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

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
IN ACCORDANCE WITH ARTICLE 16 OF THE INTERNATIONAL  
COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Replies by the Government of Kenya to the list of issues (E/C.12/KEN/Q/1) to be taken up in  
connection with the consideration of initial report of Kenya (E/C.12/KEN/1)**

**KENYA\***

[21 October 2008]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## I. GENERAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED

**Question 1. Please clarify why the provisions of the Covenant have not been incorporated into the domestic law of the State party to make them directly applicable in the Kenyan courts. Please provide examples of cases in which individuals have invoked economic, social and cultural rights before the Court of Appeal and the High Court. What steps are being taken to ensure that victims of violations of economic, social and cultural rights have access to effective judicial remedies, and that court orders and judgements are being enforced (paras.14, 16 and 28 of the report)?**

1. Kenya is a dualist state requiring domestication of international instruments through legislation by Parliament. In this regard, the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and recently the Convention relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa have been fully domesticated by promulgation of the Children Act (Chapter 586 of the Laws of Kenya) and the Refugees Act, 2007 respectively. The provisions of these laws are closely modeled on those of the international and regional instruments. The Country has also fully domesticated the Geneva Conventions through The Geneva Conventions Act.

2. Further, in a bid to domesticate the Rome Statute of the International Criminal Court and enable Kenya comply with its obligations thereto; the Government has published the International Crimes Bill. Many of the International instruments are given effect in different laws. The same goes for this Covenant. Most of the Laws, rules and regulations which govern the Right to and in work, Right to found a family and the Right to Culture, as discussed both in the State Report and the responses given herein, all give effect to the Covenant.

3. A number of decisions have also been made which though not pleading for Social Economic Rights in these precise terms, nonetheless, have given effect to the Covenant. Examples of these are cases which have enunciated a divorced woman's right to matrimonial property e.g *Karanja V. Karanja*[1976] KLR 307, *Otieno V. Ougo & another Civil Case No. 4873 of 1986*, *Kivuitu V Kivuitu* Civil Appeal No 26 of 1985 ad *Ngami V Nduta & 2 others* [1987] KLR 702.

4. All the cases discussed under the right to and in work and those recognizing the right to culture also give effect to rights recognized under the Covenant.

5. In the case of *Rangal Lemeiguran & Others v Attorney-General & Others*, Misc Application No. 305 of 2004 eKLR, an application was brought on 12th March, 2004 by the IL Chamus Community under the provisions of Section 84 (1), 1 and 1A and Section 33 of the Constitution of Kenya. The Court ruled that *“a constitutional classification should not be seen in a tribal lens but such a classification should be undertaken and aimed at the furtherance of the rights of minorities to exist, to be treated without discrimination, to the preservation of their cultural identity and to their participation in public life. All these rights and values may not be expressly provided under sections 33 and 42 of the Constitution but they are rights and values recognized by our Constitution”*.

6. These are normally civil cases and the execution of the Courts Judgement is the responsibility of the parties. Where a litigant feels that he or she would be unable to execute the judgement, he or she can apply to the court to give orders to the Provincial Administration or to the Police to ensure that the Court Judgement is executed.

**Question 2- Please provide information on the measures taken to eradicate corruption, including within the judiciary, and explain the reasons for the lack of prosecutions and convictions of high-level officials and return of assets, four years after the establishment of the Kenya Anti-Corruption Commission.**

7. Kenya has undertaken many anti-corruption measures, which measures have born bountiful good governance and economic recovery dividends since 2003.

**Anti-Corruption Strategies:**

8. In line with its policy of zero tolerance for corruption, the Kenya Government has adopted various strategies for combating the corruption, to wit:

- (a) Investigations
- (b) Prosecutions
- (c) Prevention
- (d) Education
- (e) Civil litigation
- (f) Public awareness
- (g) Enforcement of ethics and integrity
- (h) Public sector reforms

**The Anti-Corruption Legal Framework**

9. Kenya has enacted a number of laws and put in place a number of anti-corruption measures, to enable it implement various anti-corruption strategies, such as: Anti-Corruption and Economic Crimes Act, 2003(ACECA) and the Public Officer Ethics Act, 2003(POEA); the Penal Code (Cap. 63), among other laws and administrative instruments such as the *Kenya Gazette* Notice No. 4121 of 28<sup>th</sup> May, 2004 (establishing the National Anti-Corruption Campaign Steering Committee) and Legal Notice No. 5826 of 21<sup>st</sup> June, 2007 (through which the President established the Public Complaints Standing Committee. The ACECA and POEA have been subsequently amended,

through the Statute Law (Miscellaneous Amendments) Act, 2007, to address various legislative and policy issues. The principal statute on the fight against corruption is the ACECA.

10. There are other pieces of legislation that play a complementary role in the fight against corruption, such as: the Public Officer Ethics Act, 2003; the Penal Code (Cap. 63); the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006; the Public Service Commission Code of Conduct and Ethics, 2003; the Public Financial Management Act, 2004; the Public Audit Act, 2003; the Witness Protection Act, 2006, and The Political Parties Act, 2007, among others.

## **The Anti-Corruption Institutional Framework**

### **Kenya Anti-Corruption Commission**

11. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003) establishes the Kenya Anti-Corruption Commission (KACC), as the principal dedicated anti-corruption agency in Kenya. The Commission has immense enforcement capacity in the fight against corruption and economic crime, considering its functions, as vested by Section 7 of the Act:

- (a) Investigations
- (b) Preventive services
- (c) Public education
- (d) Civil litigation
- (e) Asset recovery

### **Prosecution of Corruption and Economic Crime Cases**

12. KACC does not have prosecutorial powers. At the moment, corruption and economic crime matters investigated by KACC are referred to the Attorney-General for prosecution. This is not unique to Kenya since the same case applies to some of the most celebrated anti-corruption success stories, such as Hong Kong and Singapore. The rationale behind the denial of the Commission of prosecutorial powers is that vesting such powers on the Commission would contravene the Constitution of Kenya, which vests prosecutorial powers on the Attorney-General. However, debate is still going on in Kenya as to whether the Constitution should be amended to vest KACC with prosecutorial powers.

13. Nonetheless, in 2004, Government facilitated the establishment of the Corruption, Economic Crime, Serious Fraud and Asset Forfeiture Section in the office of the Director of Public Prosecutions (within the Attorney-General's office), to deal with cases of corruption and economic crime cases referred by KACC, CID and other agencies.

14. With the approval by Cabinet, on 9<sup>th</sup> February, 2006, to implement the reports of the *Commission of Inquiry into the Goldenberg Affair*, the Ndung'u *Commission of Inquiry into Illegal/Irregular Allocation of Public Land* and various Parliamentary Accounts and Parliamentary Investments, the Government, has made arrangements for the expansion of the prosecutorial capacity of the AG's office to deal with the attendant demand for more prosecution and litigation services. Already, five Special Prosecutors were engaged to support the Directorate of Public Prosecutions, under the office of the Attorney-General.

15. Granted that there is an inbuilt mechanism for monitoring and evaluation of anti-corruption investigations and prosecutions under the Anti-Corruption and Economic Crimes Act, 2003, the lack of prosecutorial powers on the part of KACC has not in any way compromised the Commission's performance and output.

#### **Summary of Cases Pending Before Court (as of 9<sup>th</sup> October, 2008)<sup>1</sup>**

1	Investigation by Anti-Corruption Police Unit (ACPU)(KACC's immediate predecessor – 2001-2003)	18
2	Investigated by KACC up to August, 2003	12
3	Investigated by KACC from September 2004 to-date	208
	<b>Total No. of cases</b>	<b>238</b>

#### **Summary of Cases Finalized in Court from May 2003 to-date (as of 9<sup>th</sup> October, 2003)<sup>2</sup>**

1	No. of convictions	51
2	Discharge (by court) under Section 87 (a) of the Criminal Procedure Code (CPC), Cap. 75.	57
3	Discharge (by court) under Section 89(5) of the CPC.	11
4	Acquittals	65
5	Appeals ( to the High Court of Court of Appeal)	3
	<b>Total No. of cases</b>	<b>187</b>

