immediate response to the warning.

#### *D. Recommendations*

18) We recommend that the Government of Kenya:

- a) Complies with its commitments under the Maputo Declaration by allocating at least 10% of its budget to agriculture development.
- b) Strengthens existing institutions and enacts laws that will promote independence of institutions, as well as apply existing laws to prosecute corrupt officials.
- c) Develops strategic partnerships with non-state actors including NGOs and the Private Sector to enhance and act on the Early Emergency Systems.
- d) Encourages crop diversification with an emphasis on orphan crops and agro-ecological practices by providing farmer incentives in this line of production.

## **II. RIGHT TO WATER AND SANITATION**

### *A. First-cycle UPR Recommendations*

19) One recommendation relevant to the right to water and sanitation was accepted by

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<sup>8</sup>Marindany,K., *State Meat Firm To Stop Livestock Exports To Middle East*. The Star. Available at <http://www.the-star.co.ke/news/article-153253/state-meat-firm-stop-livestock-exports-middle-east> [Accessed 24 May 2014]

<sup>9</sup>ActionAid and Institute of Economic Affairs, 2013. *Public Spending In Agriculture In Kenya*. Available at <[http://www.ieakenya.or.ke/publications/doc\\_download/312-public-spending-in-agriculture-in-kenya-is-it-beneficial-to-small-scale-women-farmers](http://www.ieakenya.or.ke/publications/doc_download/312-public-spending-in-agriculture-in-kenya-is-it-beneficial-to-small-scale-women-farmers)> [Accessed 24 May 2014]

<sup>10</sup>Mwathane, I., *Law Made Relations Between Ministry And Land Commission Quite Difficult*. Daily Nation. Available at <<http://mobile.nation.co.ke/blogs/-/1949942/2319416/-/format/xhtml/-/12ltw/-/index.html>> [Accessed 24 May 2014]

<sup>11</sup>Food Early Warning Systems Network December, 2013. *Kenya Food Security Brief*. Available at <[http://www.fews.net/sites/default/files/documents/reports/Kenya\\_Food%20Security\\_In\\_Brief\\_2013\\_final\\_0.pdf](http://www.fews.net/sites/default/files/documents/reports/Kenya_Food%20Security_In_Brief_2013_final_0.pdf)> [Accessed 24 May 2014]

Kenya at the first cycle of UPR in 2010.<sup>12</sup>

### *B. Legal and Institutional Framework*

- 20) The Kenyan Constitution has expressly provided for the right to water and sanitation. Chapter 4 – The Bill of Rights under Article 43 (1) (d) states that every person has a right to clean and safe water in adequate quantities. While, under Article 43 (1) (b), every person has a right to accessible and adequate housing, and to reasonable standards of sanitation. Other provisions of the Constitution place responsibilities on the National and County Governments to meet the right to water and sanitation under Article 174 (f) and Article 185 (4).
- 21) A Draft Water Policy was developed in 2012 and takes into consideration Vision 2030 and the constitutional provisions on access to clean and safe water of a sufficient quantity. The draft Water Bill 2013 is intended to provide for the efficient management of water resources and development of water and sewerage services. However, there are valid concerns that the Water Bill 2013 emphasizes establishment of costly institutions at the expense of service delivery. There is also an absence of public participation in the development of the law<sup>13</sup>. The National Water Services Strategy (NWSS) 2007 – 2015, set several targets in view of the vision 2030 and developed the Water Master Plan 2012.

