

REPUBLIC OF KENYA



REPORT ON THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

JUNE, 2006

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PART A: GENERAL INTRODUCTION AND COUNTRY INFORMATION

1. The Government of the Republic of Kenya has the honor to submit to the African Commission on Human and Peoples' Rights, in conformity with Article 62 of the African Charter on Human and Peoples' Rights (hereafter the "African Charter" or simply the "Charter"), its First report under the Charter.
2. Kenya has not submitted a state report since it became a party to the Charter in 1992. The reasons for this state of affairs are manifold, and include political, social, and economic problems obtaining for most of the Country's post-independence history. In the past, the political system was not conducive to a culture of human rights. In recent years, and particularly with the ascension to power in 2002 of the National Rainbow Coalition (NARC), Kenya has increased its capacity to undertake state reporting and other human rights related activities. It is in this light that this report has been prepared.

Land and People

3. Kenya is an East African country that lies astride the Equator covering a total area of 582, 646 km square. The country has approximately 1000 km of Indian Ocean coastline to the east.
4. The total population is estimated at 32 million. Approximately 75% of the citizens live in populated rural areas, while the remaining 25% live in urban areas. Life expectancy is 46.4 years while adult literacy rate is (83%). Infant mortality rate is 72 (per 1000) and maternal mortality rate is 590 (per 1000). Fertility rate stands at 4.7. Over 50% of population is under 15 years of age.
5. The national language is Kiswahili while the official language is English, though numerous other local languages are spoken. There are 42 ethnic groups. Religious orientations include Christianity, Islam, and Hinduism, and African Traditional Religion, among others. The occupational distribution involves pastoralists, agriculturalists, and the urban formal and informal sector.
6. Poverty remains a major impediment to both the fulfillment of basic needs and the realization of potential of many Kenyans, particularly women and children. As of 2005, approximately 56% of Kenyans lived below the poverty line of less than \$1 per day. The economy however has been improving. In

2005, economic growth rate was 5.8%, and this rate is expected to rise to 6.7% in 2006.

7. Kenya has faced numerous challenges in the efforts to implement the rights entrenched in the Charter. Poor political and economic governance, corruption and inequitable allocation/misallocation of resources have been barriers to the achievement of national targets of poverty reduction. HIV/AIDS remains a major health and development concern. Malaria is another major concern, as 70% of the total population is at risk of infection. Poor infrastructure in epidemic prone areas has hindered timely intervention and access to healthcare facilities for affected individuals.

General Political Structure

8. Kenya gained independence from Great Britain in 1963 and has evolved into a multi-party democracy. After years under a single-party state system, the Constitution was amended in 1991 and the first multi-party elections were held in 1992. Kenya African National Union (KANU) was the party that won the initial elections in 1964 and managed to retain power for 39 years through 8 general elections. Only in 2002 did KANU lose the general elections for the first time to the National Rainbow Coalition (NARC), a grouping of 14 political parties. The change to a multi-party system marked a political transition, which involved fundamental constitutional re-engineering aimed at transforming the state apparatus from instruments of repression and exploitation to agents of African development and self-actualization. There is renewed hope that good governance will be restored by the NARC government, and that the relationships with bilateral and multi-lateral donors will improve, thus increasing the chances of progressive realization of Economic, Social, and Cultural Rights.
9. There are three arms of the Government: the Legislature, Executive, and Judiciary. Chapter III of the Constitution establishes the Parliament. Section 30 provides that the legislative power of the Republic shall vest in the Parliament of Kenya, which shall consist of the President and the National Assembly. This National Assembly represents 210 constituencies spread throughout the 8 provinces and consists of elected members duly elected in national elections, nominated members and ex officio members. The Presiding Officer in Parliament is the Speaker, and is elected by the members. There are 210 elected members, 12 nominated members, 2 ex officio members, namely the Attorney General and the Speaker.

10. The President heads the Executive arm of the Government, as per Chapter II of the Constitution. The President is mandated to appoint a Vice President and ministers from among the elected members of Parliament. This is provided for in section 16 of the Constitution. The Executive acts through a Cabinet that consists of the President, the Vice President and other ministers. The function of the Cabinet is to aid and advise the President in the Government of Kenya.
11. As a check against excesses of Government, section 17(3) of the Constitution provides that the Cabinet shall be collectively responsible to Parliament for all things done by or under the authority of the President or the Vice President or any other minister in the execution of his office.
12. Chapter IV of the Constitution establishes the Judiciary. Section 60 thereof provides for the High Court as a superior court of record and with unlimited original jurisdiction in civil and criminal matters. Section 64 provides for the Court of Appeal. This is the highest court in the country. It only hears matters on appeal from the High Court. It has no original jurisdiction to hear any matter.
13. The Judiciary is headed by the Chief Justice, and consists of Judges of the Court of Appeal and High Court, as well as magistrates. Section 65 provides that Parliament may establish courts subordinate to the High Court. Such courts shall have jurisdiction and law may confer powers on them. As a result, the Magistrates Courts and the *Kadhi* (Islamic) Courts are established by statute.

General Legal Framework within which human rights are protected

The Legal Structure in which human rights are protected involves the following:

14. *Judicial Authority:* The High Court is established by the Constitution of Kenya as the court that has unlimited original jurisdiction. The Court of Appeal is the highest court in the country. It has only appellate jurisdiction. Below the High Court are the court martial, magistrates' courts and tribunals. The High Court also has inherent jurisdiction to hear cases of violation of fundamental rights. Thus, a complaint touching on the rights in the African Charter would

be dealt with as a violation of fundamental rights, and would be heard by the High Court. If any person alleges that any of their fundamental rights have been, are being or are likely to be contravened in relation to them, then that person may apply to the High Court for redress. The High Court have original jurisdiction to hear and determine such an application, and may issue appropriate orders (section 84, Constitution). The Bill of rights in the Current Constitution has not provided for economic, social and cultural rights hence the courts have been reluctant to pronounce judgments that promote and protect the rights. **There was, however, an inclusion of social, economic and cultural rights in the Draft Constitution that was voted down in the national referendum of 21 November 2005.**

15. *Legislative Authority:* Parliament of Kenya is vested with the power to enact legislation. In the field of human rights, Parliament has established the following institutions:
 - The Kenya National Commission on Human Rights;
 - The Gender Commission;
 - The Kenya Anti-Corruption Commission;
 - National Council for Children Services;
 - National Council on Persons with Disabilities; and
 - The Law Reform Commission whose mandate includes reviewing all oppressive laws.

16. International and regional treaties (such as the African Charter) are not considered as part of the law of Kenya and cannot be directly applied by the courts, tribunals or administrative authorities if domestic laws are insufficient. Therefore once a treaty is ratified by Kenya it does not automatically become part of Kenyan law otherwise the law could be altered without the consent of Parliament, which would be contrary to the basic principle of Constitutional law that Parliament has monopoly of legislative power. Kenya follows the dualist approach to treaty implementation and denies any direct internal effect of international treaties without legislative enactment of an enabling statute. However, the courts interpret the laws of Kenya so that they do not conflict with treaties Kenya is a party to and the practice is that after ratification, legal and administrative structures are set up to support such instruments.

Major Human Rights Instruments to Which Kenya is a Party

17. Kenya has ratified the following international human rights conventions at the global level:

- 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;

In addition, the Country has ratified:

- The Convention on the Non-applicability of Statutory Limitation to War Crimes and Crimes Against Humanity;
- The International Convention Against Corruption;
- The Convention Relating to the Status of Refugees;
- The Optional Protocol to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; and
- The Rome Statute of the International Criminal Court.

At the regional level, Kenya has ratified the following key human rights instruments:

- The African Charter on Human and Peoples' Rights;
- The African Charter on the Rights and Welfare of the Child;
- The OAU Convention Governing Specific Aspects of Refugee Problems in Africa; and
- The Protocol on the Rights of Women in Africa.

The extent to which the treaties have been domesticated

18. Kenya is a dualist state requiring domestication of international instruments in the national arena through legislation by Parliament. In this regard, only the

United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child have been fully domesticated by promulgation of the Children Act (Chapter 586 of the Laws of Kenya). The provisions of this Act are closely modeled on those of the two instruments.

19. Despite the fact that other international human rights instruments (including the African Charter) have not been domesticated through national legislation, it is worth noting that the language of the Bill of rights in the Constitution of Kenya is similar to that of the ICCPR and African Charter. It is accepted that the Bill of Rights in the **current Constitution** is limited to civil and political rights, but the proposed future Constitution for Kenya contains also socio-economic rights as well as group rights, in line with the normative framework of the African Charter.
20. To specifically domesticate the Convention Relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa the Government has published the Refugees Bill, which when promulgated into law will enhance protection of refugees in Kenya. To domesticate the Rome Statute of the International Criminal Court and enable Kenya comply with obligations thereto, the Government has published the International Crimes Bill.