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<sup>1</sup>

<sup>2</sup>

**Positions of some of the Accused/Convicted Persons:**

	POSITION	CHARGE	SENTENCE/ACTION TAKEN
1	Ex-Mayor, City Council of Nairobi	Attempting to defraud the City Council of Nairobi (Kshs. 560,000) (two counts)	Fine of Kshs. 100,000 on each count.
2	Former Director, National Aids Control Council	Abuse of office (three counts) contrary to Section 101(1) of the Penal Code.	Sentenced to three one year imprisonment on each count. Sentences to run concurrently.
3	Former OCS, Hardy Police Station, Nairobi	Bribing agents contrary to Section 39(3) (a) of the Anti-Corruption and Economic Crimes Act, 2003.	Fine of Kshs. 20,000 or 1 year imprisonment in default for count 1 and Kshs. 30,000/= for count 2 or 1 year imprisonment in default.
4	Prosecutor, Kilgoris	Soliciting and receiving bribe contrary to Section 39(3) (a) of the Anti-Corruption and Economic Crimes Act, 2003.	4 years imprisonment with no option for a fine. Appeal against sentence rejected.
5	City Superintendent, City Council of Nairobi	Corruption contrary to Section 39(3)(a) as read with Section 48(1) of the ACECA	Fined Kshs. 50,000 on each count or 6 months in default.
6	Former Director General, National Museums of Kenya (NMK)	Stealing by Director	Nolle prosequi entered. Accused refunded Kshs. 2,555,000/= to NMK and the matter was settled.
7	Dr. Augustine K. Muita, Director, Kenyatta National Hospital	Abuse of office	Case withdrawn under Section 87(a) of the CPC.
8	Former Manager, Euro Bank	Stealing contrary to Section 282 of the Penal Code	Discharge under Section 87(a) of the CPC.
9	OCS, Central Police Station, Nairobi	Abuse of office	Acquittal under Section 210 of the CPC.
10	Ex- Town Clerk, Nairobi City Council.	Abuse of office	Acquittal
11	Three ex- directors of Euro Bank, Nairobi	Obtaining Kshs. 50 million by false pretences.	Acquittal
12	Ex-Managing Director, Post Bank	Abuse of office	Acquittal
	Ex-Company Secretary, KPTC	Abuse of office	Acquittal
13	Former Acting Town Clerk, Nairobi City Council.	Failure to disclose interest contrary to the Local Government Act, Cap. 265.	Acquittal

14	Directors of NK Brothers Ltd.	Corruption under Section 3 of the Prevention of Corruption Act, Cap. 65 (now repealed)	Acquittal
15	Former CEO, National Hospital Insurance Fund (NHIF)	Corruption	Acquittal
16	Governor of the Central Bank of Kenya	Abuse of office	Acquittal
17	Permanent Secretary, Ministry of Roads and Public Works	Abuse of office	Acquittal
18	District Commissioner, Busia	Abuse of office	Acquittal
19	Ex-Director, Kenyatta National Hospital and former Permanent Secretary, Ministry of Health.	Abuse of office	Acquittal
20	Managing Director and Board Members of Kenya Seed Co. Ltd.	Abuse of office	Acquittal
21	Former Managing Trustee, National Social Security Fund	Abuse of office	Acquittal
22	MP and former Minister for Provincial Administration and Internal Security	Failure to comply with a notice contrary to Section 26 of ACECA.	The Court of Appeal quashed the proceedings initiated at the lower court.
23	Legal Officer, Kenyatta National Hospital	Abuse of office	The Court of Appeal granted an order of prohibition.

### Recovery of Unlawfully Acquired Public Assets/Benefits

1	Total number of suits for Recovery of Unlawfully Acquired Public Assets/Benefits	55
2	Total number of matters filed by KACC for restitution of Public Land	152
3	Total number cases where preservative orders have been issued upon application by KACC to forbid further transactions on particular parcels of land, pending the hearing of the matters.	143
	<b>Total value of property recovered by KACC as of 31<sup>st</sup> July, 2008</b>	<b>Kshs. 3.94 billion</b>

### **The Role of the Judiciary in the Fight against Corruption**

16. The Judiciary in Kenya plays a significant role in the fight against corruption. Indeed, Section 3(1) provides for the appointment of Special Magistrates, to hear and determine corruption and economic crime cases on priority basis. To ensure that the Judiciary is effective in the fight against corruption and to rid it from corruption from within, the Government has carried out a number of reforms in the Judiciary.

17. In 2003, the Judiciary initiated reforms following an internal audit work on ethics and corruption, undertaken by its Ethics and Integrity Committee. This led to the famous “radical surgery” of the Judiciary, which resulted in the suspension of 6 out of the 11 Court of Appeal judges, 17 out of the 36 judges of the High Court and 82 out of the 252 magistrates. 76 of the magistrates were retired in the public interest while the rest were reinstated after satisfactorily responding to the allegations leveled against them. As for the judges, tribunals were set up, as provided for under the Constitution, to investigate the claims against 5 judges who contested their suspension. At least one judge (of Appeal) has been discharged by the Tribunal (for Court of Appeal Judges). Two High Court judges were found guilty and removed from office.

18. Plans are underway to table in Parliament the Judicial Service Commission Bill to address the governance, financial and structural needs of the Judiciary. In order to enhance the capacity of the Judiciary further, the Government has initiated legislative reforms through the Statute Law (Miscellaneous Amendments) Act, 2007, which has amended the Judicature Act (Cap. 8 of the Laws of Kenya) to provide for the increase of the number of High Court and Court of Appeal judges to 70 and 14 respectively.

### **Question 3- Please provide information on the financial independence of the Kenya National Commission on Human Rights, its compliance with the Paris Principles relating to the Status of National Institutions (General Assembly resolution 48/13 of 20 December 1993, annex), and indicate whether the Commission’s mandate covers all of the rights recognized in the Covenant, as well as information on the number of staff dealing with economic, social and cultural rights (para.17).**

19. The Kenya National Commission on Human Rights (KNCHR) which is a statutory body established under an Act of Parliament, Kenya National Commission on Human Rights Act 2002. It receives funding from both the Government through the Ministry of Justice, National Cohesion and Constitutional Affairs which is used mainly for administrative functions as well as from donors. Most of the funding for the programme work is obtained through donor funding especially through the Governance, Justice Law and Order Reform Programme (GJLOS).

20. The KNCHR is established in accordance with the United National Paris Principles on constitution, mandate and independence of such bodies.

21. The KNCHR is broadly mandated through its constitutive act to promote and protect human rights and section 16 of the Act mandates the commission more specifically to "investigate on its

own initiative or upon a complaint made by any person or group of persons, the violation of any human rights"; and also to "act as the chief agent of the Government's compliance with its obligations under international treaties and conventions on human rights."

22. On account of its mandate, the Commission has an Economic, Social and Cultural (ECOSOC) department amongst its seven departments. The KNCHR through its strategic plan 2004-2009, and recognizing poverty as the greatest human rights violation, gave prominence to a department aimed at enhancing freedom from want and exploitation. The ECOSOC department is mandated to improve the livelihoods of vulnerable groups in particular women, children, and the disabled; increasing understanding of gender implication/impact in resource allocation and use by public and social sectors; increasing equitable access to social services by low income women, men and disabled persons and increasing legal protection of social-economic rights and basic needs. The Department has seven full time members who are usually boosted by the engagement of interns and Consultants when the need arises.

## II. ISSUES RELATING TO THE GENERAL PROVISIONS OF THE COVENANT (articles 1 – 5)

### A. Article 2 (1) – States parties' obligations

**Question 4- Please provide information on the mechanisms to ensure that adequate safeguards are in place for the protection of economic, social and cultural rights of the most disadvantaged and marginalized individuals and groups (in particular the rights to work, favourable conditions of work, adequate standard of living, and health) when the State party negotiates trade, investment and economic agreements, including the Economic Partnership Agreement with the European Union and the Investment Agreement under the Common Market for Eastern and Southern Africa (COMESA). Please also provide information on the process of public consultation on such agreements, and indicate whether human rights impact assessments are conducted as part of the preparations for such negotiations.**

23. The dynamic nature of international trade has necessitated Kenya's engagement in negotiations for trade, investment and economic agreements. Agreements emanating from such negotiations impact differently on the welfare of various groups of people in the country. For example, Kenya has been engaged in the Economic Partnership Agreement (EPA) with the European Union. It is foreseen that lowering of tariffs through trade liberalization under EPAs could result in loss of government revenue. If the country is unable to mitigate the loss of tariff revenue through other means, then this can lead to a cut in government spending on pro-poor programmes. This in turn would adversely affect the economic, social and cultural rights of most disadvantaged individuals.

24. To mitigate against this welfare loss, the EPA process provides each group of the ACP countries with a margin of products that it can fully or partly exempt from liberalization commonly known as the exclusion list. In addition to the exclusion lists, countries can negotiate an

implementation schedule for gradual elimination of tariffs for different products, leaving the more sensitive products to be liberalized at the end of the implementation period.

25. With regard to public consultations, Kenya's EPA negotiation process has been participatory and representative, involving various stakeholders at both the national and regional level. Stakeholders from the public and private sectors, Non State Actors (NSAs), and Trade Union Organizations have participated in the formulation of Kenya's positions for the prioritized areas of negotiations.