### *C. Promotion and Protection of Human Rights on the Ground*

- 22) According to the Kenya Population Census 2009, 27.9% of the general population use piped water from service providers; 37.2% from springs, wells or boreholes. At least 29% draw water from such supplies as streams, lakes and ponds that are often unsafe and 5.9% from water vendors. At least 60% of Nairobi residents (about 4 million people) live in the informal settlements. At present, there are about 200 informal settlements in Nairobi according to the Nairobi Slum Inventory conducted by Muungano wa Wanavijiji in 2008.
- 23) It is reported that over 60% of the urban population in Kenya relies on water vendors, water kiosks or unprotected water sources that pose health risks, especially through water borne diseases. In low income communities, with an average monthly income of US\$ 70 per household, it is estimated that a family of five spends up to 10% of their monthly income on water.<sup>14</sup>

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<sup>12</sup> *The Government of Kenya accepted to 'ensure the equitable distribution of water and food to the entire population, especially during times of drought'. (Spain). A/HRC/15/8, Report of the Working Group on the Universal Periodic Review Kenya, 17 June 2010, recommendation 101.93 .*

<sup>13</sup> *Memorandum by the National Environment Civil Society Alliance of Kenya (NECSA- K) and the Naivasha and Mara Water Resource Users Associations (WRUAs) on the Water Bill 2013.*

<sup>14</sup> *WSUP report (Kenya) 4<sup>th</sup> September 2013, available at <http://www.wsup.com/programmes/where-we-work/kenya/> .*

24) According to the Kenya National Water Report 2006 and confirmed by research in 2011<sup>15</sup>, a provincial analysis showed that Nairobi, Central and Western provinces had the highest access (above 80%) to decent sanitary facilities while North Eastern province had the least access (77.2% of households had no toilet facilities). Comparatively, Nyanza had 18.5%, while Coast had 29.6%, and Rift Valley 27.2% depicting a poorer access to sanitary facilities. Despite high levels of access in Nairobi Province, sanitary conditions in slum areas are in poor state due to overcrowding<sup>16</sup>.

#### *D. Recommendations*

25) We recommend that the Government of Kenya:

- a) Improves its regulation of water and sanitation service providers to ensure affordable, accessible, available and acceptable standards of water and sanitation to all its citizens.
- b) Ensures that laws and policies relating to the right to water and sanitation are effectively implemented both at the national and county levels, enforcing penalties to violations of the laws and providing for arbitration structures and procedures.
- c) Takes appropriate measures to ensure the protection and rehabilitation of water sources and catchment areas.
- d) Prioritizes and expedites the construction of dams, water pans and necessary infrastructure including domestic rainwater harvesting to serve regions that are prone to drought, to mitigate drought effects.
- e) Creates public awareness on water and sanitation both at the national and county levels and encourages public participation in line with Chapter 1 Article 10 (2) (a) of the Constitution and partner with civil society in this effort.

### **III. RIGHT TO HEALTH**

#### *A. First-cycle UPR Recommendations*

26) There were two main recommendations on the Right to Health and one other related recommendation accepted by the Government of Kenya.<sup>17</sup>

#### *B. Legal and Institutional Framework*

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<sup>15</sup> Kaluli, Githuku, Home and Mwangi, *Towards a National Policy on Waste Water Reuse in Kenya*. JAGST Vol 13(1) 2011.

<sup>16</sup> Kenya National Water Development Report Prepared for the 2nd UN World Water Development Report 'Water: A shared responsibility' (2006).

<sup>17</sup> The recommendations encouraged the Government to continue developing programs and measures aimed at ensuring quality of health services for its population; to improve access to reproductive health services for pregnant women and; to redouble its efforts to save mother and child.

- 27) The Constitution of Kenya 2010 recognizes the right to the highest attainable standard of health<sup>18</sup>, which includes the right to health care services (Art 43 a). The Government is obliged to take legislative, policy and other measures, including the setting of standards to ensure the progressive realization<sup>19</sup> of, among others, the Right to Health. The National Government is responsible for developing health policy and management of national referral hospitals. The County Governments are responsible for county health services and facilities, including promotion of primary health care.
- 28) There is domestic legislation regulating the health sector with some statutes fulfilling rights of specific groups such as women, children, persons with disabilities, prisoners and persons living with HIV/AIDS.<sup>20</sup> Currently, the Health Bill (2012) and the Mental Health Care Bill (2012) are yet to be passed. The Constitution recognizes rules of international law as forming part of the laws of Kenya, as well as treaties and conventions ratified by Kenya<sup>21</sup>. However, the bill on the Ratification of Treaties<sup>22</sup> is yet to be passed. Some of the statutes may also need to be reviewed, amended or repealed in order to ensure conformity of the domestic legal framework with international standards and the current constitution.
- 29) The Government has developed the Kenya Health Policy (2012-2030), which focuses on “attaining the highest possible health standards in a manner responsive to the population needs”. The National Health Sector Strategic Plan 2005 -2010 provided a framework for structured engagement for all health sector stakeholders. There is a Health Sector Strategic and Investment Plan (2012-2018)<sup>23</sup> guides investments in health and the restructuring of the National Medical Supplies Agency facilitates timely procurement and distribution of medical supplies.

