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الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
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## Concluding Observations and Recommendations on the 8<sup>th</sup> to 11<sup>th</sup> Periodic Report of the Republic of Kenya

### I. Introduction

1. The Republic of Kenya (Kenya) is a State Party to the African Charter on Human and Peoples Rights (African Charter or Charter), having ratified the Charter on **23 January 1992**.
2. Pursuant to Article 62 of the African Charter, Kenya submitted its initial Report to the African Commission on Human and Peoples' Rights (the Commission) at its 41<sup>st</sup> Ordinary Session, held in Accra, Ghana, from **16 to 30 May 2007**.
3. The present Report, which was submitted in December 2014, is the 8<sup>th</sup>-11<sup>th</sup> Periodic State Report of Kenya (covering the period 2008 to September 2014), and it brings Kenya up-to date with its reporting obligations provided for under Article 62 of the African Charter.
4. The Report was presented to the Commission by the delegation from Kenya led by **Ms. Maryann Njau Kimani**, Senior Deputy Solicitor General at the Office of the Attorney General and Department of Justice of Kenya.<sup>1</sup>
5. The Report highlights developments which took place in Kenya in the promotion and protection of human rights, and the legislative, administrative and judicial measures put in place to comply with its obligations under the African Charter.
6. The present Concluding Observations and Recommendations give an account of the positive aspects, the factors restricting the enjoyment of human rights and the areas of concern regarding exercise of human rights in Kenya. The Commission makes recommendations to the Government of Kenya on measures for strengthening the enjoyment of human rights as guaranteed by the African

<sup>1</sup> the full list of the delegation is attached as Annex 1.

Charter, as well as other relevant regional and international human rights instruments.

## II. Positive Aspects

7. The Commission notes a number of positive aspects in Kenya's efforts towards the fulfilment of its obligations under the African Charter:

### Reporting Obligation and Cooperation with the Commission

8. The Commission:

- i. welcomes the efforts made by Kenya in preparing and presenting its Report and commends the latter for being up to date with its obligations under Article 62 of the African Charter;
- ii. commends the efforts made by Kenya to ensure that the preparatory process of the Periodic Report was participatory and transparent, with wide consultation between Government Officials, Civil Society Organizations (CSOs) and Independent National Human Rights Institutions (NHRIs), for ensuring compliance with the African Charter, using a participatory and transparent process; and
- iii. commends Kenya for implementing some of the recommendations of the Commission in its Concluding Observations on Kenya's Initial Periodic Report.

### Ratification of Regional/International Human Rights Instruments

9. The Commission commends Kenya for ratifying *the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol)* in October 2010.

10. The Commission commends Kenya for the enactment of the following laws, amongst others, to guarantee human rights:

- i. *The Constitution of Kenya of 2010;*
- ii. *Counter Trafficking in Persons Act, 2010, No. 8 of 2010;*
- iii. *Commission For The Implementation Of The Constitution Act 2010;*
- iv. *Nurses (Amendment) Act (No. 27 of 2011 Laws of Kenya);*
- v. *National Commission On Gender And Equality Act 2011;*
- vi. *Commission on Administrative Justice Act 2011;*
- vii. *Environment and Land Court Act No 12A of 2011;*
- viii. *National Police Service Act, 2011;*
- ix. *Kenya Citizenship and Immigration Act, 2011;*
- x. *Prohibition of Female Genital Mutilation Act, 2011;*
- xi. *Independent Ethics and Anticorruption Commission Act, 2011;*

- xii. *Political Parties Act, 2011;*
- xiii. *Environment and Land Court Act, 2011;*
- xiv. *National Land Commission Act 2012;*
- xv. *Land Act (No. 12 of 2012) and the Land Registration Act (No. 3 of 2012);*
- xvi. *Kenya Information and Communication (Amendment) Act No. 41 A of 2013;*
- xvii. *Technical and Vocational Education and Training Act No. 29 of 2013;*
- xviii. *Basic Education Act (No. 14 of 2013);*
- xix. *Office of the Director of Public Prosecutions Act, 2013;*
- xx. *Kenya Institute of Curriculum Development Act, No. 4 of 2013*
- xxi. *Matrimonial Property Act 2013;*
- xxii. *Marriage Act 2014;*
- xxiii. *Victim Protection Act 2014;*
- xxiv. *Domestic Violence Act 2015; and*
- xxv. *Environmental Management and Coordination (Amendment) Act 2015.*