26. In addition to the mitigating measures within the EPA negotiation process, Kenya will also implement various initiatives targeted at disadvantaged groups within its Medium Term Plan, 2008 – 2012 (MTP). These initiatives will enhance representation of the disadvantaged groups in decision making processes, widen their opportunities for work and improve their standards of living. The affirmative actions in the MTP include:

- (a) Establishment of a consolidated social protection fund for cash transfers to Orphaned and Vulnerable Children (OVCs), the elderly and other persons facing vulnerabilities.
- (b) Implementation of the Disability Fund. This fund will be inclusive of appropriate budgetary allocations to provide financial assistance to Persons with Disabilities (PWDs) for their socio-economic empowerment.
- (c) Representation of PWDs in decision making at all levels to ensure that issues that affect them are adequately addressed in policies and legal frameworks, programmes and projects.
- (d) Affirmative Action Policy will be instituted to increase the number of female participation and representation
- (e) The Women Enterprise Fund and the Youth Enterprise Development Fund will continue to provide Kenyan women and youth with access to alternative financial services.

**Question 5- Please provide a detailed assessment of the achievements and shortcomings of the international economic assistance and cooperation of the State party with other States and intergovernmental organizations to achieve progressively the full realization of the rights recognized in the Covenant during the period 2002-2007 (para.90).**

27. Kenya engages with other State parties and international organizations for economic cooperation. In the period 2002 – 2007, such international economic assistance and cooperation complemented the government resources in implementing the country's development initiatives. International assistance and cooperation has been useful in supporting initiatives in various sectors of the economy, aspects that have improved access of Kenyans to socio-economic needs such as education, health, and habitation. Examples include:

- (a) In the education sector where the country achieved primary school Net Enrolment Rate (NER) beyond 80%;
- (b) In the health sector where initiatives on HIV/AIDS, malaria, TB and other infectious diseases have benefited;
- (c) In the infrastructure sector where programmes and projects in the roads, water, housing and energy sub-sectors have benefited;
- (d) In the agricultural sector where pro-poor initiatives have been supported to provide livelihoods to agriculturalists and pastoralists; and
- (e) In the Governance, Justice, Law and Order Sector where various reform initiatives have been supported.

28. International economic assistance and cooperation also has shortcomings. The financial cooperation increases the country's debt burden. The debt burden creates strain on citizens as it has to be financed through higher taxation or shift of resources from other priority areas. In addition, the burden is spread across generations. The development programmes and projects benefiting from international assistance and cooperation also come with negative socio-economic-environmental impacts. Furthermore, international development assistance is not always predictable and therefore not fully dependable for effective planning and budget execution.

#### **B. Article 2 (2) – Non-discrimination**

**Question 6- Please indicate whether the State party intends to relax its policy of requiring refugees to live in camps, and to issue work permits to all refugees and provide hospital services and education at the same rate to them as to nationals, and integrate special schools for children of refugees into the regular school system, with a view to ensuring their equal enjoyment of all economic, social and cultural rights (paras.23-25).**

29. The Government of Kenya largely treats all foreigners equally including refugees and asylum seekers of different nationalities due to this principle of non-discrimination on racial grounds. To this end, Kenya has enacted the Refugees Act of Kenya 2006, governing aspects of Refugee law. This Act prohibits discrimination of any refugee and/or asylum seeker by making provisions which are to be enjoyed by refugees and asylum seekers on equal footing. In ensuring that Refugees in Kenya are accorded adequate enjoyment of human rights, the Government has seen to the provision of the following services to the refugees without any discrimination:

- (a) Right to public health, medical care, social security and social services whereby all Refugees living in the camps are provided with health facilities at no cost. There are health centres which are accessible to them. They have basic amenities such as ARVs which are provided free of charge. In addition to this there is specific attention to pregnant women who are provided with ante natal care and are given mosquito nets.

- (b) The right to equal education and training. Refugees in Kenyan can access free primary education provided by the government.
- (c) The right to equal participation in cultural activities. Refugees are able to freely participate in their cultural activities where the government has, through the Department of Refugee Affairs organized World Refugee Day celebrations where they are encouraged to showcase their cultural activities.
- (d) The right to access places of service. Refugees and asylum seekers, in accordance with ICERD, have free access to places of service and can obtain any service for the required fee. The Government has also provided mobile courts in the Kakuma and Dadaab refugee camps, held on a monthly basis whereas the refugees living in urban areas have access to the courts just like the Kenyans.
- (e) Right to human rights education. The Kenya government encourages the teaching of refugee rights and human rights to not only the refugees but also to surrounding communities. The government has also been co-operative in the development of a curriculum on training of officers such as Immigration officers and police officers on refugee laws and rights while, the provincial administration has been instrumental in maintaining peaceful co-existence between refugees and host communities.

30. In moving towards the full integration of refugees, the Government is issuing refugees with identification cards similar to those held by Kenyans but with word “refugee” on the top right side of the card.

**Question 7- Please provide information on any special measures taken by the State party during the period 2002-2007 to protect the economic, social and cultural rights of internally displaced persons.**

### **C. Article 3 – Equal rights of men and women**

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

31. Several provisions had been made to address discrimination against women with regard to marriage, divorce, inheritance and citizenship under the proposed Kenyan new constitution which was rejected at the November 2005 Referendum. The provisions of the proposed new constitution were comprehensive, reflected the principles of equality of women and men.

32. These include:-

- (a) Equality of all persons before the law, including equal enjoyment of all rights and freedoms
- (b) General equality of people and non-discrimination on the account of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- (c) That women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social activities: women and men to have equal right to inherit, have access to and manage property; it outlawed any culture, law, custom or tradition that undermines the dignity, welfare, interest or status of women and men; and it called upon the State to protect women and their rights, taking into account their unique status and natural maternal role in society, and further to provide reasonable facilities and opportunities to enhance the welfare of women to enable them realize their full potential and advancement.
- (d) Equality of women and men in marriage and entitlement to equal rights in relation to the marriage, at the time of marriage, during marriage and at the dissolution of marriage.
- (e) Citizenship: This was also a key area in the proposed new constitution article 17 which allowed Kenya women to confer citizenship to their spouses and children.
- (f) Land property laws

33. Had the new constitution been adopted, it would have allowed women to own land for the first time through inheritance. It had called for the elimination of gender discrimination in laws, regulations, customs and practices related to land and property in land.

34. During the referendum, many Kenyans rejected the proposed constitution, citing some of these gender equality provisions as the reason. In particular, the provisions relating to equal inheritance of property, especially land, by men and women became a problem, with the majority, both men and women, arguing that culture did not allow women to inherit property from their fathers and that if that were to happen, there was going to be conflict in homes. This perspective extended to right of married women to own property while in marriage either in their individual capacity or joint ownership.

35. The Constitutional Review Amendment Bill is to be tabled in parliament for discussion and once adopted it will pave way for the development of a new Constitution. The Ministry of Gender has expressed the importance of these provisions being incorporated more comprehensively in the envisaged new constitution.

**Efforts being made to address the issues**

36. The Government through the Kenya Law Reform Commission has undertaken a review of marriage laws, matrimonial property laws, gender equality and Affirmative Action laws, and laws relating to domestic violence which will address the issues of equality of men and women in marriage and divorce situations. These laws will also address the issues of equity and equality in the sharing of matrimonial property in cases of divorce. During the 9<sup>th</sup> Session of parliament, the head of State re-emphasized the importance of the laws and had specifically directed the Attorney General to ensure speedy enacted of these laws. The four draft laws Bill have been prioritized and submitted to the Attorney General and the Ministry of Gender id making a follow up to ensure that they are enacted. The Government has also incorporated women right to ownership in the Draft National Land Policy.

37. The Judiciary itself is undertaking reforms which include opening of a website, posting of decided cases onto the website through the National Council of Law Reporting, which is a department of the Judiciary. The Judiciary also had an historical Judicial open day where members of the public freely interacted with the bench and had an opportunity to ask them questions, plenary discussions and also view materials on the work of the Judiciary and land mark cases which included succession cases.

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

38. Various measures with regard to this provision include: The Affirmative Action Bill which is with the Attorney General, the Political Parties Bill Act, 2007 which requires parties to ensure Affirmative Action in their nominations. The Head of State also issued a policy directive to all public services organizations that 30% of all appointments, recruitments, training and promotions should be preserved for women. The implementation of this directive is being monitored by the Ministry of Gender to ensure compliance.