PART B: SPECIFIC ASPECTS OF THE REPORT PURSUANT TO THE REPORTING GUIDELINES (1999)

B (1) Civil and political rights

Non-discrimination: Article 2 of the Charter

21. The Bill of Rights (Chapter 5 of the Kenya Constitution) introduces the fundamental rights and freedoms of the individual, which apply regardless of race, tribe, place of origin or residence or other local connections.
22. Any person whose rights under the Constitution are violated is entitled to seek legal redress at the High Court of Kenya. In 2001 the Chief Justice of Kenya promulgated and published the Protection of Fundamental Rights and Freedoms of the Individual (Practice) Rules, 2001, pursuant to the powers vested on him by section 84 of the Constitution. The Rules enable persons

complaining of violation of their Constitutional right to access justice at the High Court. Since then, there has been an increase of Constitutional references. Indeed, in 2004, the Chief Justice of Kenya administratively established a division of the High Court to serve as the permanent Constitutional court, to deal with matters touching on Constitutional references, judicial review and related matters. With a view to expediting the determination of constitutional application, the Chief Justice has published new rules “the Constitution of Kenya (supervisory jurisdiction and protection of fundamental rights and freedoms of the individual) High Court practice and procedure rules, 2006 to replace the 2001 Rules.

23. Section 82(3) of the Constitution provides that the expression “discriminatory” means affording different treatment to different person’s attributable wholly or mainly to their descriptions by race, tribe, place of origin or residence, political opinions, colour or sex. Under Section 82(1), no law shall make any provision that is discriminatory either OF itself or in its effect.
24. Despite the above legal framework, there have been concerns that Kenya’s personal laws need review for purposes of giving full effect to the principle of non-discrimination (on the basis of sex).

Equality before the law and protection before the law: Article 3 of the Charter

25. The Constitution of Kenya does not have an expression stating that every person is equal before the law and is entitled without any discrimination to equal protection of the law. However, this principle is to be found spread out in Chapter 5 of the Constitution (dealing with human rights). Section 77, for instance, lays out elaborate provisions aimed at ensuring that everyone in Kenya is accorded equal treatment when charged in the court for an offence. Section 70 offers protection of fundamental rights and freedoms for all while section 82(1) provides that no law shall make any provision that is discriminatory either of itself or in its effect.

The right to life: Article 4 of the Charter

26. The Constitution, in section 71(1) states that no person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Kenya of which he has been convicted.

Existing laws in Kenya stipulate that abortion is illegal. However the law provides for exceptional circumstances where the life of the mother is at risk.

27. The State is obliged by law to offer free legal counsel to those charged with murder and treason. There is a right of appeal for those convicted of capital offences.
28. The Criminal Procedure Code provides that a person below the age of 18 who commits a capital offence shall not be sentenced to death but shall be incarcerated at the pleasure of the President. Pregnant women cannot, also, be sentenced to death if found guilty of a capital offence. This also applies to persons who are found guilty but insane.
29. Despite the existence of the death penalty, there has been no execution of convicts since 1988. This confirms the death row phenomenon in Kenya, like is the case in many other States around the world.

Right to Dignity: Article 5 of the Charter

30. In order to protect the dignity of everyone, the Constitution provides that no person shall be subjected to torture or inhuman or degrading punishment or other treatment. Slavery, forced labour and corporal punishment have also been outlawed.
31. Prison reforms are on course under the Governance, Justice, Law and Order Sector (GJLOS) reform program. The reforms have been hailed as a showcase for prison reforms in Africa, in acknowledgment of which Kenyan prison officers were seconded to the United Nations sponsored prison reform programme in Liberia. Prisoners' uniforms have already been changed. Prison warders are being trained on how to treat prisoners humanely. Comfortable transport buses have been introduced for inmates. These programs have opened up prisons for scrutiny by the Kenya National Commission on Human Rights, civil society and other interested parties.
32. The Kenya Prisons Service Rules contain provisions that protect the integrity of detainees in accordance with the UN Minimum Standard Rules for the Treatment of Offenders. The training programs of prison officers incorporate human rights education.

33. Under the police reforms program, establishment of customer care desks and training in professional ethics is intended to improve the treatment of suspects at the police stations.
34. In 1997 the Government enacted The Statute Law (Repeals and Miscellaneous Amendment) Act, 1997 that expressly prohibits torture being used by the police to extract information/evidence. The Act amends the Police Act and provides that no police officer shall subject any person to torture or any other cruel, inhuman or degrading treatment.
35. The Criminal Law Amendment Act 2003 introduced in the Evidence Act that a confession or any admission of a fact tending to prove guilt made by an accused person shall not be proved against such person unless it is made in courts thus making the prospect of torture by police improbable.
36. The death penalty applies to the following offences;
 - Murder under section 204 of the Penal Code;
 - Treason under section 40 of the Penal Code;
 - Robbery with violence under section 296(2) of the Penal Code; and
 - Attempted robbery with violence under section.297 of the Penal Code.

In these four instances, death penalty is mandatory if one is found guilty of having committed the offences by a court of law.

37. The Economic Survey of 2006 detailed statistics on crime analysis in Kenya. Issues such as the number of persons sentenced to death were not captured by this survey. However, the Central Bureau of Statistics is currently conducting a Survey that is expected to take into account human rights issues.
38. Due to the proliferation of small arms and consequent upsurge in violent crimes, incidences of police shooting have been reported. Whenever a police officer shoots a person, investigations are carried out and the matter is handed over to the Attorney General for directions as to prosecution
39. The efforts of the Government to combat torture and other cruel, inhuman or degrading treatment or punishment have been supplemented by civil society

organizations such as People against Torture, the Coalition on Violence against Women and the Kenya Human Rights Commission and others.

Liberty and Security of the Person: Article 6 of the Charter

40. The Constitution deals with protection of right to personal liberty.
41. The Criminal Procedure Code in section 47 describes arrest procedures with (and in some cases, without) a warrant. Statutory reforms in 1997 proposed by the Inter – Parties Parliamentary Group (IPPG) amended the Chief’s Act and the Preservation of Public Security Act, effectively sealing possible loopholes for arbitrary arrests and detention without trial in the name of “public security”.
42. Under the Governance Justice Law and Order Sector (GJLOS) Program in conjunction with the Police Department, *community policing* projects have been initiated countrywide to curb insecurity in the country. The projects entail the co-operation between the police and the local communities for purposes of fighting crime in the neighborhood.
43. In light of our economy as a developing country, it has been extremely difficult to effectively allocate adequate resources to the police force. This has hindered adequate surveillance. The ratio of the police to the number of citizens is still disproportionate and far below the minimum international standards. The high unemployment rate in the country has led to crime, which has posed a big challenge on security.
44. Moreover, the desire of the Government of Kenya to provide security to all the people of Kenya has been constrained by the proliferation of firearms that find their way into the country through the long, porous and, in some sections, unmanned borders. Armed conflicts in the neighboring countries have been responsible for this setback. However, the Immigration Department has been strengthened to effectively manage the entry points along our borders. Through the Personal Identification Secure Comparison and Evaluation System (PISCES) program, detective devices have been provided to the Department. There are initiatives by the Governance Justice Law and Order Sector (GJLOS) programmes for border patrol surveillance and the rapid deployment unit by the Administration Police.

The right to one's cause to be heard: Article 7 of the Charter

45. Section 77 of the Constitution of Kenya enshrines provisions to secure protection of law.
46. The High Court of Kenya has ruled in several occasions that the process through which one's cause must be held must not only take place within a reasonable time but must also be free from abuse. For instance, in a judicial review case of *Osman Ibrahim Abdullah Vs the Principal Immigration Officer*, the matter involved a decision involving the legal status of an immigrant. The court maintained that abuse of process by the Executive denied the immigrant of his right to have his cause heard fairly, and ruled that in the present case, the process was flawed and that Mr. Abdulahi should be released on bail pending the hearing of the substantive matter on his immigration status.
47. To reduce delays in court cases occasioned by personnel and infrastructural constraints in the judiciary, the government proposes to increase the number of judges, magistrates and state counsel; introduce small claims courts as well as strengthen alternative dispute resolution methods.
48. There are also intended reforms in the office of Director of Public Prosecutions aimed at developing a national prosecutions policy, training needs, code of conduct for prosecutors and a training curriculum for prosecutors. The government has partnered with other development agencies to pull resources together under the Governance, Justice Law and Sector Reform Program (GJLOS) to among other things initiate reforms in the judiciary. Key in these reforms is the court computerization and availing electronic versions of case law and statutes for reference by lawyers, judicial staff and the general public.

Freedom of Conscience: Article 8

49. Section 78 of the Constitution stipulates that every person in Kenya is entitled to the freedom of conscience. This freedom includes freedom of thought and religion, freedom to change his religion or belief, and freedom, either alone or in community with others to manifest and propagate his religion or belief in public or in private. Every person is entitled to manifest such religion subject to the restrictions contained in law.

50. The different faiths in Kenya co-exist peacefully in general: Christian (Catholic, Protestant and Pentecostal), Muslims, Hindu, Judaism and African traditional religion. The State is secular and there is no official faith. In furtherance of the right to religion and conscience, the law allows individuals or religious groups to establish instructional facilities (schools, colleges) and to conduct religious based instruction.

The right to receive information: Article 9

51. The Constitution in section 79 deals with protection of freedom of expression. This section guarantees the individual enjoyment of his freedom of expression and freedom to hold opinions. However, the section places limitations on the right, in the interest of national defence, public safety, public order, public morality, public health, and for the protection of the reputation, rights and freedoms of other persons.
52. The right in section 79 has been interpreted to guarantee also the freedom of the media. In the last five years, the Government has increasingly adopted a policy of promoting media freedom and liberalization of the airwaves. There are four national daily newspapers that provide a variety of political and socio-economic viewpoints.
53. Regarding broadcasting, the Country has 22 radio and 13 television stations. A major challenge regarding granting broadcasting licenses in future is the limited frequency allocated in Kenya by the International Telecommunications Union (ITU)
54. In practice mass media in Kenya is limited in terms of reach. For the print media there are distribution constraints. For the electronic media, developmental constraints must be tackled before every part of the country can receive radio and television coverage. Internet connectivity is limited to major urban centers and accessibility is hampered by the accompanying costs. Also of concern are the private, vernacular radio stations. Some of these pose national cohesion concerns.