### **Institutional and Policy Measures Promoting Human Rights**

11. The Commission commends the following institutional measures in the promotion and protection of human rights:

- i. *Kenya National Commission on Human Rights (KNCHR);*
- ii. *National Gender and Equality Commission (NGEC);*
- iii. *Commission on Administration of Justice (CAJ);*
- iv. *Independent Electoral and Boundaries Commission (IEBC);*
- v. *Ethics and Anti-Corruption Commission (EACC);*
- vi. *Independent Police Oversight Authority (IPOA); and*
- vii. *Independent Office of the Director of Public Prosecution (ODPP).*

12. The Commission commends the adoption of the following policies to guarantee human rights and promote peace and development:

- i. *Kenya Health Policy (2012-2030);*
- ii. *Kenya National Action Plan on Health and the HIV/Aids Workplace Policy;*
- iii. *Kenya National Health Policy and Guidelines (KNHPG) of 2009;*
- iv. *Special Needs Education Policy;*
- v. *National Energy Policy; and*
- vi. *National Policy on Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions.*

### **Economic, Social and Cultural Rights**

13. The Commission commends Kenya on:

- i. *Vision 2030*, which is the country's developmental blue print on which specific government policies are based, covers aspects that are relevant to human rights such as: access to adequate social amenities, including housing, water and sanitation infrastructure, and the need to improve human settlement systems;
- ii. Legislative, policy and other measures taken to guarantee the right of access to adequate housing, to ensure security of tenure for all citizens, particularly for the vulnerable and marginalized; including availability of utilities, economic and physical accessibility as well as cultural acceptability;
- iii. the establishment of the Uwezo Fund Initiative (UWEZO) which creates more jobs for women and the youth;
- iv. the Sessional Paper Number 4 of 2015 on National Employment Policy and Strategy for Kenya, passed by Parliament in August 2015 with a goal to promote decent jobs in the country through various identified multi-sectoral strategies, which, when implemented will go a long way in addressing unemployment challenges in Kenya;
- v. the increase in the number of hospitals from 167 in 2008 to 275 in 2012;
- vi. the introduction of free maternal health care in public hospitals in 2013 in order to encourage pregnant mothers to deliver in hospitals attended by skilled workers as opposed to delivering at home in a bid to reduce the high infant and maternal mortality rate;
- vii. the Traditional Health Practitioners Bill 2015 which is currently in Parliament and provides for the regulation of the practice of traditional medicine;
- viii. taking measures to enhance education in the informal settlements, with the Government providing capitation grants to 474 non-formal schools;
- ix. on the free primary and secondary school education; and the establishment of a National Council for Nomadic Education in 2015 which amongst other things reviews and develops policies in all matters relating to nomadic education; mobilizes funds for the development of nomadic education; and determines standards and skills to be attained in schools and institutions with nomadic communities.

### **Civil and Political Rights**

14. The Commission commends Kenya for the:

- i. progressive jurisprudence of the Kenyan Judiciary with regards to determining cases relating to the citizen's right to vote, especially on the right of prisoners to vote;

- ii. NGEN which promotes the principles of: impartiality, gender equality; inclusiveness, non-discrimination and protection of marginalized groups; and ongoing amendment of the Elections and Political Parties Act to address the challenges experienced for Persons with Disabilities (PWDs) in the 2013 general elections, including protection from violence and lack of funding to the PWDs.