**Women in Decision Making As Per September 2008**

**Table 1: Percentage of Women Parliamentarians, Permanent Secretaries and Secretaries (as per September, 2008)**

No	Year	2008			
	Positions	Female	Male	Total	% of Women
1.	M. of Parliament	21	201	222	9.1
2.	Ministers	7	35	42	16.7
3.	Ass. Ministers	6	46	52	11.5
4.	P. Secretaries	6	38	44	13.6
5.	Secretaries	3	18	21	14.3

Source: Office of the President (May 2008) and September 2008.

Table 2: **Judicial Service Establishment in Kenya by Grade and Sex, 2005 and 2007**

Rank	2005				2007			
	Women	Men	Total	% Women	Women	Men	Total	%Women
Court of Appeal Judges	0	9	9	0	1	10	11	9.1
High Court Judges	10	39	49	20.4	11	38	49	22.4
Chief Magistrates	4	5	9	44.4	5	9	14	35.7
Senior Principal Magistrates	4	11	15	26.7	5	13	18	27.8
Principal Magistrate	11	19	30	36.7	12	22	34	35.3
S. Resident Magistrates	36	66	102	35.3	38	62	100	38.0
Resident Magistrates	33	44	77	42.9	30	44	74	40.5
District Magistrates	14	24	38	36.8	5	7	12	41.7
C. Kadhi/ Khadhis	0	17	17	0	0	17	17	0
<b>Total</b>	<b>112</b>	<b>234</b>	<b>234</b>	<b>32.4</b>	<b>107</b>	<b>222</b>	<b>222</b>	<b>32.5</b>

Source: Judicial Commission, 2007

Table 3: **Politics and Decision Making (January – September 2008)**

Rank	2005				2007			
	Women	Men	Total	%Women	Women	Men	Total	%Women
Ministers	2	32	34	5.8	7	35	42	16.7
Assistant Ministers	6	40	46	13	6	46	52	11.5
National Assembly	18	204	222	8.1	21	201	222	9.5
Ambassadors/ High Commissioners	11	29	40	27.5	11	29	40	27.5
Permanent Secretaries	5	25	30	16.7	6	38	44	13.6
Provincial Commissioners	0	8	8	0	0	8	8	0

Source: Department of Gender  
Electoral Commission

### III. ISSUES RELATING TO SPECIFIC PROVISIONS OF THE COVENANT (articles 6 – 15)

#### A. Article 6 – The right to work

**Question 10- Please provide more detailed information on any national programmes and policies to create employment, in particular in the formal economy, including for women. What measures are being taken to regularize the situation of workers in the informal sector (para.47)?**

39. The Government is committed to facilitating the creation of sustainable and freely chosen employment that guarantees maximum productivity and rewards to entrepreneurs, workers and employers alike.

40. The Kenya Vision 2030 and the Economic Recovery Strategy for Wealth and Employment Creation strategies provides the framework for enabling Macro economic and sectoral policies that

are vital for rapid and sustainable growth necessary for employment generation and poverty reduction.

41. The draft Sessional Paper No. 6 of 2006 on Employment Policy and Strategies for Kenya identifies unemployment as one of the key challenges facing the country. It also outlines the strategies to be pursued to promote full, productive and decent employment that will enable those who are willing and able to work secure jobs.

42. Some of the strategies and programmes to create employment are:

- (a) Giving incentives to the private sector to invest in labour-intensive activities. These include commercialization of management and operation of roads and public works and housing, reviving the rural access road programmes. This is aimed at generating employment and income generating opportunities.
- (b) Implementation of policies on revitalization of the agricultural sector - The Blue print named "Strategy for Revitalization of Agriculture" (SRA) lays the framework for revitalization and restructuring of the sector. This enables it to play the multiple social-economic objective of improved food security, raising rural incomes, poverty reduction, increased export earnings and general improvement of wealth of the nation.
- (c) Developing long term integrated human resource development programmes to address the problem of skills mismatch. - The strategy aims at mainstreaming training curricular and syllabi to make them responsive to the needs of the industry and Labour market.
- (d) Implementation of interventions aimed at addressing the employment challenges of the youth. Such interventions include promotion of industrial attachments, the youth Enterprise Fund, Internship and vocational apprenticeship, Youth enterprise and Incubation programmes.

43. Measures have also been put in place to remove barriers and promote women's access to education and training in order to improve their participation in the Labour market. Gender units have also been established in ministries to continue articulating gender issues and promote their full integration into the country's policy formulation programmes. Measures have also been taken to encourage women to access the world of work and compete for all jobs through appropriate policies and programmes such as promotion of equal employment opportunities and removing limiting clauses in employment related laws that prohibit their effective participation in the Labour market. Employers are also being encouraged to engender their employment policies and programmes; keep and provide desegregated gender data and develop policy statement to address sexual harassment at the workplace.

44. The Government has also been improving working conditions and industrial relations through promoting the fundamental principles and rights at work to give effect to the core conventions that Kenya has ratified.

45. In order to promote foreign employment, policies and legislation have been developed to provide framework for promoting labour migration and combating trafficking. This will enable Kenyans access employment opportunities in friendly and willing countries.
46. The informal sector is expected to provide the bulk of new job opportunities in the country. However, enterprises in the sector experience high mortality rates. This makes it difficult to regularize the situation of workers in the sector.
47. Some of the measures being taken to regularize the situation include:
- (a) Training for skills up-grading and transfer of technology.
  - (b) Developing new laws to curb the exploitation of casuals by regularizing their employment upon serving a given period.
  - (c) Encouraging workers in the sector to join social security and health schemes.
  - (d) Enhancing occupational, safety and health at the workplaces

**Question 11- Please provide detailed statistical information on the number of persons with disabilities who found employment in full-time and part-time jobs during the period 2002-2007 (para.54).**

48. The Government carried out a survey on the employed or the working persons aged 15 years and above who have disabilities and reported having either held a job or undertaken an activity for pay, profit or family gain.. Table 6.5 shows the activities respondents undertook in the seven days preceding the survey. A third of the PWDs worked on own family business, around 16% worked for pay and one in ten indicated that they were homemakers. Another 24% did not work.
49. The analysis shows that PWDs who reside in urban areas are more advantaged in terms of accessing employment opportunities. A quarter of them worked for pay, compared with 9% of their counterparts in rural areas. Similarly, a third of those in rural areas did not work, compared with only 22% of those in urban areas. About a third (32%) of those who worked on own family business were in rural areas compared with one in five (21%) urban residents.
50. The largest number of PWDs who worked for pay were in Nairobi (32%), followed by Coast (15%) and Central (13%); North Eastern Province (3%) had the least. More of those working were aged 34–55 years and were likely to be males (17.7%; compared with 7.5% of females); they were also likely to have post primary vocational education or secondary education and above.
51. Most of those who worked on own family business were from Nyanza Province (42%), followed by Central (38%). The lowest percentage was in North Eastern (3%). Most were aged over 54 years (37%) or were likely to be married (39%) or to have post primary or vocational education (44%). Of those who did not work in the seven days prior to the survey, the largest share was from

North Eastern (80%). They were also more likely to be divorced/separated (38%) or widowed (43%). Between 13% and 17% of women in the age brackets spanning 25–55+ years reported being homemakers. The data show that the largest percentage of homemakers was residents of Coast Province (20%) and nearly 22% are women.

**Table 6.5: Employment of PWDs by background characteristics (percentage)**

Background characteristics	What were you mainly doing in past 7 days							
	Worked for pay	Worked on own family business	Did not work but was employed	Did not work	No, never been employed	Home-maker	Other	Total
<b>Residence</b>								
Rural	8.8	32.1	1.7	33.7	6.9	12.6	4.1	100.0
Urban	25.4	21.3	4.8	21.8	6.9	13.7	6.1	100.0
<b>Province</b>								
Nairobi	31.5	13.9	5.8	22.4	5.5	11.1	9.8	100.0
Central	12.6	38.1	1.6	33.6	1.9	11.4	0.8	100.0
Coast	14.5	21.1	6.2	25.6	9.3	19.2	4.1	100.0
Eastern	9.0	34.2	2.6	24.1	7.0	15.6	7.4	100.0
North Eastern	2.7	2.5	0.0	79.9	9.9	4.5	0.5	100.0
Nyanza	9.6	42.2	1.5	27.9	8.8	7.6	2.4	100.0
Rift Valley	11.0	23.2	0.7	38.0	8.9	14.1	4.1	100.0
Western	6.3	21.7	1.4	39.8	4.7	18.4	7.6	100.0
<b>Age</b>								
0–14	0.0	0.0	0.0	40.4	29.5	30.2	0.0	100.0
15–24	8.2	13.6	0.9	32.4	19.2	8.6	17.2	100.0
25–34	21.0	31.3	1.6	23.3	7.5	13.4	1.9	100.0
35–54	22.0	35.9	2.4	21.5	2.5	14.5	1.3	100.0
55+	4.4	37.2	3.9	33.6	4.0	15.6	1.4	100.0
Don't know	1.7	21.7	2.0	65.3	1.5	6.7	1.0	100.0
<b>Sex</b>								
Male	17.7	31.4	4.4	31.0	8.0	2.7	4.9	100.0
Female	7.5	28.5	0.6	31.5	6.0	21.8	4.2	100.0
<b>Marital</b>								