### *C. Promotion and Protection of Human Rights on the Ground*

30) Among other efforts, the Government extended a waiver of the maternity fee for women. However, with home births being more common in rural areas, only 44% of births were assisted by health care professionals (doctor, nurse or midwife)<sup>24</sup>. Further, the environment necessary for the achievement of maternal health is not yet up to standard as a result of, among other factors, the lack of a robust referral system and understaffing. The Kenya Health Sector Strategic & Investment Plan (2012-2018) estimates that current staff levels meet only 17% of minimum requirements needed

<sup>18</sup> Christopher Mbazira: “The Judicial Enforcement of the Right to the Highest Attainable Standard of Health Under the Constitution of Kenya”: *Judiciary Watch Report: The Kenya Section of the International Commission of Jurists* (2011): p113

<sup>19</sup> Constitution of Kenya, Art. 21

<http://www.kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=Const2010&term=constitution>

<sup>20</sup> These include; the Sexual Offences Act (Act No. 3 of 2006), The HIV and AIDS Prevention and Control Act (No. 14 of 2006), The Social Assistance Act (24 of 2013), and The Cancer Prevention and Control Act (No 15 of 2012).

<sup>21</sup> Constitution of Kenya, Art. 2(5) and Art. 2(6)

<http://www.kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=Const2010&term=constitution>

<sup>22</sup> Ratification of Treaties Bill, 2011 <http://kenyalaw.org/kl/index.php?id=523>

<sup>23</sup> [http://www.who.int/pmnch/media/events/2013/kenya\\_hssp.pdf](http://www.who.int/pmnch/media/events/2013/kenya_hssp.pdf)

<sup>24</sup> WHO Kenya: Health Profile [www.who.int/gho/countries/ken.pdf](http://www.who.int/gho/countries/ken.pdf), last update April 2011



for effective operation of the health system<sup>25</sup>. Kenya has only 7 nurses per 4,000 residents, half the number (14 per 4,000) recommended by the World Bank<sup>26</sup>.

31) Health care is still largely unaffordable. The cost for curative and preventive medication is still high in relation to the poverty levels. According to Vision 2030 2<sup>nd</sup> Medium Term Plan, only 20% of the Kenyan population has access to a Health Insurance Scheme. 80% of the population remains largely un-insured. The Policy on Universal Health Care Coverage in Kenya through Sessional Paper No. 7 of 2012 is yet to be implemented.

32) The Government still spends far below the Abuja target on Health<sup>27</sup>. According to the Medium Term Plan, the Government spent only 4.6% of Government expenditures on health, which is below the Abuja target of 15%. Furthermore, the Government under prioritizes health care services devoted to mental health, as evidenced by the scaling down of the Mental Health Division under the Ministry of Health to a Unit in 2013<sup>28</sup>. The limited expenditure in the Health Sector translates into poor infrastructure, under staffing and unmotivated staff.

#### D. Recommendations

33) We recommend that the Government of Kenya:

- a) Takes measures to adhere to the WHO standards on health service delivery by developing and implementing a health policy with specific reference to attraction, retention and motivation of all health workers for better service delivery.
- b) Increases the health budgetary allocation to the recommended minimum of 15% of the GDP.
- c) Invests in preventive care to improve the health of the population and reduce the incidence of non-communicable diseases.
- d) Creates a robust infrastructure network and expedite the process of implementing the Universal Health Care coverage to increase access to health and respecting the right to life.
- e) Fast tracks all the pending bills related to health, while ensuring that the content conforms to the relevant International Treaties to which Kenya is a

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<sup>25</sup>Kenya Health Sector Strategic & Investment Plan, July 2012-June 2018., 49.