## **Women and Children's Rights**

15. The Commission commends Kenya on the:

- i. efforts made to reduce maternal and infant mortality rate in the country, especially the introduction of free maternal health care in public hospitals and improved access to and utilization of reproductive health services by economically disadvantaged populations;
- ii. sum of about 100 million which has been raised to establish mobile clinics to provide integrated HIV, maternal and child outreach services in the country;
- iii. department of Children's Services, the National Council for Children Services, the KNCHR and the NGEN that work closely to ensure the realization of children's rights in the country;
- iv. Division of Child and Adolescent Health established by the Ministry of Public Health and Sanitation mandated to promote and participate in the provision of an integrated and high quality promotive, preventive and rehabilitative health care for all children and adolescents; as well as ensures survival, growth development of children under the age of 5 years, health promotion in all children between 0-18 years, promotes good nutrition for children, expectant and nursing mothers and the health rights of the child;
- v. Child Survival Development Strategy 2008-2015, aimed at ensuring delivery of efficient and effective services to improve the lives of women and children;
- vi. establishment of day care centers in prisons and provision of social workers to look after the children of female inmates, as well as Family Days where children visit their parents in prison thus providing an opportunity for the families to bond;
- vii. National Plan of Action against Sexual Exploitation of Children in Kenya-2013-2017; and the Sexual Offences Rules of Court, published by the Chief Justice which represents a key milestone in the development of the criminal law in the country;
- viii. establishment of the Anti-Female Genital Mutilation Board responsible for the implementation of the Female Genital Mutilation Act No. 32 of 2011; and
- ix. National Gender-Based Violence (GBV) Working Group established in 2014 which has commemorated 16 days of activism with the launch of the

National GBV Campaign dubbed '*Keeping the Promise to End GBV*'. The campaign targets duty bearers and seeks to increase awareness on GBV in Kenya, hold duty bearers accountable to their roles, influence budget allocation and ultimately contribute to reduction of GBV cases in the country.

16. The Commission notes the draft Guidelines on Safe Abortion.

### **Right to Freedom of Expression and Access to Information**

17. The Commission commends Kenya on the:

- i. enactment of the *Kenya Information and Communications Act, CAP 411A* which provides a framework for the establishment of e-Government, a portal where one can access Government documents and information;
- ii. increase in the use of technology and social media in the country;
- iii. increase in public access to Government information which enhances transparency and accountability;
- iv. appointment of Board of Directors for the Communications Authority selected by an independent panel comprising nominees from the private sector; and
- v. establishment of the Communications and Multimedia Appeals Tribunal to hear Complaints about any publication by or conduct of a journalist or media enterprise and anything done against a journalist or media enterprise that limits or interferes with the constitutional freedom of expression of such journalist or media enterprise.

### **Right to Freedom of Assembly and Association**

18. The Commission commends Kenya for Article 37 of the Constitution which allows every person the right, to assemble, peaceably and unarmed, to demonstrate, and to present petitions to public authorities.

### **Due Process and Conditions of Detention**

19. The Commission commends Kenya for:

- i. efforts made in providing mechanisms to guarantee the payment of compensation to persons who have spent unlawful time in pre-trial detention;
- ii. structural development programs for prisons with a view to improving prison conditions through infrastructural upgrades and civil works in many prison facilities countrywide;
- iii. police oversight through the establishment of the IPOA;
- iv. plans to establish human rights desks in police stations in line with recommendations of the Police Reform Taskforce, and the establishment

- of gender desks in all police stations to make services accessible to gender violence survivors to seek redress easily;
- v. human rights training for Police Officers; and
  - vi. structural reforms and institutional framework for averting the threat of terrorism in the police service through the Security Laws Amendment Act, of 2014 which provides a County Coordinating Commander to oversee the operations of all the services at the County level and enabled unity of command in combating terrorism.

### **Rights of Older Persons and Persons with Disabilities**

20. The Commission commends Kenya for :

- i. a Code of Practice on Disability Mainstreaming in Public Service;
- ii. the establishment of a cash transfer program for vulnerable older persons aged 65 and above and persons with severe disabilities with the targeted beneficiaries receiving a monthly stipend of Ksh 2000 to cushion them against poverty;
- iii. a pilot programme for a health cover under the NHIF for older persons benefiting from the cash transfer, involving 500 beneficiaries who are spread across all Counties covering older persons on inpatient and outpatient, including reasonable accommodation;
- iv. ensuring that all public organizations include measurable targets in their performance contract every year on actions they intend to take to mainstream persons with disabilities (PWDs);
- v. the National Action Plan on Accessibility and Disabilities Rights which is a practical step in establishing a framework for a coordinated approach to implementing the PWDs Act, and related legislations touching on PWDs; and
- vi. subsidiary legislations to give effect to the PWDs Act, including: The PWDs (Access to Employment, Services and Facilities) Regulations 2009; The PWDs (Cost Care, Support and Maintenance) Regulations 2009; The PWDs (Registration) Regulations 2009; The PWDs (Income Tax Deductions and Exemptions) Order 2010; and the PWDs (National Development Fund for Persons with Disabilities) (Conduct of Business and Affairs of the Board of Trustees) Regulations 2009.