Background characteristics	What were you mainly doing in past 7 days							
	Worked for pay	Worked on own family business	Did not work but was employed	Did not work	No, never been employed	Home-maker	Other	Total
<b>status</b>								
Single	12.7	14.5	1.7	34.7	16.9	6.7	12.8	100.0
Married	14.8	39.0	3.2	24.7	2.8	14.6	0.8	100.0
Divorced/separated	12.9	24.4	0.9	38.4	5.9	12.8	4.7	100.0
Widowed	3.9	30.9	1.4	42.5	2.0	18.2	1.1	100.0
Others	31.9	30.1	5.2	23.6	9.2	0.0	0.0	100.0
<b>Highest level of education attended</b>								
Nursery, kindergarten	14.6	37.3	0.0	25.7	14.1	8.3	0.0	100.0
Primary	10.4	37.4	1.6	27.0	5.9	12.4	5.4	100.0
Post primary, vocational	20.2	43.4	3.4	12.0	13.9	7.1	0.0	100.0
Secondary, "A" level	22.3	27.4	5.7	18.6	10.7	8.0	7.3	100.0
College (middle level)	36.4	24.7	6.7	19.5	4.3	4.1	4.3	100.0
University	45.4	23.2	5.3	11.7	6.2	3.6	4.6	100.0
Other	8.9	0.0	0.0	56.2	18.5	5.1	11.3	100.0

## **B. Article 7 – The right to just and favourable conditions of work**

### **Question 12- What measures are being taken by the State party to reduce the significant wage gap between men and women?**

52. Having ratified Convention 100 on Equal Remuneration, Kenya does not have any wage gap between men and women, performing the same job. All get equal pay for equal work done. All wages orders apply to both men and women. As stated above, measures have been taken to encourage women to access the world of work and compete for all jobs through appropriate policies and programmes such as promotion of equal employment opportunities and removing limiting clauses in employment related laws that prohibit their effective participation in the Labour market.

### **Question 13- Please provide information on the measures taken by the State party to increase and enforce minimum wages, with a view to providing all workers and their families with an adequate standard of living, in accordance with article 7, paragraph (a) (ii), of the Covenant (paras.57-59).**

53. The Ministry of Labour enforces minimum wages by ensuring that labour inspections are carried out at least twice a year at every business premise. This not only ensures that workers are not paid below the statutory minimum wage, it also guards against erosion of the workers purchasing power. The Ministry is also under a performance contract which ensures that the inspectorate staffs meet the targets set in achieving all that is laid out in the work plans.

54. In previous years, the basic minimum wage increments were announced on the 1<sup>st</sup> of May every year. The last increment was made in May 2005. After Tripartite consultations, it was agreed that wages and salary increments would now be based on productivity, among other factors. This is in line with the creation of the Productivity Centre of Kenya (PCK) to facilitate the same.

### **Question 14- Please provide information on steps taken to address the poor working conditions, such as excessive working hours and low minimum wages, in Export Processing Zones (EPZ) and in the horticulture industry. What steps have been taken to extend the application of occupational health and safety regulations and collective bargaining agreements to the EPZ, as well as to ensure respect for trade union freedom in them (paras.62-63)?**

55. Workplace inspections are carried out in the Export Processing Zones. If any anomalies or breach of law is detected the employers are advised to adjust the wages and arrears pay is claimed. Legal action may be taken against any employer who fails to comply. Employers in these Zones have therefore been advised and are made to pay overtime for excess hours performed by workers, including weekly rests and gazetted public holidays. Action is also taken if these breaches are detected while handling labour complaints and disputes.

56. Trade unions can now recruit members in these Zones. Workers have been advised to join the relevant trade unions in order to give the trade union the authority to approach the employers,

enter into Recognition Agreements and gain the power to bargain a Collective Agreement for terms and conditions beyond the basic minimum standards.

57. Application of the Occupational Safety and Health regulations are now applicable to EPZs under the newly enacted Occupational Safety and Healthy Act 2007. The provisions are geared towards protection of the employee at the work place. The Act covers all workplaces and Export Processing Zones are not exempted.

58. The new provisions include: -

### **Auditing**

59. Risk assessment to be done by the employer to identify all gaps pertaining to healthy and safety issues.

### **Medical Surveillance**

60. This is done during pre-employment, during employment and post employment to determine whether a worker is affected. This is made easier to determine, as employees are required to undergo medical check-up twice per year.

### **Safety and Health Committees**

61. Workers are now involved in managing safety and health issues at the work place

### **Annual Safety and Health Auditing**

62. Approved and authorized auditors do this.

### **Enhanced Workplace Surveillance through:-**

- (a) hygiene monitoring
- (b) Air quality (checking air contamination).
- (c) Noise-hearing deficiency due to noise pressure
- (d) Loss of hearing due to noise pollution
- (e) Annual registration of each old and new work place

63. Each workplace is required to ensure that they register annually for the purpose of being visited and inspected to ensure total compliance of the Act. This will enhance annual surveillance.

### **Examination of hazardous plants**

64. This applies to Boilers, air receivers, Lift equipment, and cylinders for compressed and dissolved gases e.g. LPG. These are to be examined by authorized personnel and reports issued. Marking of containers carrying any hazardous substances e.g. paint which should be done by the manufacturer.

**Question 15- Please explain why the Ministry of Labour inspectorates lack authority to inspect certain factories and work sites, indicate the measures taken to increase the number of labour inspections, which reportedly would need to be tripled to cover the entire State party, and provide information on the concrete results of such inspections in 2007.**

65. In order to increase work place inspections the Ministry plans to employ more officers, provide all the required work tools and enhance each stations Authority to Incur Expenditure (AIE). The Ministry also intends to carry out integrated work place inspections where all the Departments use one vehicle to carry out workplace inspections and follow ups, in a given zone.

66. In the financial year 2007/2008 a total of 10,886 inspections were planned and a total of 8779 inspections were carried out. In this financial year a total of 13,200 labour inspections have been planned. A total of 3000 inspections should therefore be carried out in each quarter. For the first quarter a total of 2,700 inspections have already been carried out. Arrears claims have been made and contravention letters sent to employers over issues on overtime leave entitlement and provision of first aid kits.

### **C. Article 8 – Trade union rights**

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

67. The recently enacted Labour Relations Act 2007 provides for freedom of association, establishment of Trade Unions/employers organizations, recognition of trade unions and Collective Agreement, and dispute resolution. It states: -

- (a) That an employer or groups of employers including the public sector which have recognized a trade union shall conclude a collective agreement with the recognized union.
- (b) That an employer shall disclose to a trade union all the relevant information that will allow the union to effectively negotiate on behalf of employees
- (c) That all the information shall be treated as confidential

- (d) That an employer is not required to disclose information that is privileged, may cause substantial harm or is private personal information
- (e) That if there arises a dispute or disclosure of information, the dispute shall be referred to the minister for conciliation.
- (f) That if the dispute is not resolved at conciliation level, the matter shall be referred to the Industrial court.
- (g) That the Collective Agreement shall be implemented upon registration by the Industrial Court.

YEAR	NO. OF STRIKES	CAUSES
2002	46	<ul style="list-style-type: none"> <li>• Interpretation of court awards</li> <li>• Non payment of salaries</li> <li>• Failure to recognize the union</li> <li>• Agitation for better terms and conditions of employment</li> <li>• Protests against low wages</li> <li>• Arbitrary dismissals/termination</li> <li>• Breach of rules and regulations</li> <li>• Desire for better working conditions</li> </ul>
2003	35	“
2004	32	“
2005	17	“
2006	30	“
2007	21	“
<b>TOTAL</b>	<b>181</b>	

68. In most of the strike situations the workers were reinstated back without loss of benefits.

**Question 17- Please provide more detailed information on the provisions in Kenyan law and other obstacles preventing the ratification by the State party of International Labour Organization Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize (1948) and on the measures taken to remove such obstacles, with a view to ratifying the Convention (para.67).**

69. The Labour Relations Act provides for the establishment and registration of trade unions and employers organization. The government plays the role of a regulatory agency with a view of ensuring that the law is adhered to. In 1962, 1980 and 1984 the Government, Workers and Employers umbrella bodies signed a memorandum of agreement with a view to promoting industrial based trade unionism pegged on broadly defined industry irrespective of, craft, occupation or trade

70. It is in this respect that the government has not found it necessary to ratify ILO Convention No.87 on the Freedom of Association since it will be against the Principle of Tripartism which the social partners have voluntarily agreed to abide to. However the country has adopted the spirit of the Convention as far as possible.