Freedom of association and of assembly: Article 10 and 11

55. Section 80 of the Constitution deals with the protection of freedom of assembly and association. This right allows a person to freely associate with

other persons, and in particular to form and belong to trade unions or other associations for the protection of his interests. The right is subject to the same restrictions as to the right to freedom of assembly.

56. Registration and deregistration of trade unions is done under the provisions of the Trade Unions Act, Chapter 233 of the Laws of Kenya. Section 11, 16 and 17 of the Act provide limitations to the right of freedom of association. In order to ensure that Kenya labour laws conform to international conventions and standards, the Government in the year 2001, established a task force to review all the labour laws. The task force has completed its work and submitted recommendations. (Need to update further) In addition, Kenya ratified seven of the core ILO conventions and has consistently made annual and periodic reports under these Conventions.
57. In terms of statutory law, provisions regulating the exercise of the right to assembly are contained in the Public Order Act, Chapter 56 of the Laws of Kenya. Part III thereof regulates the conduct of public gatherings. Section 5 provides that any person intending to hold a public meeting or a public procession shall notify the regulating officer of such intent. All what is required to hold a public meeting is to notify the office in charge of the local police station.

The right to freedom of movement: Article 12

58. Section 81 of the Constitution deals with protection of freedom of movement. It provides and guarantees that no citizen of Kenya shall be deprived of his freedom of movement, the right to reside in any part of Kenya, to leave Kenya and immunity from expulsion from Kenya. This freedom may be restricted only by law in the interest of defence, public safety, order, morality, and public health or in the enforcement of a court order.
59. The right to the freedom of movement applies to Kenyans and aliens alike, so long as the foreign nationals are in the Country lawfully (through obtaining a visa under the Immigration Act, Chapter 172 of the Laws of Kenya; or a permit under the Aliens Control Act, Chapter 173 of the Laws of Kenya).
60. Kenya is a state party to both the 1951 Convention Relating to the Status of Refugees as amended by its 1967 Protocol as well as the 1969 OAU Convention Governing the specific aspect of refugee problems in Africa. To optimize refugee management/administration, Kenya encampment policy

requires refugees to reside within specified camps. However there have been concerns about the refugees right of movement within the country and the government has sought to address these concerns through the draft refugee bill.

The right to participate freely in the government of one's country: Article 13

61. The Constitution establishes an independent Electoral Commission of Kenya (ECK) to supervise Presidential, Parliamentary and local authority elections held once every five years, or at any time when a by-election ensues as a result of death or resignation of an elected official. Kenya is divided into 210 constituencies. All citizens above the age of 18 years are eligible to vote, so long as they are registered as voters.
62. This right is not restricted to voting. It entails also the right of Kenyans to stand for political office. To vie for the presidency, one must be at least 35 years old; must be sponsored by a registered political party and must be supported by at least 1 000 registered voters. A parliamentary candidate must be at least 21 years old, must be nominated by a registered political party and must be registered voter.

B (2) SOCIAL, ECONOMIC AND CULTURAL RIGHTS

The right to property: Article 14

63. The constitution protects the right to property and provides that an individual may not be deprived of their property unless by law when the State may compulsorily acquire property for public purposes by compensating the person deprived of property.

The Right to Work & favourable conditions of work article 15 & 16

64. The current Government policy is to create 500,000 jobs a year in both the formal and informal sector. The Government has also pledged promotion of an enabling environment for business and industrial development. On this basis, an Investments Act and a Procurement Act have been enacted as one of the pillars for the realization of the objectives of Government in the Economic

Recovery Strategy Paper. Data collected by the Ministries of Labour and of Planning indicate that approximately, 470 000 jobs were created in 2004.

65. To ensure that public servants are productive as possible, the Government has embarked on the signing of performance contracts on the basis of Result Based Management approach for public servants and the development of sector/Ministry-specific strategic plans and annual work plans for the public sector. Already the 1st year of performance contracting is over and its evaluation is underway.
66. Sections 73(i) & (ii), 75 and 81 of the Constitution provide for the protection from slavery, forced labour, deprivation of property and freedom of movement all of which are relevant to the right to work. Freedom of movement guarantees the right to work in any part of the Country. Under the Constitution, no person is to be held in slavery or servitude, and the Country ratified ILO conventions Nos 29 and 105 (on the abolition of forced labour) on 13th January 1964. The Government has since taken measures aimed at ensuring that the national law and practice are in conformity with these Conventions. In this connection, sections of the Chiefs Authority Act that gave Chiefs authority to impose forced labour in villages (ostensibly for purposes of undertaking communal projects like the maintenance of rural access roads) were repealed in 1997.
67. The Government is committed to reforming certain provisions of the Penal Code (Chapter 63 Laws of Kenya) with regard to imprisonment involving an obligation to perform work as a punishment. Also set for review are the Merchant Shipping Act, 1967 and the Trade Disputes Act (Chapter 234 of the Laws of Kenya) both which prohibit participation in strikes for certain categories of workers. Discussions are being held between the Office of the President, the Attorney-General's Office, the Kenya Law reform Commission and the Ministry of Labour, regarding proposals aimed at bringing national legislation in full conformity with provisions of the relevant ILO Conventions
68. A Government-appointed task force to review labour laws has submitted its recommendations. The task force has recommended an overhaul of the current Employment Act, with a view to specifically prohibit forced labour in line with Convention 105, with the exception of the categories of work exempted from the provisions of the Convention (such as work or service of a military nature, normal civil obligations etc.)

69. Major challenges relating to the attainment of the full employment output, productive and freely chosen employment include inadequate resources to support high levels of employment as well as the heavy investment required to adapt the education system to the changing needs of the economy. To address these challenges, the Economic Recovery Strategy Paper has been adopted as a blueprint for setting the economy on a recovery path. Furthermore, the Government has adopted Sessional Paper no 1 of 2005 on policy framework on Education aimed at realigning education system with market needs in a changing national and international social, economic and cultural landscape.
70. Achieving gender parity especially in the senior positions of both the public and private sector remains a significant challenge. For instance, out of 26 Permanent Secretaries in Government only 6 are women. The establishment of the National Commission on Gender Equality, and the elevation of the Women's Bureau to a Department within the Ministry of Gender, Sports, Culture and Social Services gone a long way in correcting gender imbalances in the Country. At the policy level, Sessional Paper Number 5 of 2005 on Gender Equality provides for the establishment of gender divisions in the public service. Enactment of persons with Disabilities Act, HIV (Control and Management) Bill and the Equality Bill, are meant to legislate against discrimination. Under the Children's Act, discrimination in the education of girls and boys is criminalized. Marginalized groups are beneficiaries of affirmative action to integrate them into the work economy, since they have been left out for a long time.[suggested to be transferred to part c]
71. With regard to persons with disabilities, the Government has improved access to rehabilitation, education, training and employment of persons with disabilities. Through a number of activities as contained in the persons with disabilities Act

Right to just and favourable conditions of work: Article 16[combined based on the fact that health under work is satisfactory condition]

72. Kenya has ratified Convention No. 111 on discrimination in employment and occupation. The Country has also ratified seven out of the eight ILO conventions fundamental principles and rights at work.
73. The Regulation of Wages and Conditions of Employment Act Cap. 229, governs the setting of wages for all workers except for the Police, the Armed

Forces and the National Youth Service. Minimum wages apply to unionisable employees. The General Wages Advisory Board, the Agricultural Wages Authorities, and the Protective Security Wages Council make proposals for the setting of wages and advise the Minister for Labour thereon. On the basis of this advice, the Minister sets the minimum wage, which is reviewed occasionally to reflect inflation and other economic factors. The minimum wage so established has the force of law as subsidiary legislation.

74. The Wage Boards appointed by the minister for labour supervise the minimum wage system draw representation from the most representative workers and employers' organizations and are chaired by independent persons from the private sector. There are labour inspectors who inspect premises to ascertain compliance with labour standards. Apart from the above framework, there are voluntary negotiations and collective bargaining agreements between workers and employers.
75. In Kenya, rates of remuneration are based on trade, professional qualifications, job experience and on various schemes of services for public and civil servants. All employees regardless of sex are remunerated in accordance with qualifications and are paid the same for equal work done. However there are provisions that bar women from working at night (from 6.30 pm to 6.30 am) in industrial settings. These are the target for review as they are seen as *prima facie* discriminatory and may contribute to both unemployment and underemployment. The Equality Bill pending legislation proposes the establishment of an Equality Board and the Equality Tribunal to give an institutional framework to eliminate discrimination.
76. Supervision of compliance with the minimum wage has been less than perfect. The reasons for this state of affairs range from inadequate and poorly motivated labour inspectors due to financial constraints and allegations of corruption. On the issue of corruption, the Government has put in place a legal and institutional framework for combating corruption in the country.
77. Job evaluations and annual appraisals form the basis of fixing remuneration and promotion of employees. This enhances the principle of equal opportunity for promotion.
78. In November 2004, the Government issued regulations on occupational health and safety rules in industries and places of work that have to be filed every year. The Employment Act requires employers to provide water,

housing and healthcare. There are also provisions in the Act for annual leave (21 days a year after 12 consecutive months of work), maternity leave (up to two months) and weekly rest days (one day a week) and public holidays & provision for overtime compensation.