### **HIV/AIDS**

21. The Commission commends Kenya for:

- i. the various legislative, policy, administrative and other measures reported to have been undertaken to give effect to the right to health, and in particular, for the prevention, management and control of HIV and AIDS, as well as for the legal protection and access to legal remedies for People Living With HIV (PLHIV) and those at risk, vulnerable to and affected by HIV;

- ii. the development of a Monitoring and Evaluation Framework 2014-15 to 2018-19 which provides a monitoring and evaluation framework for the HIV programme and Kenya AIDS Strategic Framework in general;
- iii. the establishment of the Equity (HIV and AIDS) Tribunal under the HIV and AIDS Prevention and Control Act, to determine complaints arising from breaches of this law;
- iv. free treatment services to all PLHIV in all public health facilities, including free testing, maternal health care, ARVs, free assistance from the HIV Tribunal and the provision of free Mobile Clinics; and
- v. the Anti Stigma Campaign of September 2015 which seeks to fast track the HIV response to end new infections, AIDS related deaths and stigma and discrimination in adolescents and young people, with an objective to reduce stigma and discrimination by 25%.

### **Death Penalty**

22. The Commission congratulates Kenya for its efforts in safeguarding the right to life including by observing a moratorium on death penalty since 1987, the commutation of death penalty to life imprisonment as well as efforts to raise public awareness on death penalty together with the KNCHR.

### **Refugees, IDPs and Migrants Workers**

23. The Commission commends Kenya for:

- i. implementing the Commission's recommendation in Kenya's initial State Report, urging the Government to take measures to cater for special needs of children with disabilities and integrate refugee children and internally displaced children in the regular school system.;
- ii. issuing visas and permits to migrant workers; and
- iii. the Refugee Bill of 2015 which provides for proper management of refugee matters including administrative, registration processes, residence of refugees and asylum seekers in Kenya, movement of refugees inside and outside Kenya, refugees right to work in Kenya, dealing with rejected asylum seekers, exclusion and disqualification grounds etc.

### **Indigenous Population**

24. The Commission commends Kenya for:

- i. establishing a Taskforce on the Implementation of the Commission's Endorois decision, with a mandate to provide guidance on the political, security and economic implications of the decision, and examine the

- potential environmental impacts on Lake Bogoria and the surrounding area; and
- ii. ensuring the political participation of indigenous peoples in various organs of the Government.

### **Prohibition of Torture and Cruel, Inhuman and Degrading Treatments**

25. The Commission commends Kenya for:

- i. the ratification of the CAT and the inclusion of the prohibition of torture in Kenya's 2010 Constitution;
- ii. enacting the 2014 Victim Protection Act, and for recently unveiling a memorial to victims of torture and ill-treatment during British colonial rule, which is an aspect of reparation to the victims; and
- iii. setting up a Working Group to prepare the Prevention of Torture Bill to implement the CAT and Constitutional provisions on the absolute prohibition of torture; criminalization of torture and other cruel, inhuman and degrading treatment and has heavy penalties for contravention.

### **Extractive Industries and the Environment**

26. The Commission commends Kenya for:

- i. having legislations safeguarding and protecting exploitation of natural resources and the environment which provide a legislative framework to manage and regulate the energy sector, and provide strategic oversight over all mining activities in the country;
- ii. its Mining Strategy 2030 which uses the Africa Mining Vision as model framework to improve mining activities in the country;
- iii. the establishment of the Environment and Land Court to hear and determine disputes relating to the environment and the use and occupation of, and title to land, and to make provision for its jurisdiction, functions and powers;
- iv. the social and environmental impact assessment which enables participation of affected communities; and
- v. availing public hearings to enable people give their views about issues of compensation, as well as free and informed consent.

### **Border Security**

27. The Commission commends Kenya for:

- i. increased border security control including inter-agency officials such as Immigration Officials, Kenya Revenue Authority and the Security

- Organs that have enhanced border security by ensuring that those entering the country are vetted at the border; and
- ii. intelligence-led policing which has enabled better access to actionable information on impending attacks especially along the borders at the Coastal and Northern Kenya.