[http://www.who.int/pmnch/media/events/2013/kenya\\_hssp.pdf](http://www.who.int/pmnch/media/events/2013/kenya_hssp.pdf)

<sup>26</sup> We Need Accountability, Not Money, To Fix The Health Sector," *The Star*, July 13, 2013, <http://www.the-star.co.ke/news/article-130247/we-need-accountability-not-money-fix-health-sector> . "Free Maternity Services in Kenya Could Endanger Mothers' Lives, Experts Warn," July 18, 2013, <http://www.standardmedia.co.ke/>

<sup>3</sup> WHO: The Abuja Declaration; Ten Years On (2001), <http://www.who.int/healthsystems/publications/Abuja10.pdf>

<sup>4</sup> Sessional paper no. 7 of 2012 on the policy on universal health care

<http://www.universalhealth2030.org/index.php/documents-publications/category/3-kenya-health-system?start=20>

<sup>27</sup> Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infections Adopted at the African Union Summit on HIV/AIDS, Tuberculosis and Other Related Diseases, 24-27 April 2001, para 26

<sup>28</sup> Atwoli, L., December 7 2013, Blow As Mental Health Division Is Scrapped, *Daily Nation*, Available at <<http://mobile.nation.co.ke/blogs/Blow-as-mental-health-division-is-scrapped/-/1949942/2103186/-/format/xhtml/-/dix5vo/-/index.html>> [Accessed 27 May 2014]

State Party and effectively enforce all existing health related bills.

#### **IV. RIGHT TO EDUCATION**

##### *A. First-cycle UPR Recommendations*

34). At the first UPR cycle, Kenya accepted seven recommendations relating to education which were to address issues of access to quality education for all especially the poor and marginalized segments of its population, girls, and children with special needs.<sup>29</sup>

##### *B. Legal and Institutional Framework*

35) The current Constitutional Framework under Article 43 (1) (f) provides that every person has a right to education and under article 53 (1) (b), every child has a right to free and compulsory basic education<sup>30</sup>.

36) The Kenyan Government has passed a series of bills to put in place a policy and legal framework to actualize the constitutional provisions for education.<sup>31</sup> However, although comprehensive, the National Special Needs Education policy framework<sup>32</sup> is under-prioritized and yet to be fully implemented.

##### *C. Promotion and Protection of Human Rights on the Ground*

37) We commend government efforts in ensuring implementation of free primary education since 2003 and free day secondary education from 2008. However, several challenges persist. The primary school dropout rate is at 27%. Child labor, insecurity and retrogressive cultural practices remain prevalent and the quality of education in

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<sup>29</sup> *The Kenyan Government accepted to: 'Strengthen educational policy to guarantee required quality of education accessible to all members especially the marginalized and most vulnerable; Elaborate an educational policy to combat illiteracy with particular emphasis on girl child education; Develop education policies that ensure quality education, particularly for the poor, marginalized and vulnerable segments of its population and to request international assistance to this end; Elaborate an educational policy to combat illiteracy, with particular emphasis on girl child education; Develop and implement a specific education policy which would cover all children with special needs; Continue to develop programmes and measures aimed at ensuring quality and free education and health services for its population; Seek the support of the international community and cooperate with it to formulate policies aimed at further broadening access to free and compulsory education, particularly for the children from poor households.'* A/HRC/15/8, Report of the Working Group on the Universal Periodic Review Kenya, 17 June 2010, recommendations 101.126 (Indonesia), 101.90 (Uruguay), 101.109 (Slovakia), 101.110 (Bolivia), 101.111 (Niger), 101.112 (Ireland), 101.113 (Cuba).