79. A large number of people seek jobs outside the country due to the high level of unemployment in Kenya. All job seekers going to work outside the country are required to have their contract scrutinized by a labour officer before proceeding to ensure their terms of service are not unfavourable than those obtained in Kenya.

The right to health: Article 16

80. The population of Kenya is estimated at 32 million, of which about 50% are under 18 years of age. 20% under five years and 50% under 15 years. The morbidity pattern features malaria, HIV/AIDS scourge, acute respiratory infections and skin conditions Kenya has, however, put in place a health policy framework. While the framework adopts the World Health organization (WHO) recommended Primary Health Care (PHC) elements, it adds two other elements, namely, pre-natal and dental health. The policy addresses general health service delivery while PHC gives attention to maternal & child health services also included in the policy are safe water supply aimed at preventing and controlling communicable diseases.
81. According to the Public Expenditure Review (PER), health expenditure as a share of the total budget has been rising gradually, although it remains at about half of the intentions of the target of 15% as agreed in the Abuja Declaration. The increase is partly due to donor funding in the development budget. For the year 2002/2003 the total budget for the Ministry of Health averaged 1.5% of the GDP and represented about 8% of the total GOK spending. Overall this represents an increase of 1% over the last 5 years (1997/98). The Government projects to increase the allocation to 12% of the total Government budget by 2008.
82. Government plans to improve maternal health services through promotion of save motherhood and has a target of progressively reducing maternal death to 560/100.000 by 2006/2008. Population proportion having access to trained personnel during deliveries is 42%.

83. Measures considered necessary to improve the physical and mental health situations include the enactment and implementation of the National Social Health Insurance Scheme Bill; increase in budgetary allocations to the Ministry of Health with specific focus on programmes targeting the vulnerable groups; and designing and implementing specific poverty reduction programmes to enhance and support livelihoods for the low-income groups in society.
84. The policy measures that the Government has undertaken to improve the healthcare system include the increment of the budgetary allocation to the Ministry of Health; improving the availability of medical supplies through reforms that have led to the establishment of the Kenya Medical Supplies Agency (KMSA); and the creation of an enabling environment for private sector and other stakeholders' participation in provision of health care.
85. With regard to environmental and industrial hygiene, the Government has formulated the Environmental Sanitation and Hygiene Policy. In addition, there has been increased collaboration between the Ministry of Health and the Ministry of Labour on one hand, and the ILO, WHO and other international agencies in the area of occupational health and industrial hygiene. Capacity building, targeting personnel in areas of occupational health and safety as well as the enforcement of legislation such as the Public Health Act, the Factories Act, the Food, Drugs and Chemical Substances Act and the Environmental Management and Coordination Act have also been prioritized.
86. In order to enhance access to medical services. The Government has increased coverage particularly in hardship areas. In addition, the Government has continued to strengthen referral systems both within public and private sector.
87. Of particular concern has been the cost of healthcare for the elderly. Although the country cannot afford to waive user fees for the elderly, they do benefit from the general waiver in all public hospitals that cover all people who are unable to meet their medical costs due to poverty.
88. The following measures have been undertaken to maximize community Participation: -District Health Forums are convened and comprise representation of all stakeholders whose purpose is to prepare districts health plans with well spelt out priorities. In this way Communities are able to

participate in the planning, organization, operation and control of primary health care.

The right to education: Article 17

89. The Education act cap 211 is silent on the right to education. But the Children Act cap 586 section 7 provides that every person has the right to free and compulsory education. It obliges the State to institute a programme to implement the right of every child to free and compulsory pre-primary and primary education and in so doing to pay particular attention to children with special needs. Further the State is obliged to take measures to make secondary and post-secondary education progressively available and accessible. It creates the legal environment for increasing availability of educational opportunities to everyone who so desires to establish and maintain private educational institution that complies with the requirements of the education Act.
90. There are 14 Acts of Parliament that in one way or other touch on different aspects of education. These include the *Education Act*, the *Children's Act*, the *Adult Education Board Act* and university acts. Most of these laws create institutions of education and education-related administrative institutions. The Education Act obliges the Minister for Education to advance the education of Kenyans and to promote the progressive development of institutions devoted to the promotion of education in carrying out the national education policy. It also allows the Minister to from time to time formulate a development plan for education that is consistent with any national plan for education and social development of Kenya. The Act creates core institutions of education such as the Kenya Institute of Education whose function is to coordinate institutions devoted to training of teachers, examinations, educational research, educational materials and related matters.
91. The Children's Act, domesticates the UN Convention on the Rights of the Child. Among its key social rights provisions is the guarantee for free and compulsory basic education and the right to health care. Section 7 of the Act provides that 'every child shall be entitled to education the provision of which shall be the responsibility of the Government and parents. Further 'every child shall be entitled to free basic education which shall be

compulsory in accordance with Article 28 of the Convention on the Rights of the Child.’ Besides guaranteeing the right, the Act imposes a sanction upon any person who willfully violates this right, with a term of imprisonment not exceeding 12 months or a fine not exceeding fifty thousand Kenya shillings or both.

92. In 1998, the Government, responding to public disquiet with the current 8-4-4 system of education, and to keep its election promise of its reform, appointed the *Commission of Enquiry into the Education System in Kenya* also known as the *Koech Report*. It covered virtually all aspects of education, and recommended the enactment of a new all inclusive legal framework to include all aspects of education not addressed in the Education Act cap 211. The ongoing review and harmonization of legal framework on education and training addresses these concerns.
93. Other policy interventions that have had an effect on the sector to date include the introduction of the *Admissions Quotas in 1985*. In this policy the government committed secondary schools in each district to reserve 85% of places in their schools to pupils from within the district and provincial primary schools and 15% to pupils from the rest of the country. This has been reviewed to 60% and 40% respectively.
94. The *Bursary Scheme* by the Ministry is a policy to address the questions of accessibility and equity for poor children. The budget for the scheme has increased from Ksh548million in 2001/2002 to Ksh 770million in 2002/2003, amid concerns that it is inefficiently administered. It is now administered at the constituency level to ensure reaches the targeted beneficiaries countrywide.
95. The Free Primary Education (FPE) Policy that has significantly increased enrolment rates in the country. Its goals of UPE are however threatened by the incidence of child labour with 1.9 million children being said to be engaged in it with 1.3 of them being completely out of school and with the rest combining work with school. It is also threatened by budgetary constraints to keep it going.

96. The *National Poverty Eradication Plan 1999- 2015*, gives significant focus to the goal of basic education for all, acknowledging declining enrolment and completion rates of the poor, the failure of the cost-sharing strategy, and the declining social indicators and restates the importance of paying for the basic open cycle of education through public funds and thus using a key human development service to help alleviate inequity.
97. Budgetary allocation for education is relatively large; it is 19% of the national budget and 40.56% of the recurrent budget. In the year 2005/06 the budgetary allocation is Kshs. 91.92 billion compared to Kshs. 84.70 billion in the year 2004/05.[to be updated]
98. The number of primary schools has more than tripled from 6,508 to 18617 while those of secondary schools has increased from 151 to 3207 in the last 37 years, and the universities have grown in tandem with marked expansion of vocational and technical training institutions. These figures are an indication of the Government's consistent efforts to increase availability of education to Kenyans over the last 40 years. Despite these major investments however, a large number of Kenyans do not realize important aspects of their right to education.
99. Enrolment in the pre-primary education (early childhood) has increased by 33.3% from 2000 to 2004. In the year 2000 boys constituted 636,808 while girls constituted 609, 793. In 2004 boys were 815, 775 while girls were 788, 764. About 267,000 more children were enrolled in primary schools in 2004 compared to the enrolment in 2003. Total enrolment in primary schools was 7.1 million in 2004 because of the free primary education up from 6.1 in 2002. The current net enrolment ratio (NER) is 84.5% of the school going age population indicating that there are still children between age 6 and 13 who are yet to access free primary education. In 2002 before free primary was introduced 3, 143,100 boys and 2,988,000 girls were enrolled. Two years after the introduction of free primary education the enrolment rose up to 3,810,400 boys and 3,574,400 girls representing a total net enrolment increase of 20.45%.