### **III. Factors restricting the enjoyment of human rights guaranteed by the African Charter**

28. Acts of terrorism in Kenya has seriously impeded the promotion and protection of human rights in the country.
29. The *Security Laws (Amendment Act) of 2014* which inhibits the protection of human rights in the country, in particular freedom of expression.
30. Harmful cultural and traditional practices which continue to restrict Kenyan women and children from fully enjoying their rights.
31. Lack of knowledge by the majority of the population about regional and international human rights instruments ratified by Kenya which restricts the effective enjoyment of human rights in the country.

### **IV. Areas of Concern**

32. While acknowledging the significant efforts made by the Government of Kenya to promote and protect human rights, the Commission is however concerned about the following matters:

#### **Reporting Obligations and Cooperation with the Commission**

33. The Commission appreciates Kenya's response to its recommendations in Kenya's Initial Periodic Report of 2007. It however notes that, the current Report does not provide specific and comprehensive answers to some of the questions and issues raised by the Commission.
34. The Report does not for instance, provide comprehensive disaggregated data, including gender disaggregated data on its implementation of the rights guaranteed in the African Charter in order to allow the Commission to objectively assess Kenya's level of compliance *vis-à-vis* the obligations contained in the African Charter.

#### **Ratification of Regional/International Human Rights Instruments**

35. Kenya has not ratified the following human rights instruments:

- i. *The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention);*
- ii. *The African Charter on Democracy, Elections and Governance;*
- iii. *The Protocol on the Statute of the African Court of Justice and Human Rights.*
- iv. *The African Union Convention on the Elimination of Mercenaries in Africa;*
- v. *International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families;*
- vi. *The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT);*
- vii. *The Optional Protocol to the Convention on the Rights of Persons with Disabilities; and*
- viii. *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.*

36. Kenya has also not made the Declaration under Article 34(6) of the Protocol to the African Court on Human and Peoples' Rights, accepting the jurisdiction of the Court.

### **Economic, Social and Cultural Rights**

37. The Commission is concerned about:

- i. challenges associated with land use, which have increased in both urban and rural areas as a result of rapid urbanization, inadequate land use planning, and unsustainable production methods as well as poor environmental management;
- ii. the issue of adequate housing which remains a major challenge in Kenya, wherein majority of the residents in Kenya's largest urban centres: Nairobi, Mombasa, and Kisumu live in informal settlements characterized by low quality of housing with poor infrastructural services, overcrowding, inadequate access to water or electricity, poor sanitary conditions, insecurity, lack of privacy and poor accessibility in times of disasters;
- iii. unemployment and underemployment which have been identified as Kenya's most difficult and persistent challenges;
- iv. lack of integration of culture in the formal education system which impedes cultural creativity and expression; and
- v. **lack of monitoring and effective regulation of private school chains, such as Bridge International Academies that register as non-formal schools, whereas they appear to offer formal education.**

### **Civil and Political Rights**

38. The Commission is concerned about the lack of information in the Report regarding adequate awareness of the population about their rights, legal procedures and available remedies in respect of their civil and political rights.

## **Women and Children's Rights**

39. The Commission is concerned about:

- i. the low representation of women at decision making levels and gender inequality, despite the concerted efforts made at ensuring gender equality in all sectors, policies and programmes;
- ii. the persistent traditional harmful practices such as FGM and child marriages, in spite of the criminalization of the said practices;
- iii. the fact that child labour still remains a challenge due to poverty; and
- iv. Kenya's non-implementation of the State Reporting Guidelines under the Maputo Protocol.

## **Right to Freedom of Expression**

40. The Commission is concerned about:

- i. laws limiting freedom of expression such as the *Security Laws (Amendment Act) of 2014* recently passed in Kenya which contains a number of provisions not in conformity with fundamental human rights, in particular those which unduly restrict freedom of expression;
- ii. the fact that defamation is still a criminal offence in the Criminal Code, and the use of defamation to incriminate journalists and media practitioners; and
- iii. lack of an Access to Information Law.

## **Right to Freedom of Assembly and Association**

41. The Commission is concerned about lack of sufficient information in the Report concerning the protection of these rights.