<sup>30</sup> *The Constitution of Kenya (August 2010)*

<sup>31</sup> *These have included the Teachers Service Commission Act 2012; the Kenya National Examinations Council Act 2012; the Universities Act 2012; the Basic Education Act 2012; the Kenya Institute of Curriculum Development Act 2012; the Technical and Vocational Education and Training Act 2012; the Science, Technology and Innovation Act 2012; and the Kenya National Commission for UNESCO Act 2012. Further, the Policy Framework, Sessional Paper No. 14 of 2013 is also in place.*

<sup>32</sup> *Special needs include but are not limited to: Visual and Hearing impairments, Paraplegia, Quandraplegia, Autism, Downs Syndrome, Learning Disabilities and other related physical and mental impairments.*

most public schools remains poor with the teacher to pupil ratio in some schools above 1:80 while the ideal is 1:45.<sup>33</sup> Due to the availability of free primary education, children are enrolled directly to primary schools, thus skipping the foundational Early Childhood Development Education (ECDE) for 3-5 year old children. There is a lack of statistics on children out of school and especially for children with disabilities. Other challenges include unmotivated teachers, poor training of teachers, the absence of standards to ensure equity and inclusion for schools, an emerging trend for some public secondary schools to charge high fees and a lack of uniformity in teacher deployment between rural, urban, arid and semi-arid areas.

#### *D. Recommendations*

38) We recommend that the Government of Kenya:

- a) Ensures a proper review of the teacher to pupil ratio and distribution of teachers across the country to address matters of quality and access.
- b) Prioritizes provision of necessary infrastructure and security to guarantee the right to education of students from the marginalized, vulnerable and minority groups.
- c) Increases access to education for children with disabilities by effectively integrating special needs facilities into all schools.
- d) Implements policy in a manner that links and mainstreams Millennium Development Goals on poverty eradication with access to education.
- e) Ensures and oversees the effective prosecution of perpetrators of sexual offenses, harmful cultural practices such as Female Genital Mutilation (FGM) and forced early marriages that inhibit education of girl child.
- f) Undertakes a comprehensive evidence based review of the whole of the education sector in Kenya to validate and affirm the reforms undertaken so far.
- g) Amends or reviews the Kenya National Examination Council Act in favor of a National Learning Assessment framework that allows for on-going corrective learner assessment and support.

## **V. RIGHTS OF INTERNALLY DISPLACED PERSONS**

### *A. First-cycle UPR Recommendations*

39) In the first-cycle of the UPR, the Kenyan Government accepted several recommendations in relation to Internally Displaced Persons (IDPs).<sup>34</sup>

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<sup>33</sup> *Uwezo 2013 report, Class 8 students unable to do class 3 mathematics.*

<sup>34</sup> *The recommendations mainly asked Kenya to implement a comprehensive strategy for IDPs and ensure that the Guiding Principles on Internal Displacement are taken into account; ensure that IDPs are resettled and have access to basic human rights and social services; implement the National Reconciliation and Emergency Social and Economic Recovery Strategy and the National Cohesion and Integration Act of 2008, as well as take measures in relation to violence against women, including internally displaced persons A/HRC/15/8, Report of the Working Group on the Universal Periodic Review Kenya, 17 June 2010, recommendations 101.117 (Mexico), 101.118 (Argentina), 101.116 (Algeria), 101.30 (Belarus), 101.51 (Argentina).*

## B. *Legal and Institutional Framework*

40) The key drivers of displacement in the country are attributed to colonial population displacement, ethno-political divisive instigated conflicts, politicized land issues,<sup>35</sup> human rights violations, large-scale development and economic programs by the government, protection and conservation of some natural resources and conflicts over limited natural resources by communities. The Guiding Principles on Internal Displacement (1998) have been for years the only existing framework in place for the protection and assistance of IDPs in the country.

41) The post-election violence of 2007-2008 highlighted the failure by successive governments to address the root causes of conflict and displacement.<sup>36</sup> This situation led to significant positive legal progress through the promulgation of the Kenyan Constitution in 2010 to include a comprehensive Bill of Rights and the enactment of the Internally Displaced Persons Act in 2012. The state has also ratified the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons that has been in force since 2008 and is yet to ratify the Kampala Convention of 2012.