100. The annual schools drop out rate improved from 5.0% in 1999 down to 2% in 2004. To cater for those who have dropped out the Government has instituted the following measures; -
- Readmission of girls who drop out due to pregnancy.
 - Opening up of non-formal education centers to cater for older children.
 - Making primary education free and compulsory.
 - Purchase of school uniforms has been made optional.
 - School feeding programmes have been intensified in marginalized areas.
 - Existing secondary school facilities have been expanded to increase transition rates.
 - Non-formal and post literacy education curricular have been developed to cater for school drop outs and adult learners, this is in recognition of the importance of imparting functional literacy skills after these learners acquire the basic literacy skills.
101. Provision of adult education to mature learners has been enhanced to improve access as a way of attaining education for all (EFA goal). The total enrolment went up by 1.4% from 108,431 in 2003 to 109,923 adult learners in 2004. Female learners at 71.3% constituted the majority of adult learners in 2004. A national survey has been launched on 10th June 16, 2006 to determine the number of literate adults.
114. To enhance access for children with special needs and the marginalized, the Government strives to increase the provisions to special needs schools and non-formal schools have been given capitalization grant of Kshs 2,000 per child per year. To address the issue of drop out rates and access in the ASAL areas, the government has increased the support to the primary boarding schools. During the ERS period the sector will spend Kshs.191m on capacity building and capitation in these schools There is however a problem of unequal distribution of teachers which is being addressed.
115. In its endeavor to provide free primary education the Government has partnered with the development partners. Among the key partners supporting this program include: - The World Bank, Department for International Development (DFID), USAID, the Swedish International Development Authority (SIDA), the Canadian International Development Authority (CIDA), the Japanese International Cooperation Agency (JICA), the

United Nations Children's Fund (UNICEF) and the World Food Programme (WFP). Their assistance is mainly towards provision of textbooks and institutional materials, infrastructure development and rehabilitation including classrooms and toilets, as well as the provision of food to pupils under the school-feeding programme.

117. Some of the challenges to the education system in Kenya include overcrowding in primary schools and overstretched infrastructure (classrooms, toilets etc.) especially since the introduction of free primary education; inability of children in marginal areas and slums to access schooling despite the introduction of free and compulsory education; poor teacher: pupil ratio due to inadequate resources to employ teachers; and indiscipline in schools especially since corporal punishment was abolished
118. At secondary school level where the free education policy has not been implemented and parents still meet the costs of education, the average proportion of costs borne by households are high at 46% for day schools; 63.8% for boarding schools and an overall average of 56.6% for day and boarding schools.
119. Children with Special Education needs have not accessed the right to education equally as other children. Even though the Ministry of Education has recognized the need to train teachers for children with special needs and even established the Kenya Institute for Special Education (KISE), this had not been met with adequate government support. The proportion of Government funding going to special education has increased marginally 0.09% in 1980 to 0.40% in 2000/2001, according to Economic Surveys for those years. According to the National Development Plan 2002-2008, out of the 1.8 million handicapped children of ages 1-19, only 100000 have been assessed, and of these, only 22000 (22%) have enrolled in both regular and special schools. Even for this small group who has access to education, the quality of education is less than perfect given the shortage of trained teachers. This low enrolment rate has been attributed to poor management and high costs of training teachers, with records showing that only 40 teachers a year complete the two year diploma course in special education at KISE.

The right to culture/ the protection of moral and traditional values: Article 17

120. In Kenya, African customary law has the force of law, so long as it is “not repugnant to justice or inconsistent with any written law”. This is provided for in the Judicature Act.
121. Cultural aspects are taught in schools as early as in class one. The school curriculum also includes subjects like history and civics that teach about cultural aspects of different communities in Kenya. This coupled with drama and music festivals promote cultural identity as well as mutual appreciation and co-existence among different ethnic groups.
122. The Ministry of Gender, Sports Culture and Social Services has seen its development budget increase from Kshs 164million in 2004/05 to Kshs 495 million in 2005/06. The recurrent expenditure is Kshs 1.59 billion 2004/05 and 1.62 billion for 2005/06.
123. The Government has taken measures to preserve the culture of the peoples of Kenya. These include the establishment of the Kenya National Theatre; the establishment of the National Museums of Kenya and the setting out of the Ministry of National heritage to supplement the work of the Department of Culture in the Ministry of Gender, Sports, Culture and Social Services. The Government has also put in place a legal, institutional and policy framework for the conservation and management of wildlife as part of Kenya’s national heritage. There are plans to put in place legislation intended to protect cultural property even where the property is in private hands.

The Right to Family - Article 18

124. The Government of Kenya has taken measures to strengthen and support the family as the fundamental and natural unit of society, pursuant to the African Charter. These measures are summarized below:

Legislative measures:

125. The Government recognizes the position of the family as the basic unit of the society. The Marriage Act governs marriages in Kenya. Marriage is open to consenting parties of 18 years and above. Other pieces of legislation relating

to marriage include the African Christian Marriage and Divorce Act, the Hindu Marriage and Divorce Act and the Mohammedan Marriage and Divorce Act. The proposed Domestic Violence (Family Protection) Bill also offers protection to the family unit by outlawing violence within the family. The Sexual Offences Bill further underscores the duty of the State in securing moral family values within the family and the society at large. Under the Children Act both the State and parents share responsibility of ensuring the security and welfare of the child.

126. The State's capacity to maintain and protect the family as the basic natural unit of the society has however been hampered by the advent of the HIV /AIDS pandemic, which has occasioned the untimely deaths of family heads thereby leaving behind child - headed families.
127. The Employment Act provides for 60 days maternity leave for mothers in employment to enable them spend enough time with their newborns (in the formative days) and families. However the shortcomings in the Act have been identified as the lack of paternity leave for fathers to take care of their spouses who have delivered and to share roles in parenthood. There have also been concerns with the conditions of work in the Export Processing Zones (EPZs).
128. The issue of long working hours and lack of sufficient maternity leave for women in the EPZs have been of particular concern to the Government.

Judicial measures

129. The Government has established the Family Division of the High Court, which is charged with the sole responsibility of handling family related disputes. The establishment of the Children's Courts, with magistrates specifically trained and gazetted to hear matters relating to the rights and welfare of children, can also be viewed in this light.
130. The Government has also recognized the need for Alternative Dispute Resolution (ADR) measures as a first step in solving family disputes and has recently trained judicial officers in this regard. The Rules Committee of the High Court has also proposed the formulation of court-mandated ADR in cases where it is deemed necessary.

Administrative measures:

131. The Government in developing the National Population Policy for Sustainable Development recognizes that the role and responsibility played by each member of the family in enhancing and sustaining family stability must be supported and strengthened. The management of the population policies will therefore contribute to family stability by supporting and strengthening the family and promoting equality of opportunities for all family members. Some of the strategies adopted to facilitate this are: providing better working conditions and environment to pregnant mothers and nursing mothers; researching into the determinants of increased family stability and violence; and, expanding, diversifying and intensifying morally acceptable guidance and counseling programmes to promote the welfare of the family.
132. The Children's Department of the Ministry of Home Affairs mediates between parents in disputes involving the welfare of the children mostly for purposes of maintaining cohesion within the family.
133. The Government has introduced initiatives such as Constituency Development Funds (CDF) and Constituency Bursary Fund (CBF) which are intended to alleviate poverty and raise standards of living for the rural and urban poor. Although there are no budgetary allocations specifically for families, the family benefits from these initiatives.
134. In the furtherance of the need to protect the sanctity and the cohesiveness of the family, the government through the TSC has put in place a deliberate policy to post teachers to schools in their home areas and female teachers are transferred to schools where their husbands work subject to the availability of vacancies.

B (3) Group Rights: Article 19-23

135. Kenya is comprised of about forty-two ethnic communities. The communities live largely in geographically autonomous areas that also form the political and administrative areas. The Government has put in place mechanisms for ensuring that communities benefit as far as it is possible, from the natural resources found within their areas. It has been a Government policy that, communities living near and around the country's National Parks and Reserves should benefit from the revenue generated from these areas.

136. On general satisfactory environment favourable to development, the country has put focus on sustainable environment through engaging inadequate management of environmental resources. The government is in the process of implementing the National Environmental Action plan (NEAP) and the Environmental Management and Coordination Act (1999). As a result, the government established the NEMA, responsible for setting and enforcing environmental standards. The Ministry of Environment is also conducting a natural resource inventory and evaluation. Other initiatives include: Lake Victoria Environmental Management Project. It is also working to implement the Forestry development policy, enforcement of Forestry Act and promotion of private sector participation in afforestation and management of forest plantations. The government is working with the local communities in the conservation of wildlife and benefit sharing. The National Population Policy on Sustainable Development also addresses issues of environmental management.

THE RIGHTS OF VULNERABLE GROUPS: WOMEN, CHILDREN, PERSONS WITH DISABILITIES AND ELDERLY PERSONS AND MARGINALIZED COMMUNITIES

137. In the charter the rights of the above categories of people are covered under articles 2, 16, 17, 18 and 22.

C (1) Women

138. Section 82 (4) of the current constitution prohibits discrimination on the basis of sex and guarantees equality of women. However Section 82 (4) (b) and (c) allow discrimination of women on matters of personal law e.g. customary law, marriage and divorce, inheritance etc
139. The Law of Succession Act Cap 160 is also pro-women in the sense that both women and men share equal rights in succession. This law does not apply to people professing the Muslim faith. Currently, the issue of a widow having only a life interest in her late husband's estate and inheritance by girl children is under review .
140. Under Section 89 of the Constitution a Kenyan woman cannot confer citizenship to her husband and children and her children acquire their fathers citizenship, the Constitution and the Citizenship Act cap 70 discriminate against Kenyan children born to Kenyan mothers abroad but do not

discriminate against children born to Kenyan fathers abroad. Children born to Kenyan mothers abroad have to apply for citizenship and they are given entry permits for a limited duration upon entry in to Kenya while similar treatment is not accorded to children of Kenyan fathers born to non Kenyan mothers.