## **Due Process and Conditions of Detention**

42. The Commission is concerned about the:

- i. lack of statistics as to how many cases referred to the Director of Public Prosecution by the IPOA have been prosecuted;

- ii. lack of information regarding a database on torture-related complaints in Police Stations;
- iii. absence of legal aid provided to suspects at the time of police inquiry;
- iv. high rate of Pre-trial detainees; and
- v. lack of speedy processes in the judicial system which continues to hinder the right to fair trial.

### **Older Persons**

43. The Commission is concerned about lack of specific legislation to protect the rights of older persons apart from the draft Older Persons Bill of 2015 which is yet to be adopted by Parliament, and the National Policy on Older Persons which was still pending for review before the end of 2015 as at the time of presentation of this Report.

### **HIV/AIDS**

44. The Commission is concerned that:

- i. even though the budget allocation of the Kenyan health sector has been increasing gradually, this allocation remains inadequate; and
- ii. the Report does not indicate measures put in place by the State to support children orphaned by and other vulnerable children affected by HIV/AIDS.

### **Death Penalty**

45. The Commission is concerned that the death penalty remains in the Criminal Code despite the self-imposed moratorium on the death penalty.

### **Refugees, IDPs and Migrants Workers**

46. The Commission is concerned that,

- i. the Refugee Bill of 2015 which provides for proper management of refugee matters is still pending adoption; and
- ii. IDPs are still not fully resettled.

### **Indigenous Populations**

47. The Commission is concerned that:

- i. even though Kenya established a Taskforce on the Implementation of the *Endorois Case* in September 2014, CSOs and Members of the Endorois Community are not part of the Taskforce. It is only composed

- of Members from the public sector including representatives from the Ministry of Lands, Housing and Urban Development, Ministry of Sports, Culture and the Arts, the Secretary to the KNCHR and the County Government of the affected area;
- ii. the Report does not contain information regarding measures taken by the Government to protect indigenous peoples and ensure their security, investigate and act on the reported cases of harassment, assault, violence and forced eviction against indigenous peoples, particularly sexual abuse against women during the disarmament exercises conducted in 2009, 2012, 2014 and 2015 in the Tana Delta Region and Northern Kenya, affecting the Turkana, Samburu, Pokot, Pokomo and Orma communities; and
  - iii. although the Government has done a commendable work in ensuring the political participation of indigenous peoples in various organs of the Government, smaller indigenous groups such as the Ogiek of Mount Elgon, Ilchamus, and Emolo still lack formal representation and participation in the political affairs of the State.

#### **Prohibition of Torture and Ill-treatment**

48. The Commission is concerned that:

- i. the State has still not enacted the Prevention of Torture Bill (2014), initially Bill (2011);
- ii. there is no data in the Report in respect of the numbers of victims of torture in the country; and
- iii. the Government has not implemented decisions of the high court to compensate victims and survivors of torture

#### **Extractive Industries and Environment**

49. The Commission is concerned that:

- i. although the Mining Bill provides a framework for recognition, operations and regulation of artisanal miners, artisanal mining is considered illegal under the current Mining Law; and
- ii. illegal mining activities with seizures of illegal consignments of minerals; illegal mining and exports of gemstones, gold, copper and manganese from the country continue to take place due to loopholes in law, regulations and poor enforcement regimes, in addition to the fact that penalty under the existing law is too weak to deter these activities.

### **V. Recommendations**

50. In view of the foregoing, the Commission makes the following recommendations to the Government of Kenya:

### **Reporting Obligations**

51. Kenya should ensure it complies with its obligations under Article 62 of the African Charter by implementing these recommendations.

### **Ratification of Regional/International Human Rights Instruments**

52. Kenya should make a declaration under Article 34(6) of the Court Protocol and ratify the following human rights instruments:

- i. The Kampala Convention;*
- ii. The Optional Protocol to the Convention on the Rights of Persons with Disabilities;*
- iii. The African Charter on Democracy, Elections and Governance;*
- iv. The Protocol of the Court of Justice and Human Rights of the African Union;*
- v. The African Union Convention on the Elimination of Mercenaries in Africa;*
- vi. The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families;*
- vii. The OPCAT;*
- viii. The Optional Protocol to the Convention on the Rights of Persons with Disabilities; and*
- ix. The Optional Protocol to the International Covenant on Social and Economic Rights*