42) The Truth Justice and Reconciliation Commission (TJRC) were set up in 2008 to investigate serious human rights violations from December 1963 to February 2008. None of the recommendations by the TJRC presented to the government as of May 2013 has been implemented<sup>37</sup> to address ethnic conflict, political violence or aid in healing and reconciliation of the country.

43). The National Cohesion and Integration Commission (NCIC) is a statutory body under the National Cohesion and Integration Act of 2008, to facilitate and promote equality of opportunity, good relations, harmony and peaceful coexistence between persons of different ethnic and racial backgrounds. The work of the Commission has so far been hampered due to the fact that the Commissioners' tenure expired in October 2013 and no appointments have been made as of June 12, 2014. Furthermore, critics have demanded NCIC be disbanded on grounds of under-performance.<sup>38</sup>

## C. *Promotion and Protection of Human Rights on the Ground*

44) The Government of Kenya has made commendable progress in setting up legal and institutional frameworks crucial for the protection and assistance of IDPs. However, we are concerned that the government continues to deny the existence of 41 IDPs camps in the country and the presence of integrated IDPs in Nyanza, Central, Western, Rift Valley, Coast, Moyale and Tana River.<sup>39</sup> Furthermore, we are

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<sup>35</sup>Zetter, R. (2011), *Protecting Environmental Displaced People Developing the Capacity of Legal and Normative Frameworks*, Refugee Studies Centre University of Oxford, 1-67

<sup>36</sup> Global Centre for the Responsibility to Protect, *The March 2013 Elections in Kenya and the Responsibility to Protect. Policy Brief. February 11, 2013* retrieved from <http://www.globalr2p.org/media/files/march-2013-elections-in-kenya-and-r2p-4.pdf>

<sup>37</sup> Benard Momanyi, "Kenyan Authorities Urged To Implement Human Rights Report," *Institute For War and Peace Reporting*, Issue 358, August 2013.

<sup>38</sup> Julius Kithure, "Fate of Kenyan peace and unity commission hangs in the balance," *Sabahi*, November, 2013

<sup>39</sup> Bonyote, P., *State of Internally Displaced Persons in Kenya*, at KMCP Conference, April 2014.

concerned that the plight of refugees has not been adequately addressed, and IDPs of political motivated circumstances, receive more attention from the government, as opposed to persons displaced by other factors.

45) County governance is the second tier of government, but substandard budgets, poor implementation, leadership wrangles and lack of citizens' participation have been cited<sup>40</sup> as core obstacles to progress in a majority of the 47 counties. The counties are also keen to promote development in the form of infrastructure and job creation, making IDP issues peripheral, and it is not clear whether the authority to deal with IDP issues has been fully devolved.

46) Climate variability negatively impacts pastoralists communities identified as a new cause of displacement in Kenya. Over time, water and pasture areas have sharply decreased and competition over these limited resources has led to violent clashes, resulting to economic crisis, loss of livelihood, inhibited social development and prolonged vulnerability<sup>41</sup>. Approximately 200,000-400,000 persons have been displaced and protection and assistance principles have not been applied, forcing members of this community to temporarily or permanently abandon traditional livelihoods because of the threat to their lives.<sup>42</sup>

47) Sexual abuse as a tool of conflict is becoming widespread in Kenya increasingly affecting IDPs. The lack of adequate and effective protection mechanisms to help women and children report perpetrators exacerbates the issue. While sexual abuse during conflict is commonly associated with women and children, men are also being affected. Without any support structures for victims their mental and physical health deteriorates and stigma dwindles the chance of living normally in the society. It is also the case that to-date, apart from the ongoing cases at the International Criminal Court (ICC), none of the offenders in the 2007/08 violence have been held to account.

#### D. *Recommendations*

48) We recommend that the Government of Kenya:

- a) Ratifies the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).
- b) Provides the necessary financial support, political will, and independence for the National Cohesion and Integration Commission and the Truth, Justice and Reconciliation Commission to achieve their mandates.
- c) Strengthens security apparatus and intelligence within external and internal boundaries to avoid theft of livestock and the maiming and killing of persons among pastoralist communities in Kenya.