141. The National Commission on Gender and Development Act 2003 was enacted and the Gender Commission has been established. Its mandate is to mainstream gender in Government ministries. The wide mandate of the commission is to:

“ Initiate lobby for and advocate for legal reforms on issues affecting women and to formulate laws, practices and policies that eliminate all forms of discrimination against women and all institutions, practices and customs that are detrimental to their dignity.”

142. Several laws protecting especially women have been drafted and are before parliament - The Sexual Offences Bill which is awaiting Presidential assent; The Equality Bill; The Domestic Violence (Family Protection) Bill; The HIV and AIDS Prevention and Control Management Bill is awaiting Presidential assent, (seeks to protect and promote the rights of women living with Aids in recognition of the fact that more women suffer from the effects of the scourge).
143. Women continue to be disenfranchised with regard to property ownership. The relevant law-The Registered Land Act, Cap 300 of the Laws of Kenya makes provision for absolute proprietorship. In this regard, married women have lost family property since the law does not make provision for trusts in which circumstances husbands would hold property in trust for families and consequently family consent would be required before any sale and or transaction over family property. The Government in conjunction with Civil Society is working on a National Land Policy, which is intended to inform the Land Laws of the country. One of the recommendations of the Policy is to have women’s rights in land recognized as overriding interests.
144. Women have been grossly represented in Parliament and this has led to difficulty in passing pro-women legislation in a male dominated House. The current parliament has only 18 women, which in itself is a marked improvement from past Houses.

145. The judiciary has applied the equality principle in Succession and Division of Matrimonial Property as happened in the famous case of *Muthembwa Vs Muthembwa* where the Court of Appeal of Kenya decided that a wife was entitled to share of gifted and inherited property if she contributed towards developing the same. In this case the sharing of matrimonial property was decided at 50%. However, this needs to be legislated on.
146. The National Policy on Gender and Development provides a framework for the advancement of women in political, social, economic and cultural areas. Towards this end, Sessional Paper No. 5 of 2005 on Gender Equality and Development has been prepared for discussion in parliament. Plans are also at an advanced stage to develop a plan of action that will facilitate implementation of the policy and provide a basis for stakeholders to initiate programmes that seek to promote gender equity in the country. The Sessional Paper provides a framework in areas where affirmative action can be used to bring equality between men and women. In political participation and decision making for example, in section 58 c it encourages NGOs, CBOs, co – operative societies, trade unions, professional bodies and the private sector to ensure higher representation and participation of women in decision-making. In part e of the same section, it also encourages the creation of awareness and promotion of the active participation of women in political and decision-making processes at the grass roots level.
147. At other levels, The Ministry of Co–operatives has adopted affirmative action. One – third of its board members are supposed to be women to push forward women’s issues. We are yet to ascertain the membership of women on these boards as well as the nature of duties performed.
148. The Constituency Development Fund Act, 2003 states that one-third of members of Constituency Development Fund Committees should be women. It is envisaged that this representation will ensure that women’s voices are heard in terms of the projects that are earmarked for implementation. The Ministry of Planning is in the process of collecting data of women’s representation on the committees as well as the positions they hold in order to determine their effectiveness in terms of influencing development agenda at the constituency level.
149. The East African Legislative Assembly has embraced affirmative action in the sense that nine of its members should be women from the three countries of

East Africa that form the East African Community; Kenya, Uganda and Tanzania. Currently two women instead of three represent Kenya while Tanzania and Uganda each have three representatives.

150. On the other hand the National Commission on Gender and Development Act 2003 section 11(5) specifies that the director and deputy director of the commission shall be of opposite genders and at no one time shall more than two – thirds of the Commission be of the same gender. This provision has partly been adhered to, currently; a woman heads the Gender Commission while the deputy is a man. The KNCHR has a similar provision.
151. These special measures are considered to be non – discriminatory because they are meant to bring women at par with men in specific areas of their lives. The new constitutional dispensation we hope to achieve. Progress of women in taking centre stage in politics is also demonstrated by the election of a woman as head of a prominent political party in the country. The Sexual Offences Bill that is awaiting presidential assent received government support due to escalation of cases of violence against women such as rape. Reported cases rose from 1675 in 2000 to 2908 in 2004[update]. This support is further demonstrated by condemnation of such acts by high-ranking officials in government including ministers.
152. To fight escalating sexual abuse and to be more responsive to victims of sexual abuse gender desks have been established in several police stations. Kilimani police station in Nairobi was earmarked to be transformed into a women only police station. There are efforts by government through the provincial administration in collaboration with civil society organizations to fight negative social practices such as FGM and early marriage. At the same time, the National Policy on Gender and Development, which the government is in the process of disseminating, also recommends mainstreaming in normal schools of children born with disabilities. On the other hand, the government is in the process of carrying out a survey on persons with disabilities, which will also provide an opportunity to increase awareness on the needs of persons with disabilities. Government is also recruiting social workers to serve in government hospitals to provide psychosocial support to victims of sexual abuse.
153. The challenges constraining these efforts include implementation of legislation and inadequate funding for implementation of targeted programmes that would provide necessary skills and attitudinal changes.

154. Gender parity in education was introduced with the aim of improving access and retention of girls in the education system such as lowering entry points to public universities in the year 2000. Kenya's re-entry policy for pregnant schoolgirls that was introduced in 1998 was another positive measure. The challenge faced is effective implementation of the measures including monitoring and evaluation
155. The Government has undertaken a comprehensive review of the Primary and Secondary School education curriculum. Books that initially portrayed women as actors in the domestic front and men as players in public life have either been reviewed or done away with. The syllabus also encourages both boys and girls to learn creative arts, home science (including cooking, knitting, washing cloths etc.) and even sports. It is hoped that this new curriculum will go a long way to eliminate currently prevailing stereotypes. Since the syllabus targets children at their very early stages in life, we expect a Kenya bereft of abusive stereotypes. A positive measure introduced through presidential decree and later enforced in the budget is tax exempt on sanitary towels. These are marked as VAT zero-rated items.
156. The following are the major challenges on implementation of women rights in Kenya:
- Cultural practices and attitudes continue to impede the full realization of women rights. Such practices include, Female Genital Mutilation, Wife inheritance, teenage marriages, violence against women, bride price and general preference of the boy child. Culture further impedes implementation of legislation favorable to women.
 - Gender-based violence is on the increase in Kenya. Sexual abuse of women remains a challenge. In many incidences of robbery women fall victim to rape increased rape, defilement, incest and sodomy cases led to the campaign to have the Sexual Offences Bill enacted.
 - Poverty affects women more in Kenya. Creation of wealth is a challenge due to the high levels of illiteracy, for this reason they are unable to access employment. In terms of accessing means of production for business most women lack collateral and security to get loans because property ownership is still largely in the hands of men.

- Female-headed households are worse off than other households. Given the less favourable terms of women in the labour market and high dependency ratios such households are poorer and more vulnerable to economic recession. The number of female-headed households accounts for 31.7% of all households.
- Very few women own meaningful property in Kenya. The 1998 (recent statistics) Kenya Country Gender Profile showed that while men owned the majority of building structures the highest proportion of women 32.8% owned shanties. Shanties are often demolished by the city council without notice.
- By and large, women have a problem in accessing justice in Kenya because of lack of awareness and lack of funds. The administration of justice system has not been very friendly to women. To increase access to justice for the poor and marginalized the Kenya Law Reform Commission is working on legislation, which will establish Small Claims Courts.
- HIV affects more women than men. Women are also the caregivers in this pandemic. As stated in cultural attitudes the dynamics of our society do not give women a strong position to negotiate for safe sex. The female condom is expensive and not easily available while Government gives the male condom freely in public places

The following table shows women participation in politics and decision-making (June 2003 – June 2005)

| RANK | WOMEN | MEN | TOTAL | % WOMEN |
|--------------------------------|-------|------|-------|---------|
| National Assembly | 18 | 204 | 222 | 8.1 |
| Ambassadors/High Commissioners | 7 | 27 | 34 | 20.6 |
| Permanent Secretaries | 4 | 21 | 25 | 12.5 |
| Provincial Commissioners | 0 | 8 | 8 | 0 |
| District Commissioners | 3 | 68 | 71 | 4.2 |
| Deputy Secretaries | 19 | 75 | 94 | 20.2 |
| Elected Councilors | 382 | 2043 | 2425 | 15.7 |
| Elected Members of Parliament | 9 | 201 | 210 | 4.2 |
| District Officers | 68 | 355 | 423 | 16.1 |

Source: - Department of Gender
 Electoral Commission
 DPM Compliment Statistics Unit

However, at other levels of the public service women are still not well represented in senior positions. For instance by June 2005, women permanent secretaries constituted 6(19.4%) out of 31. Only 2(2.8%) out of 71 District Commissioners, 21(21.4%) out of 98 Deputy Secretaries and 88(19.7%) out of 447 District Officers. At the time of reporting, there was no woman heading a province.