### **Economic, Social and Cultural Rights**

53. Kenya should:

- i. provide adequate housing for the urban and rural population as well as improve the existing urbanization pattern in identified developing and approved urban areas of the country;*
- ii. ensure urban and rural-level infrastructure, including roadways, and water distribution;*
- iii. implement Sessional Paper Number 4 of 2015 on National Employment Policy and Strategy for Kenya; create employment opportunities and skills training;*
- iv. ensure culture-based educational strategies to encourage culturally competent and linguistically appropriate exchanges and collaborations among families, professionals, students, and communities. This will foster equitable outcomes for all students and result in the*

- identification and provision of services that are responsive to issues of race, culture, gender, and social and economic status; and
- v. ensure monitoring of Bridge International Academies regarding their system and methods of education.

### **Civil and Political Rights**

54. Kenya should include in its next Report, information in respect of legal procedures and available remedies on the civil and political rights of the population, and also include civic education in school curricula if this is not already done.

### **Women and Children's Rights**

55. Kenya should:

- i. implement the Constitutional principle of the Political Parties Act, that not more than 2/3<sup>rd</sup> majority shall belong to the same gender, so as to guarantee equal opportunities in the political spheres, particularly for women;
- ii. enact a comprehensive equality and non-discrimination law;
- iii. end traditional practices such as FGM and child marriages by supplementing existing laws that criminalize the said practices with other strategies such as proactive multi-faceted strategies at the national and community levels including *inter alia*; empowering girls with information, skills and support networks; educate and rally parents and community members;
- iv. cease the practice of child labour;
- v. fast track the Law on Safe Abortion and resolve some of the obstacles impeding the passing of the law by sensitising religious leaders on the consequences of unsafe abortion;
- vi. finalize the draft Guidelines on Safe Abortion; and
- vii. comply with the Commission's State Reporting Guidelines under the Maputo Protocol.

### **Right to Freedom of Expression**

56. Kenya should:

- i. decriminalize defamation by repealing relevant provisions in the Penal Code;
- ii. expedite the finalization and enactment of the draft Freedom of Information Bill; and

- iii. take appropriate measures to effectively guarantee the right to freedom of expression, in particular for journalists and human rights defenders.

### **Rights to Freedom of Association and Assembly**

57. Kenya should:

- i. provide more information on the above rights during its next Report;
- ii. take legislative and other measures in order to protect, and promote human rights in conformity with the UN Declaration on Human Rights Defenders, the African Charter, the Kigali Declaration and other regional and international human rights instruments that guarantee the right to freedom of association and assembly; and
- iii. provide adequate information on several rights with respect of which the Report provided no data on measures taken for the fulfilment of those rights.

### **Due Process and Conditions of Detention**

58. Kenya should:

- i. ensure that the office of the Director of Public Prosecution provides statistics as to how many cases referred to them by the IPOA have been prosecuted;
- ii. establish a database on torture-related complaints in order to determine the prevalence of torture in Police Stations;
- iii. effectively implement domestic laws and policies on bail, bond and sentencing to reduce overcrowding in prisons and resultant problems of violence and adverse health consequences;
- iv. ensure speedy processes in the judicial system, and take appropriate measures to ensure strict respect of the 48 hours duration of police custody while reviewing the regime of pre-trial detention to comply with international standards such as the Commission's Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention (the Luanda Guidelines);
- v. continue to ensure human rights training for the police and other law enforcement officers;
- vi. make use of the Luanda Guidelines while providing training to the Police on the Guidelines, and adopting relevant laws and policies; and

- vii. extend access to legal services to suspects in Police Custody (specifically referring to the various ways of providing legal access as listed in Part 2. 8 of the Luanda Guidelines).

### **Older Persons**

59. Kenya should expedite the enactment of the draft Older Persons Bill of 2015 and the National Policy on Older Persons.

### **HIV/AIDSs**

60. Kenya should:

- i. ensure better management and increase of healthcare budget, and solve resource allocation problems by ensuring the use of systematic formulae for allocating funds so as to satisfy the equity criteria; and
- ii. include information and statistics on children orphaned by HIV/AIDSs and other vulnerable children affected by HIV/AIDSs in its next Report as well as measures taken to support them.