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<sup>40</sup>Dennis Odunga, *Weak structures hampering county development plans*, April 12, 2014 at [HTTP://MOBILE.NATION.CO.KE/NEWS/](http://MOBILE.NATION.CO.KE/NEWS/)

<sup>41</sup>Nuur Sheekh, Andrews Atta- Asamoah, Rood Shrahomo, "Kenya Neglected IDPs: Situation Report," *Institute of Security Studies*, 2012 p.1-11

<sup>42</sup>*Ibid.*

- d) Enables financial support for livelihoods of IDPs through enhancing the ability of county governments to plan and budget for IDPs, and to address the root causes of internal displacement.
- e) Creates ‘one stop’ centers, where victims of sexual abuse during situations that lead to displacement, can report the assault and seek immediate protection, including adequate medical treatment and legal assistance.
- f) Holds to account abusers in situations causing displacement in a manner that promotes restorative justice and that the survivors of sexual assault face no reprisals.
- g) Implements the Waki report by inviting the UN Special Rapporteur on Violence against Women to pay a visit in the country.
- h) Supports youth through training, job creation and moderating the current requirements for accessing the UWEZO fund.

## **VI. RIGHTS OF INDIGENOUS PEOPLES AND MINORITIES**

### *A. First-cycle UPR Recommendations*

49) In the first-cycle of the UPR, the Kenyan Government accepted two recommendations<sup>43</sup> in relation to the Indigenous People and Minorities.

### *B. Legal and Institutional Framework*

50) The Constitution of Kenya 2010<sup>44</sup> provides for the pursuit and strengthening of indigenous peoples’ personal and collective rights. It characterizes indigenous people as marginalized and places on the state the duty to address the needs of vulnerable groups within society including minorities and marginalized groups and to take affirmative action to redress any disadvantage suffered by individuals or groups in the past. It recognizes traditional communities who wish to preserve their unique culture and identity from assimilation.

51) The *National Community Land Bill (2012)* provides a legal framework for the protection of community land in accordance with constitutional imperatives. Through its national policy and action plan on human rights, the government has undertaken to adopt legislative and affirmative action to ensure that minorities and marginalized groups realize all the rights and fundamental freedoms set out in the Bill of Rights, on a basis of equality, taking into account their identity, way of life, special circumstances and needs. These measures that relate to Indigenous and marginalized

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<sup>43</sup> *The recommendations mainly asked Kenya to: implement the recommendations and decisions from its own judicial institutions as well as the African Commission on Human and Peoples’ Rights, particularly those relating to the rights of indigenous peoples ; implement all recommendations put forward by the Special Rapporteur on the rights of indigenous people following his visit to Kenya in 2007 as well as ratify ILO Convention No.169*

<sup>44</sup> *Chapter 4 of the Constitution of Kenya: The Bill of Rights, Article 56 of the Constitution of Kenya 2010: Minorities and marginalized groups*

peoples are yet to be implemented at county level and therefore require the urgent attention of the Government.

52) The Attorney General of Kenya and the Ministry of Lands are currently working on the necessary modalities to implement the Endoris judgment <sup>45</sup>.

### *C. Promotion and Protection of Human Rights on Ground*

53) In Kenya, indigenous peoples especially pastoralists in the vast arid and semi-arid lands (ASAL) continue to face insecurity in the form of conflicts and insecurity based on competition for resources, politics, climate change, cattle rustling and proliferation of small arms and lack of security agencies. This insecurity interrupts education, economic preoccupation and generally poses an obstacle for development. A draft peace policy has been generated and seeks to create a framework that gives direction in prevention and response like the use of dialogue among communities. However, the extent to which the policy addresses indigenous people's conflicts and insecurity which are caused and perpetuated by multifaceted aspects does not seem to be adequately addressed.