71. The Act therefore provides the following regulatory procedures:-

- (a) No person shall recruit members for the purpose of establishing a trade union or employers organization unless that person has obtained a certificate from the Registrar of Trade Unions: -
- (b) The registrar shall issue a certificate within 30 days of receiving an application
- (c) The registrar may withdraw a certificate if he has reason to believe that;-
- (d) The certificate was obtained by false misrepresentation or as a result of mistake or,
- (e) Any person has undertaken an unlawful activity
- (f) A trade union shall apply to the registrar for registration within 6 months of receiving a certificate
- (g) An application to register a trade union shall be signed by seven members of the trade union.
- (h) The registrar shall register the trade union or employers' organization after consulting with the National Labour Board.
- (i) No person shall act or purport to act as an officer or official of a trade union or employers' organization that is not registered or has had its registration cancelled.

72. The registration of a trade union or employer organization can be cancelled or suspended if:-

- (a) It was registered as a result of fraud, misrepresentation or mistake
- (b) Is operated in contravention of the Act
- (c) Is being used for unlawful purpose
- (d) Has failed to conduct elections
- (e) It is not independent

**Question 18- Please provide more detailed information on the legal requirements for declaring a strike and on the judicial remedies available for appealing decisions of the Minister of Labour declaring a strike illegal (para.69).**

73. The Labour Relations Act provides procedures for furtherance of a protected strike or lock-out. The Act specifically states that a person may participate in a strike or lock-out if:

- (a) The trade dispute concerns terms and conditions of employment or the recognition of a trade union.
- (b) The trade dispute is unresolved after conciliation
- (c) Seven (7) days written notice of the strike or lock out has been given to the other party and to the Minister by an authorized representative
- (d) No person shall take part in a strike or lock-out if;
- (e) Any law, court award or Collective Agreement prohibits a strike or lock-out in respect of the issue in dispute.
- (f) The subject matter is regulated by a collective agreement or recognition agreement.
- (g) The Parties have agreed to refer the trade dispute to the Industrial Court for arbitration.
- (h) The trade dispute has not been referred for conciliation process
- (i) The employer and the employees are engaged in an essential service
- (j) The strike or lock-out is not in furtherance of a trade dispute.
- (k) The strike or lockout constitutes a sympathetic strike or lock-out.

74. The law however provides that any party that has received a strike notice may apply as a matter of urgency to the Industrial Court for a prohibition if;

- (a) The Strike of lock-out is prohibited under the Act; or
- (b) The party that has issued the notice has failed to participate in conciliation in good faith with a view of resolving the dispute

75. The Act however does not apply to the following;

- (a) Kenya Armed Forces

- (b) Kenya Police
- (c) National Youth Service
- (d) Reserve force

#### **D. Article 9 – Social security**

**Question 19- Please provide more detailed information on the measures taken to ensure that social security schemes, such as the National Social Security Fund and the National Hospital Insurance Fund, are accessible and affordable for all categories of workers, including casual workers, workers in the informal economy and the self-employed, as well as for the unemployed. Please indicate whether the minimum amounts of social security benefits are sufficient to provide recipients with an adequate standard of living (paras.70-73).**

76. Membership of the National Hospital Insurance Fund (NHIF) is currently categorized into two broad groups:

- (a) the Formal Sector
- (b) the Informal sector

77. Being a social scheme, the Fund ensures equity in the access of benefits. Members benefit from a comprehensive cover which the Fund has negotiated with over 280 hospitals mainly faith based organizations, low-cost private hospitals and government facilities. For the high-cost Private hospital the Fund pays a per diem flat rate (rebate) which varies according to the facility.

#### **Formal sector enrolment**

78. For the formal sector, membership is legislated by the NHIF Act and hence is a statutory deduction from the payroll of members. Current membership in this sector is 1.9 Million members representing approximately 99% of the employed population.

#### **Informal sector enrolment**

79. Concomitantly, the Fund has registered over 300,000 members from the informal sector under the voluntary scheme category. Due to attitudes, cultural beliefs, poverty levels among other reasons, infiltration into this sector is difficult and there is always the danger of adverse selection. That notwithstanding, the success of the Fund has been because of a dual strategy approach of group enrolment and strategic partnerships.

80. **Strategy 1: Group enrolment** – here the Fund has been targeting SACCOs, out-grower companies etc so as to defray and mitigate the risk posed by this population. Among those targeted are the Mumias out grower company (MUOCO), Kenya Tea Development Agency (KTDA), Co-

operative Societies in the Coffee Sector. From this strategy the Fund has registered over 140 groups with a membership of approximately 160,000 members.

81. **Strategy 2: Strategic Partnerships** – in this strategy, the Fund is penetrating the informal sector through application of Micro-insurance principles which differ from mainstream insurance Practice. To this end, the Fund has signed Memorandums of Understanding (MOUs) with Kenya Women Finance Trust (KWFT) and Cooperative Insurance Company (CIC). In this arrangement, NHIF caters for health insurance whereas CIC caters for general insurance including life insurance for small scale entrepreneurs, farmers etc. In the case of KFWT, the women who access loans also get health insurance through NHIF. From this strategy the Fund has registered slightly above 100,000 members.

82. In addition to the two strategies above, the Fund opened up the age ceiling of 65 years to accommodate all retirees who are paying a subsidized premium of 50% to access comprehensive benefits. The Fund intends to improve this scheme by introducing a post retirement package, which will guarantee life membership. This is scheduled to begin by July 1<sup>st</sup> 2009. This strategy has seen the registration of over 45,000 members.

83. In the 2008/9 financial year the Fund targets to enroll at least 200,000 more members from this sector to bring the total to 500,000 informal sector members.

**Question 20- Please describe any non-contributory schemes of social assistance in place, their coverage, and the types and minimum amounts of benefits. Please indicate whether such schemes make provision for the social protection of orphans, children without parental care, families headed by single mothers or children, widows, older persons, persons with HIV/AIDS, persons with disabilities, refugees, asylum-seekers and internally displaced persons and other disadvantaged or marginalized individuals and groups.**

84. NSSF does not have any non-contributory schemes of social assistance in place, to cover orphans, children, and widows and so on. All such marginalized groups and individuals depend more on non-governmental organizations and charities.

**Question 21- Please provide information on any bilateral agreements concluded by the State party dealing with the social protection and working conditions of Kenyan migrant workers abroad.**

85. There are no bilateral agreements that have been concluded by the country's social protection organs regarding Kenyan workers abroad, in any form. However under the East African Community, there is a High Level Task Force called the East African Protocol, which is looking into the need for such agreements and this will no doubt impact on the retirement benefits of Kenyan workers within the East African Region.

86. The case of migrant workers abroad has not been addressed.

### E. Article 10 – Protection of the family, mothers and children

**Question 22- Please provide information on the results of measures taken to prevent domestic violence, including spousal rape, such as special police patrols. Please explain why there are no criminal law provisions specifically criminalizing such violence or considering it as an aggravating factor. Please also provide information on the number of women killed or injured in the context of domestic violence during the period 2002-2007, the number of criminal proceedings and convictions, the sentences imposed on perpetrators of domestic violence, and the remedies provided to victims.**

87. Measures taken to prevent domestic violence include

- (a) As mentioned earlier the Domestic Violence (Family Protection) bill has been submitted to the Attorney General. The Bill proposes a Fund to assist victims of gender based violence to seek legal redress and medical treatment. There is the Sexual Offences Act, 2006 which introduces a whole range of offences such as gang rape, sexual harassment.
- (b) The Government in collaboration with stakeholders has embarked on training judicial officers, the police and the public on the provisions of the Sexual Offences Act. Copies of the Act have distributed to various judicial officers and Police Stations. However, the implementation has been met with the challenge of some provisions causing sexual violence survivors to shy off from instituting suits under the Act example Section 38 that provides “*any person who makes false allegation against another person to the effect that the person has committed an offence under this Act is guilty of an offence and shall be liable to punishment equal to that for the offence complained of*” this raising apprehension in cases of acquittals due to various reasons that might not be occasioned by the complainant. Further there is also a challenge in application of sections that raise concern on principles of burden of proof, where the burden shifts to the accused. However, since enactment of the Act, there have been harsh sentencing patterns for the offenders.
- (c) On the 16<sup>th</sup> April 2007, the Attorney General set up a multi-sectoral Task Force Committee whose Terms of Reference include; preparation and recommendation of a National Policy Framework and guidelines for the implementation and administration of the Act in order to secure accessible and uniform treatment of the Sexual offender; to recommend to the Attorney General relevant regulations for the implementation of the Act; to consider and recommend a comprehensive policy and propose effective measures to secure acceptable schemes, programmes and other mechanisms for the protection, treatment and care of victims of sexual violence and rehabilitation of offenders; to develop an inter-sectoral national action plan and co-coordinating framework to promote, monitor and evaluate the effective implementation of the Act, to carry out public education, awareness and sensitization programmes or campaigns to promote the objects

of the Act, among other terms. These efforts are expected to lead to greater public awareness of the Act and enhance its use to survivors of sexual violence.