JUDICIAL SERVICE ESTABLISHMENT IN KENYA BY GRADE AND GENDER, NOVEMBER 2005

| RANK | WOMEN | MEN | TOTAL | % WOMEN |
|------------------------------------|-------|-----|-------|---------|
| Chief Justice | - | 1 | 1 | - |
| Judges of Appeal | - | 9 | 9 | - |
| High Court Judges | 14 | 35 | 49 | 28.5 |
| Registrar | - | 1 | 1 | - |
| Chief Court Administrator | 1 | - | 1 | 100 |
| Chief Magistrates | 4 | 5 | 9 | 44.4 |
| Senior Principal magistrates | 8 | 4 | 12 | 66.6 |
| Principal Magistrates | 16 | 11 | 27 | 59.2 |
| Senior Resident Magistrates | 50 | 52 | 102 | 49 |
| Resident Magistrates 1 & 2 | 30 | 82 | 112 | 26.7 |
| *District Magistrates Clarify data | - | - | - | |
| Chief Kadhi | - | 1 | 1 | - |
| Kadhis | - | 16 | 16 | - |
| Total | 123 | 217 | 340 | |

*Currently all the District Magistrates have been upgraded to Resident Magistrate 2. Judiciary is in the process of recruiting District Magistrates

Source: *Judicial Commission*
DPM Compliment Statistical Unit

The government has continued to make considerable efforts to appoint women in various public bodies including parastatals. In the Judiciary, women formed 37.6% of Senior/Resident Magistrates, 42.3 % of Senior/Principal Magistrates and 20.3% of High Court Judges in June 2005 as compared to 41.3%, 36.8%, 40.9% and 17.6% respectively in 2003. In June 2005, 34.3% lawyers registered by the High Court were women as compared 34.1% in June 2003.

Noting that some of the factors that continue to impede women's empowerment in terms of influencing policy and pro-women changes are inadequate resources, socio-cultural attitudes, high level of illiteracy and sexual harassment, the Government in conjunction with Civil Society is offering civil education to remedy this. It has also suggested affirmative action programs to address this.

C (2) Children

156. In 2001, Parliament adopted the Children Act, a legislation that domesticates the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The Act establishes statutory structures to facilitate the administration and safeguards the rights of children including the creation of the National Council for Children Services (NCCS) - the coordinating and unifying agency for children services in Kenya.
157. The Department of Children Services in the Office of the Vice President and Ministry of Home Affairs is the technical arm of Government in charge of issues on Children. It is mandated to provide services for the welfare of children and secure their rights. A major aspect of children's rights taken seriously by the Government is their education. There is now in Kenya free and compulsory primary education for all children. To facilitate this children from poor families are allowed to enjoy free primary education even without wearing the school uniform. For Arid and Semi Arid Lands affected by drought a school-feeding programme was started wherein children are fed in schools.
158. The education budget for the year 2005 is Kshs. 96.544 billion and Kshs. 105.338 billion for the year 2006 Update data. Much of this budget goes towards paying teachers and facilitating the free primary education.

Development partners will cater for extra budgetary costs. The Government has initiated a response towards issues affecting Orphans and Vulnerable Children (OVC), a steering committee and guidelines on this have been set up. A legislative review identified gaps in Kenya's law with regard to OVC's and a policy was prepared to address this. The government has also enacted adoption rules to regulate international adoptions, and passed a policy to govern charitable homes and institutions. It is also piloting the Conditional Cash Transfer (CCT), intended to discourage institutionalization of destitute children.

159. Children's help desks have been established by the Government in police stations to receive and investigate increasing complaints of violations of children especially child sexual abuse. Police officers have been trained on the Children Act to manage the desks in a child friendly manner. Training on Child Rights has also been mainstreamed in the Police Training curriculum. The Children's Department through the Governance, Justice, Law and Order Sector (GJLOS) reform, a sector wide approach programme is promoting the rights of juvenile delinquents in rehabilitation schools and is strengthening law enforcement and rehabilitation programmes.
160. Pursuant to the Children Act, Children courts have been established with special jurisdiction to handle children issues. 119 (update) Magistrates have been appointed to serve in the Children's courts to hear and try all matters concerning children. The Government support private charitable institutions catering for destitute children and has also established a children's remand home.
161. The major challenges on implementation of Children Act include:
 - *Free primary education:* The number of children per class continues to be a challenge but the Government is working towards building more classrooms. Though we hail the high enrolment rate the teacher pupil ratio 1:67 continues to be a challenge. Physical facilities are a big challenge too but the government is marshalling funds towards alleviating all these issues. The Government is also recruiting more teachers to increase the teacher pupil ratio and in effect the quality of education.

Enforcement of the Children' Act

Most of the problems affecting children and posing as challenges to their rights are adequately catered for in the law. However some of the challenges with regard to implementation of the law are early marriages, child labour compounded by poverty, lack of access to legal advice, ignorance of child rights within society, inheritance, drug abuse, lack of sufficient personnel and adequate physical resources among others.

- *Culture:* Cultural practices and attitudes continue to impede implementation of the Children Act. The Government through the department of culture is making efforts to educate the populace on acceptable practices.
- *Pre-primary schools:* Early childhood education is not catered for under free primary education. The government is making positive steps towards catering for these children as well. The challenge is that the early child hood teachers are not employed by the central government.
- *Street children:* Rehabilitation programmes for street children though established have not been very successful largely due to lack of policy guidelines and financial constraints. However more and more street children are being rehabilitated through the National Youth Service Programme where they are trained in vocational skills.
- *Consumption of drugs and alcohol:* Drug abuse remains a challenge for Kenya as far as its children are concerned. The National Agency for the Campaign against Drugs and Abuse (NACADA), together with the local government and the ministry of education are making concerted efforts to reduce the incidences. As a starting point no shops will be allowed in the vicinity of schools.
- *Budgetary allocation:* Though education takes a big chunk of the monies in our annual budget various key departments charged with children's affairs receive very small amounts thus hampering their work.
- *Hunger and malnutrition:* Areas affected by drought continue to be a challenge in Kenya. Although we have the Arid and Semi Arid Lands School feeding programmes the challenge is how to give children from

these areas food on weekends and school holidays. Hunger and malnutrition affect these children's learning

- *HIV/AIDS*: Due to the pandemic children have to drop out of schools. This pandemic has also led to orphans becoming household heads. These orphans are stigmatized due to societal attitudes.

C (3) Persons with Disabilities

160. *Legislative measures*

- The Government has been sensitive to the needs and specially circumstances of persons with disabilities. It has enacted Persons with Disabilities Act Number 14 of 2003.
- Section 82 of the Current Constitution protects them against discrimination. It outlaws differential treatment on the basis of disability and guarantees equality.
- Children with disabilities are protected under the Children Act. The emphasis is on such children's access to health and basic education. Section 12 of the Children Act provides that a disabled child shall have the right to be treated with dignity and to be accorded appropriate medical treatment, special care, education and training free of charge or at a reduced cost whenever possible.

161. *Proposed legislation*

- The Government proposed to introduce a law within the National Social Health Insurance Fund Bill, 2004 to cater for the health needs of the disabled. As part of the implementation process the Government proposes to set up special healthcare endowment fund to target vulnerable groups the disabled and other deserving cases included.

162. *Administrative measures*

- The National Council for persons with disabilities has been established and is fully functional to look into the issues and questions affecting this group of people. The Government funds it and the personnel are civil servants.

- The Government also works with the United Disabled Persons of Kenya, an association formed by persons with disabilities to lobby for their interests.
- A department in the Ministry of Education was set up to co-ordinate learning activities of children with disabilities. Various schools have been established in partnership with religious organizations and donors to cater for them. While in school their health is taken care of by the Ministry of Health at no cost. Clarify last line
- Persons with disabilities are allowed to import their equipment without paying taxes. In terms of employment in Government institutions they are given preferential treatment.
- Persons with disabilities are allowed to join institutions of higher learning, universities, teacher training institutions, colleges with lower grades than everybody else. In the school system they are allowed to take more time in exams.
- Public schools are being funded to make them disability friendly under a policy referred to as inclusive education. No child is to be turned away from any school on the basis of disability.
- Further the Government has a policy of modernizing its buildings to include ramps for persons on wheel chairs. Bathrooms are also being reconstructed to cater for the needs of people with disabilities. Government institutions are progressively being made user friendly for persons with disabilities. In the universities special hostels are set-aside for them.

163. The major challenges affecting people with disabilities include:

- *Culture:* Persons with disability continue to be discriminated against because of cultural belief that they or their parents caused their disability status. In some communities they are outcasts. In others they are chained and imprisoned and are not allowed to be seen outside.
- *Infrastructure and equipment:* Physical structures like schools and public places are not user friendly for people with disabilities. Facilities for use for specific handicaps like Braille, audiocassettes, hearing aids, and

wheel chairs are not availed to them. The attendant problem of alleviating this is the costs but the Government as stated has begun the process in transforming public places.

- *Lack of clear guidelines:* There is lack of a clear guideline on the implementation of a policy to deal with people with disabilities. There is lack of reliable data on persons with special needs.
- *Budgetary allocations:* There are inadequate budgetary allocations to deal with issues around persons with disabilities.
- *Implementation of the Persons with Disabilities Act:* Most of the provisions of this Act are still not in force. The process of getting tax exemptions under the Act is rigorous, long and tied in bureaucratic red tape. A weakness of the Persons with Disability Act is that it does not envisage and take care of persons with multiple disabilities even in terms of tax relief.

C (IV) Older members of the society

164. There is no comprehensive legislation dealing with the needs of the older members of the society. Administratively the Government through the Nairobi City Council runs and maintains an elderly persons home in Nairobi known as *Nyumba ya wazee*. Suffice to note that under traditional African systems children are to take care of their aged parents meaning it has not degenerated into a major problem.