### **Indigenous Peoples and Extractives Activities**

54) In the recent past, indigenous peoples' territories have gained unprecedented interest in terms of extraction of oil, gas, geothermal, water, solar and wind energy among others. Land and natural resources such as forests and grasslands for the Indigenous Peoples is held in very high regard, since community land, in addition to securing subsistence and livelihood, is seen as sacred, being inextricably linked to the cultural and spiritual integrity of the community and its traditional way of life. In this regard, we are concerned that these unprecedented extractive activities might end up affecting the local communities negatively and push them further to the abyss of deprivation and despondency. Indigenous peoples have become increasingly concerned about the Reducing Emissions from Deforestation and Forest Degradation (REDD) as these forests have been inhabited by them for centuries and since their experiences in the past have shown that governments and the private entities often refuse to recognize their rights and interests in forest policies and programs.

### **Eviction of Indigenous Peoples over the Land Dispute**

55) On July 28, 2013 the Maasai indigenous residents of geothermal rich Narrasha locality in Narok County, Rift Valley were forcefully evicted from their village. Scores of Maasai were maimed, their property destroyed and their houses torched, all over a 3,000 acre land dispute.

56) Similar evictions have been carried out on other indigenous groups. The Endorois, an indigenous community of 60,000 people who inhabited the Lake Bogoria area and

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<sup>45</sup> ACHPR Ruling on the Endorois by the Government of Kenya No. 276 / 2003.

practiced pastoralism were dispossessed their traditional lands by the creation of the Lake Hannington Game Reserve in 1973, and gazetting of the Lake Bogoria Game Reserve in 1978. The Ogiek, hunter-gatherers in Kenya's Rift Valley, were evicted by the Kenyan Government as part of an aggressive campaign to evict people living in the Mau Forest Complex and the Sengwer indigenous inhabitants of the Cherangany hills in Kenya's Rift Valley were also evicted.

57) In seeking a suspension of these evictions, more consultations and safeguards, the indigenous peoples in Kenya are citing Article 63 (d) of the Kenyan Constitution that recognizes the rights of communities to own ancestral lands traditionally occupied by hunter-gatherers as well as Article 10 that underscores the importance of the principle of the participation of people, protection of marginalized lands and sustainable development as well as co-management of the environment.

### **Climate Change and Early Warning Systems**

58) Climate change, including climate variability, is a major driver of changes in pastoral production through impacts on ecological conditions,<sup>46</sup> in particular on pasture growth, quality and on the availability of water resources, as well as on the distribution of livestock diseases. This has seen an increase in resource based conflicts, insecurity resulting from cattle raids to restock and poverty due to death of livestock herds.

#### *D. Recommendations*

59) We recommend that the Government of Kenya:

- a) Ratify ILO Convention 169 as recommended by the Truth, Justice and Reconciliation Commission's Report 2013.<sup>47</sup>
- b) Implement the United Nations Declaration on the Rights of Indigenous Peoples to reinforce the Bill of Rights and as a demonstration of adherence to international obligations concerning indigenous peoples' rights.
- c) Address indigenous people's conflicts and insecurity issue by harmonization of early warning and response mechanisms, solving boundaries issues in government policy and affirmative actions, and through civic education.
- d) Take the Draft Peace Policy to indigenous people's counties for further scrutiny and strengthening.
- e) Liaise with the respective County Government to implement constitutional provisions and to develop adequate measures to ensure the protection of indigenous peoples' rights, by prioritizing community

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<sup>46</sup> Chin welfejika Speranza, *Drought Coping and Adaptation Strategies: Understanding Adaptations to Climate Change in Agro-pastoral Livestock Production in Makueni District, Kenya*, 23<sup>rd</sup> September 2010

<sup>47</sup> *Truth, Justice and Reconciliation Commission Report, 2013*



participation in decision-making in all matters, including development activities.

- f) Implement immediately the judgment with regard to the eviction of Endorois indigenous community and to suspend all other evictions of indigenous communities without their consent and pre-consultations.
- g) Streamline climate change as a crosscutting theme in policies and statutes touching on development, conflict resolution and peace building, land and natural resources, with special emphasis on integration of science and indigenous knowledge.