- (d) Other measures include introduction of stringent rules on registration and code of conduct on hoteliers to curb trafficking of women and rate of prostitution particularly at the coast Province

**Question 23- Please indicate the impact of measures taken to prevent and eliminate discriminatory customary practices such as “wife inheritance” and ritual “cleansing” of widows (for example, ensuring equal rights of women in marriage and divorce, mandatory training of police, prosecutors and judges on the criminal nature of such acts, assistance and shelters for victims, and awareness-raising campaigns).**

88. An example of the POLICY Project-Kenya (funded by USAID and implemented by the Futures Group International) and Kenya National Commission on Human Rights (KNCHR) (funded by the Governance Justice Law and Order Sector reform program) will be used to respond to this issue. Quoting from the PROJECT documents, it was inspired by the realization of a continuing trend of violation of women’s (especially, but by no means limited to widows) right to property ownership and inheritance rights and the urgency of the problem in the face of HIV/AIDS pandemic.

89. The partners in the PROJECT recognized that the cultural structure is the main governance structure in the lives of almost all communities in Kenya. They therefore, elected to dialogue with elders to secure the rights of women. It was decided to initiate the project, in the first phase, within the Luo Community, where the Luo Council of Elders mechanism already exists. The work in Nyanza was done in partnership with the Jaramogi Oginga Odinga Foundation (JOOF). In the second phase, it is hoped that the experience on the project in Luo Nyanza shall serve as a reference point for similar initiatives in other communities within the country.

90. The Project - conducted through a series of consultations, capacity building workshops has borne results and revealed important lessons. In the first year of the project, more than 20 widows were reinstated back to their homes as a result of interventions by elders. Its primary objective of exploring opportunities for Strengthening women’s rights to own and inherit property were largely fulfilled by the recommendations, observations and reports of Success stories that have come from the workshops. This would ultimately have the result of stabilizing and improving the country’s economy, reducing social tensions and improving community support systems for vulnerable members. Through the cultural structures, a number of elders have played a significant role in assisting displaced widows and orphans. Several Non Governmental Organizations (NGOS), Faith Based Organizations (FBOS) and Community Based Organizations (CBOs) have also been instrumental in educating and assisting the widows and orphans. Some, such as the Akado Women’s group have a regular feeding programme for the orphans. The Orongo Widows and Orphans Group has provided a shelter to some displaced women.

91. The Provincial Administration and the legal structures have also played their part.

92. Through these interventions, there is evidence that several women have been empowered and now know their rights to property ownership. Others have gained through reduced vulnerability, as they feel there are people out there, looking out for their interest. A number have gained access to HIV/AIDS interventions.

93. It is anticipated that the ripple effect of these interventions, especially if well coordinated and harmonized, will be far reaching in the years to come. These Successes are demonstrated through the stories contained in the PROJECT report.

**Question 24- Please provide information on measures taken to combat female genital mutilation, such as ensuring the strict application of the law prohibiting it, promoting girls' education and women's economic empowerment, and conducting awareness-raising campaigns at the community level to discourage this culturally rooted practice (para.77).**

94. Since the enactment of the Children's Act, 2001, law Enforcement officers in particular the provincial administrators such as well as children officers have been trained to ensure arrests of perpetrators of FGM and early/Forced marriages. However, the challenge is that majority of the perpetrators are parents of the children and breadwinners of families and their arrest and imprisonment raises several other social implications detrimental to a wider family. Currently there is a study being undertaken to determine effectiveness of the law.

95. The Ministry of Gender, Sports, Culture and Social Services is the focal point for all FGM activities in the country. Through the efforts of the Ministry, a National Committee for the abandonment of FGM and a secretariat has been established as an advisory body for FGM programming. Among the key activities include the formulation of a National Action Plan on the Eradication of FGM (2008-2012), national survey on FGM that has been conducted to inform future activities on the practice.

96. The government is closely working with NGOs, Community Based Organizations (CBO's) and Faith Based Organizations (FBO's) which are implementing alternative rite of passage (ARP) ceremonies, which instill the life skills to the girls without them undergoing the cut. Alternative rituals include Education of the girls by the community elders and Public Health educators in retreat or seclusion for several days. During the ceremonies the girls receive talks on sexuality, HIV/AIDS, sexually transmitted infections and boy-girl relationships while the emphasis is on the cut as a harmful cultural practice. They are also encouraged to follow other positive cultural practices. Some promising approaches on FGM mainly Alternative Rites of Passage and Intergenerational Dialogue have been reviewed with a view of finding out if these interventions can be replicated elsewhere.

97. The biggest challenge to the alternative rites approach has been that some of the girls who graduate through the rite are secretly forced to undergo FGM by family members or the community on grounds of belief in religious sects, FGM as a rite of passage to womanhood, forceful FGM by outlawed groups, maternal duty in belief that they are acting in their daughter's best interests, particularly with regard to her marriage prospects, parents resorting to olden days belief that FGM would control the sexuality of young teenage girls and allow them complete school a

challenge in parenthood, which reasons also cause the resurgence of the practice even in communities thought to have stopped example some parts of Central Province.

98. The government's effort to put in place legal framework to curb the practice is met with the challenge that majority of the perpetrators are parents who are the bread winners to families and imprisoning them raises more social problems to the wider family. It has emerged that the elderly people are not please with idea of abandoning al all-time culture that they see as preserving the integrity of women. They see the anti-FGM campaign as an idea being imposed on their community by other people with a different kind of thinking. In this regard, it has been seen that to effectively eliminate FGM, the primary target should be the young parents, youth and young children who are willing to learn, eager to know and able to adopt to change easily.

99. The strategy includes involving communities in finding lasting solutions. In some districts Christianity has led in the decline of FMG. Islamic leaders through the chairman of supreme council of Kenya Muslims have also come out in public to denounce the practice as being associated with Islam; it is contrary to Koran teachings. Advocacy/media coverage vividly brings to the Kenyan public the plight of omen and girls who have undergone FGM as a strategy to eliminate the practice.

100. Role of high ranking Public officials: A few Members of Parliament have come out strongly to condemn FGM and Early/Forced marriages especially female Members of Parliament most of whom who also happen to come from the constituencies where the practice is rampant and who engaged in lobbying parliament to pass stringent laws against the practices through the Sexual Offences Act to protect women above the age of 18 years who are not covered under the Children Act.

101. Campaigns against FGM have been intensified by targeting parliamentarians and various committees and sensitizing them on FGM laws with a section of Members of Parliament publicly stating of their unwavering commitment to see that the practice is completely wiped out in their districts.

102. Provincial, District administrators, Social Services officer employed by the government and local chiefs have been instrumental in fighting FGM and Early marriages. They are also facilitators of community awareness campaigns and trainings.

**Question 25- Given that article 10, paragraph 2, of the Covenant protects a fundamental right, please indicate any obstacles that may prevent the State party from withdrawing its reservation to article 10, paragraph 2, and whether the State party intends to withdraw it in the near future.**

103. It should be reiterated that the Kenya Government recognizes and still endorses the principles as laid down in paragraph 2 of article 10 of the Covenant. Although substantial progress has been made, the circumstances still obtaining in Kenya do not render necessary or expedient the

imposition of those principles through legislation. However, should these circumstances change, Kenya would have no difficulties in withdrawing its reservation to paragraph 2. This is demonstrated by the fact that in our new constitutional proposals, the recognition of social, economic and cultural rights has never been a controversial issue.

**Question 26- Please describe the impact of measures taken to protect children against all forms of exploitation, in particular child labour which is likely to be hazardous or harmful to their health, education and development, including exploitative work in the agriculture sector (para.153).**

104. Out of the total population of Kenya, children number 17,584,473, 84.5% of the children live in rural areas whereas 15.5% live in urban areas. There are many children who actually live under difficult circumstances and they include.

- (a) Children who live and work on the street
- (b) Those who are abandoned and neglected
- (c) Those who are abused exploited and subjected to child Labour.