### **Death Penalty**

61. Kenya should abolish the death penalty and revise the Criminal Code accordingly.

### **Refugees, IDPs and Migrants Workers**

62. Kenya should expedite the finalisation and adoption of the Refugee Bill of 2015 which provides for proper management of refugee matters in the country.

### **Indigenous Populations**

63. Kenya should:

- i. implement the *Endorois decision*, as non-implementation further contributes to discrimination and marginalization of these communities. In line with this, the Government should also ensure that the Task Force includes CSOs and the Endorois Community;
- ii. include information on human rights abuse against indigenous peoples, especially on the communities aforementioned and measures taken by the Government to investigate and punish the perpetrators;
- iii. ensure political participation of all indigenous communities; and
- iv. take urgent measures to address indigenous peoples' specific needs in relation to land, education, health, employment and access to justice,

and further ensure that affirmative action policies and measures adopted in this respect effectively and adequately benefit them.

### **Prohibition of Torture and Ill-treatment**

64. Kenya should:

- i. fast-track the passing of the Prevention of Torture Bill, 2014 to ensure protection of all victims of torture and effective prevention and response to torture and ill-treatment in conformity with the holistic perspective envisaged in the Robben Island Guidelines; and
- ii. include data in its next Report in respect of the numbers of victims of torture in the country, and ensure prompt, impartial investigations and prosecution of perpetrators of torture.

### **Extractive Industries and Environment**

65. Kenya should:

- i. implement measures to transform artisanal gold miners into formalized operators by adopting Artisanal Mining policies to regulate artisanal mining, thereby promoting miners in that sector to make reasonable contribution to sustainable development, economic growth and poverty alleviation in the country; and
- ii. put in place a legal framework regarding its natural resources with clear penalties for illegal practices so as to eradicate illegal mining activities in the country.

### **Terrorism**

66. In light of Kenya's history of violence, an Organized Crimes Division should be established in the High Court, to provide a forum where perpetrators can be prosecuted and victims seek redress, including in relation to the post-election violence of 2007 and 2008.

### **Cooperation with the Commission**

67. Kenya Government should:

- i. invite the Commission and its Special Mechanisms to undertake a promotional mission to the country;
- ii. provide, in its next periodic report, up-to-date statistics and data on all relevant sectors as well as on activities of institutions with a human rights mandate; and

- iii. inform the Commission, in its next periodic report, of the measures taken to address the above issues of concern and to ensure the effective implementation of the recommendations contained in the present Concluding Observations.

**Adopted by the African Commission on Human and Peoples' Rights at its 19<sup>th</sup> Extra-Ordinary Session held from 16 to 25 February 2016 in Banjul, The Gambia**

### ANNEX 1

List of Kenyan delegation during the consideration of Kenya's 8<sup>th</sup> -11<sup>th</sup> periodic Report

1. Ms. Maryann Njau Kimani, OGW (Alternate, Head of Delegation),  
Senior Deputy Solicitor General.  
Office of the Attorney General and Department of Justice
2. Ms. Emily Achieng Chweya  
Deputy Chief Legal Officer  
Office of the Attorney General and Department of Justice
3. Ms. Winifred Osimbo Lichuma  
Chair person  
National Gender and Equality Commission
4. Dr. Onyancha Pacifica  
Deputy Director of Medical Services  
Ministry of Health
5. Mr. R.K Gaita  
Director of Water Storage  
Ministry of Environment, Water and Natural Resources
6. Mr. Robert Masese,  
Director, Secondary and Tertiary Education  
Ministry of Education
7. Ms. Margaret Karanja  
Senior Superintendent  
National Police Service
8. Ms. Josephine Sinyo

Deputy Chief State Counsel  
Kenya Law Reform Commission

9. Mr. James Kodienny  
Senior Assistant Commissioner of Police  
Ministry of Interior and Coordination of National Government

10. Mr. Charles Owino  
Police Spokesman  
National Police Service

11. Hon. Kivutha Kibwana  
Governor,  
County Government of Makueni

12. Mr. Metto Sylvester  
Legal Advisor,  
County Government of Uasin Gishu

13. Ms. Teresia Wanjiku Gathangu  
Chief State Counsel  
Ministry of Lands, Housing and Urban Development