D: OBSERVANCE OF DUTIES (ARTICLES 27–29 OF THE CHARTER)

165. The Government has enacted the Children Act of 2001, which *inter alia* provides that parents have a mandatory duty to ensure the welfare of their children. The Law of Succession Act requires an individual to make reasonable provision for their dependents when they die. The Act also provides that both men and women have equal rights in succession. The Marriage Act requires a spouse to provide for the other during marriage. The HIV/AIDS scourge has as been noted earlier, poses a major challenge to the Government in the sense that it has ravaged many homes in Kenya leaving in

its wake a large number of child-headed families, who are not capable of promoting family life and its welfare.

169. In so far as the individual's general duty to the society and State is concerned the Kenyan Constitution recognizes the duty to respect and consider fellow beings without discrimination and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance. In addition the Constitution prohibits discrimination on the basis of race, color, tribe, sex, political opinion among others.
170. The establishment of the Constitutional Court at the High Court affords aggrieved parties the opportunity for redress in the event of violation of constitutional rights. The diverse ethnic composition of the Kenyan nation has however contributed to sporadic clashes over land in certain parts of the country. The government is in the process of formulating a National Land Policy.
171. With regard to the duty to serve national community through one's physical and intellectual ability, Kenyans are engaged to serve the nation by way of employment in the public service, the military, the police force, national youth service to mention but a few.
172. The duty to work to the best of one's abilities and competence and to pay taxes is addressed by the provisions of Employment Act, the Public Service Code of Regulations and various pieces of legislation regulating the economic sectors which impose the duty to work in accordance with the terms and conditions of employment. The Government has in addition encouraged the growth of the informal sector. The economy cannot however absorb the high number of people who enter the job market each year.
173. The duty to pay taxes is imposed by the tax laws for example, the Income Tax Act and the Kenya Revenue Authority Act. The introduction of tax registers by the Kenya Revenue Authority is meant to reduce cases of tax evasion. The informal sector has however not been streamlined enough to facilitate proper tax collection.
174. The duty to preserve and strengthen positive African Cultural values finds recognition in the provisions of the Judicature Act, which recognizes

customary law as a source of law in Kenya subject to the repugnancy clause. The Ministry of Gender, Sports, Culture and Social Services is charged with the responsibility of addressing matters relating to culture. The proposed Constitution recognizes the different traditions, values, customs, histories, religion, medicines, stories and mode of dress, which is unique to Kenya and makes the people proud to be Kenyans. It affirms the need to respect and protect our culture. In this regard it proposes the creation of a National Commission of Culture to serve as the main instrument of the State for the protection and promotion of culture. The Commission will advise the government on matters of policy on culture. The government has also established the Permanent Presidential Commission on music, which promotes music and dance including recording the fast disappearing materials that are of national significance.

175. The Societies Act allows the formation of cultural and welfare groups. The School Curriculum includes subjects such as history and civics that teach about the cultural aspects of various communities. The introduction of a national dress is meant to inculcate in Kenyans a feeling of unity, sense of belonging and harmony. The African culture has however to a large extent been eroded by the influence of the western culture on issues such as dress, music and language.
176. With regard to the duty contribute to the promotion and achievement of African Unity, the government has brokered peace in the Sudan and Somalia through IGAD and sent peacekeeping troops to various war torn African countries. Kenya is a member of the East African Community whose charter seeks to promote closer economic and political integration of the States.

E: THE PROBLEMS ENCOUNTERED IN IMPLEMENTING THE CHARTER HAVING REGARD TO THE POLITICAL ECONOMICS SOCIAL CIRCUMSTANCES OF THE STATE

177. The transition from a one-party to multiparty system soon after Kenya's ratification of the African Charter and the subsequent political environment resulted into political issues taking precedent over implementation of the Charter.

178. Kenya's economic performance in the last decade has been far below its potential. Per capita income has declined from \$ 271 in 1990 to \$239 in 2002, thus having a profound and negative effect on the overall welfare of the people of Kenya. Some 17 million people or 56% of the population live below the poverty line. The foregoing scenario has been further compounded by the Structural Adjustment Programmes introduced by World Bank & IMF, which have led to reduced funding for social benefits. The conditionalities introduced have also had adverse effects on the economy generally. The liberalization of World Trade has also created a balance of trade problem between developing and developed world in favor of the latter. Consequently the poor economic growth persistent corruption & HIV/AIDS scourge has negatively affected the government's ability to implement what is contained in the Charter, for instance the National Social Health Insurance Bill 2004, meant to provide health insurance for all, at a cost of about 70 billion per annum, was found to be economically unsustainable.
179. The Government has introduced free primary education to provide pupils with an academic foundation; it however lacks adequate infrastructure and financial resources to extend the program to secondary and other tertiary levels.
180. The difficulties experienced by the Government in this regard include: the lack of National Cultural Policy, the absence of adequate financial human and physical resource; the exploitation through piracy; poor marketing strategies; negative impact of globalization on local cultures, poor marketing, and lack of a legal and technical framework in traditional medicine and unfavorable trade /cultural international agreements. In addition certain cultural practices such as early marriages and female genital mutilation among others are a hindrance to some of the rights within the Charter.
181. The Agricultural sector (inclusive of the Livestock and Fisheries sector) account for approximately 20 per cent of the GDP, providing 628,000 formal sector jobs and 3.7 million Small and Medium Enterprise sector jobs. Agriculture alone provides for 62% of overall employment, hence the importance of this sector. Due to the drought conditions, which have prevailed in the country in the last decade the Agricultural, sector has however generally experienced low and declining productivity. The decline in productivity in the sector is a major constraint in the realization of the provisions of the Charter on the right to food, work, education, health e.t.c

182. There are also the challenges posed by the Charter itself. Lack of specific reporting guidelines in the charter has posed a major challenge in the implementation of the Charter. Clarity in the definition of some terms e.g. “people and human” with the consequence that realization of their rights is not easily achievable. The imposition of moral duties in the Charter has posed a big problem in the sense that the same are largely not legally enforceable. The framing of some Articles in the charter is fairly terse and does not lend itself to easy interpretation. The two-year reporting rule as provided under Art. 62 is too short and has the potential of undermining the quality of expected report. On the other hand the country lacks the requisite resources to undertake the closely spaced reporting process. The combination of both civil and political rights together with the socio-economic rights has made compliance with the requirements of the Charter challenging. This is further compounded by the fact that most of the rights spelt out in the charter are absolutely realizable as opposed to progressive attainment/ realization.

F: MEASURES TAKEN BY THE STATE TO IMPLEMENT THE PROVISIONS OF ARTICLE 25 OF CHARTER

183. Article 25 of the Charter requires the States parties to promote through teaching, education and publication, the provisions of the Charter. In order to comply with this requirement, the Government has undertaken a number of measures including but not limited to the following:

- Creating a Ministry responsible for Justice and Constitutional Affairs charged with the responsibility of spearheading policy and reforms in the Legal and Judicial sector.
- Establishment of a National Commission on Human Rights through an Act of Parliament which has among others, been training civil servants and the general public on human rights and acting as a watch dog on human rights violations.
- The establishment of the National Commission on Gender to address gender issues. It is responsible for promoting the equal treatment of men and women. It also advises the Government about all matters relating to gender and development.
- Teaching of Human Rights as a unit in the faculties of Law of Public Universities. However, the fact that teaching of Human

Rights is only restricted to Universities, and that the subject is taught only to law students is a big impediment.

- Partnerships with Civil Society through seminars, workshops and consultations in the promotion of Human Rights.

184. The Government of Kenya through the Ministry of Justice and Constitutional Affairs and the Kenya National Commission on Human Rights has begun the process of developing a National Action Plan (NAP) for the promotion and protection of human rights in the country. The NAP is expected to among other outcomes create a wider awareness of the human rights standards and mechanisms among law enforcement agencies such as the police, prisons, and security forces, and also among politicians and civil servants. As a long-term strategy the NAP is expected to strengthen protection of the individuals and communities rights, build stronger human rights institutions, encourage effective social programmes and eventually improve national harmony and peaceful co-existence.
185. The government is also undertaking a sector wide approach to reforms in the Governance, Justice Law and Order Sectors commonly referred to as the (GJLOS) Reform Programme.
186. The introduction of Social Education and Ethics as a subject within the School Curriculum was an important intervention by government in mainstreaming the Human rights issues in High Schools. .
187. Anti -corruption campaigns by the Kenya Anti- Corruption Commission (KACC) and the Kenya National Commission on Human Rights (KNCHR) through billboards and brochures has contributed enormously to the creation of awareness among the citizenry on the ills of corruption.
188. The introduction of community policing has gone along way in inculcating in the citizenry the awareness that they have a duty to contribute in their security.
189. The MOJCA has constituted an Inter-ministerial Advisory Consultative Reporting Committee on the International Human Rights obligations, which is a vehicle for the promotion of adherence to the Charter. The committee is expected to improve on the reporting obligations of the country, which has been generally poor.

190. The Government has now factored in its budgetary provisions the cost of its reporting obligations on the International and Regional instruments the State is party to.
191. The main challenge has been that most of the institutions and commissions referred to above are young and are yet to be decentralized for proper impact to be felt nationally. The Bill of Rights in the Constitution has also not provided for economic, social and cultural rights hence the Courts have been reluctant to pronounce judgments that promote and protect the rights.