105. There is consensus from literature and research that child Labour entails a situation of a child working for more than 4-6 hours, is unsupervised by a responsible adult and exposes the child to hazards or conditions that endanger the physical, mental, moral and his/her social well being.

106. A forthcoming analytical report (KNBS, 2007) drawing from the Kenya Integrated Household Budget Survey (KIHBS) 2005/2006 will provide the most recent upto date information on child labour. A preliminary draft of this report shows a decrease in children in child labour from 1.9 million in 1999 to 951,273 in 2005/2006 when the KIHBS was conducted.

### **Interventions to Combat Child Labour in Kenya**

107. From a recent documentation of success in child Labour work (Onyango, 2003 and ILO 2006 the following are some of the major achievements against child Labour in Kenya.

- (a) The Government of Kenya has supported numerous initiatives to educate children under the free primary education
- (b) The Children Act 2001 protects the child from child labour
- (c) The Sexual Offences Act
- (d) As early as 1979, Kenya ratified ILO Convention 138 on the minimum age for admission into employment

- (e) Kenya has ratified ILO Convention 182 on the worst Forms of Child Labour in 2001 and has since then drafted a Child Labour Policy
- (f) Kenya has domesticated the above stated international instruments through the Children Act, Orphans and Vulnerable children (OVC) Policy and NPA, Free Primary Education, draft National Policy on Child Labour 2002, List of Hazards 2008 and the revised National Action Plan on Elimination of Child Labour 2008
- (g) Many communities have been sensitized on child labour and its dangers. Pupils, workers, police, Provincial Administration, Judiciary, Labour inspectors, community workers from NGOs and CBOs
- (h) Monitoring groups have been established in more than 11 districts to be filing reports on child labour cases
- (i) District Child Labour Committees (DCLC's), which work as a sub-committee of Area Advisory Committees (AAC's) at District level. The DCLC's are used to eradicate child labour
- (j) Through community action in reporting cases, over 50,000 children have been withdrawn from exploitative and hazardous working conditions and returned to school or for vocational training
- (k) Income generating activities have been used to keep children in school and prevent them from going into child labour
- (l) A substantial number of withdrawn children have been provided with health services in hospitals e.g. Women's Hospital, Kenyatta National Hospital, Provincial, District, Sub-district Hospitals and Health facilities
- (m) Kenya has ratified the United Nations Convention on the Rights of the Child being the 20<sup>th</sup> member state to do so.

### **Impact of Measures**

108. In 1999, there were 1.9 million children in child labour and by 2005/2006 when KIHBS was conducted there was a drop to 951,257 children.

109. Programmes that have been undertaken on prevention and withdrawal from child Labour. Between 2003 and 2006 indicate that a total of 14,172 children were withdrawn, 6695 boys and 7477 girls.

110. Besides the ILO programmes, other actors such as World Vision and NCKK (National Council of Churches of Kenya) have been undertaking child labour elimination programmes. The

civil societies have focused on child welfare rights programmes touching on child labour. UNICEF, PLAN, End Child Prostitution in Kenya (ECPIK), African Network on Protection and Prevention Against Child Abuse and Neglect (ANPPCAN), Child Welfare Society of Kenya (CWSK), among others have been pivotal. The universities i.e. Nairobi and Kenyatta have been undertaking important research in this area. It is wise to note that fight against child labour is far from complete because of the following challenges:-

- (a) Lack of reliable data on child labour in Kenya
- (b) There is no child labour policy in place (it is in draft form)
- (c) Child labour is not mainstreamed in different training and education programmes at university, police, teacher education, administrators, law school, medical school, judiciary and other key places
- (d) Lack of research on the most notable hidden forms of child labour and this requires urgent attention in research.

**Question 27- Please provide detailed information on the measures taken to combat sexual exploitation of children, in particular of street children, including information on the number of children engaged in prostitution and on the number of police and social welfare officers specifically tasked to prevent and rehabilitate the victims of such exploitation.**

- (a) Enactment of the Sexual Offences Act, 2006
- (b) Children Act, 2001
- (c) Rehabilitation of victims of sexual violence at Nairobi Women Hospital, Kenyatta National Hospital other provincial, District Hospitals and Health facilities
- (d) Advocacy/awareness creation campaigns e.g. the campaign against violence on children 2006
- (e) District work plans to fight commercial sex tourism (CST) and commercial sexual exploitation of children (CSEC)
- (f) Orphans and vulnerable children (OVC) cash transfer Programme in 37 districts to assist the orphans/vulnerable
- (g) Penal code
- (h) Employment Act, 2007

- (i) Awareness creation on Children Rights to Chiefs, Police, Magistrates, children and Area Advisory councils Child Protection Units have been established in police stations in the country (14)
- (j) Establishment of street families rehabilitation Trust Fund under Local Government ministry
- (k) Hotels are encouraged to sign the code of conduct
- (l) Teachers Service Commission (TSC) code of regulations
- (m) Rescue centre is being built at Malindi to cater for victims of Sexual exploitation (UNICEF)

### **Number of Children Engaged In Prostitution**

111. A survey conducted by GOK/UNICEF in 2005/2006 in coast indicated that there were between 2,000, 3,000 children involved in commercial sex. Generally the figures range between 10,000 to 30, 000 countrywide.

### **Social Welfare Staff**

112. The Children Department has 360 children officers from Headquarters, Provincial and at District level.

113. As regards to social welfare officers working with street children, 100 social workers have been trained in various stages of implementing rehabilitation initiatives in Local Authorities.

**Question 28- Please indicate whether there is legislation specifically prohibiting sexual exploitation, forced labour and trafficking in persons and provide updated statistical data on the reported number of persons trafficked to, from, and within the State party for purposes of sexual exploitation and forced labour.**

- (a) The Children's Act, 2001
- (b) Sexual Offences Act, 2006
- (c) Penal code Cap 63
- (d) There is counter-Trafficking in Persons Bill 2007 which is pending finalization at the Attorney Generals offices.

- (e) There is formed a National Steering Committee on Anti-Trafficking in Persons (TIP) which was previously chaired by the Permanent Secretary in the Ministry of Vice-President and Ministry of Home Affairs whose members are drawn from various departments, ministries and NGOs.
- (f) The International Organization for Migration (IOM) has assisted the National Steering Committee on Anti Trafficking in person to draw a National Plan of action.
- (g) Data on number of persons trafficked to, from and within state party for purpose of sexual exploitation and forced labour is a big challenge. It is hoped that the current process to establish a Child Protection System and National Database on children will address the challenge.

#### **F. Article 11 – The right to an adequate standard of living**

**Question 29- Please provide more detailed information on the impact of programmes and policies aimed at combating poverty (such as the National Poverty Eradication Plan, the Economic Recovery Strategy, the Poverty Reduction Strategy Paper and the Medium Term Expenditure Framework), especially on female-headed households, individuals and families living in informal settlements, and refugees (para.85).**

114. Poverty is among the key development challenges that Kenya has been addressing through various programmes and policies. The majority of people living in absolute poverty in Kenya are found among the subsistence farmers, the illiterate, landless, female headed households, large households, widows, polygamous households, pastoralists in drought prone areas, unskilled and semi-skilled casual labourers, informal sector workers and households with limited access to markets and social amenities.

115. The government has made remarkable progress towards poverty alleviation in the last one decade. National absolute poverty measured by an individual's consumption of both food and non-food items, declined from 52.3 per cent in 1997 to 45.9 per cent in 2006. Over the same period, overall poverty in rural and urban areas declined from 52.9 per cent and 49.2 per cent to 49.1 per cent and 33.7 per cent respectively. More gains were particularly realized in the reduction of hard-core poverty in rural areas. The percentage of those whose total income could meet minimum food requirements (hard core poor) declined from 34.8 per cent to 21.9 per cent in the same period. However, urban hardcore poverty increased marginally from 7.6 per cent in 1997 to 8.3 per cent in 2006. Compared to urban areas, rural areas still have much larger population that is poor (85 per cent).

116. During the same period, the rural Gini coefficient declined from 0.417 to 0.380, while the urban Gini coefficient rose from 0.426 to 0.447. The decline in the rural Gini coefficient shows that income disparities in the rural areas have on average gone down, while the disparities in the urban areas have increased.

**Question 30- Please explain the components of the basic basket of goods and the methodology used to determine the official national poverty line in the State party. Please indicate how the extent of poverty is monitored by the State party.**

117. Analysis of the *Basic Report on Well being in Kenya* (2007) was based on the Kenya Integrated Household Budget Survey (KIHBS), which was conducted in 2005-06. The report measures poverty using consumption as opposed to income as the indicator of well-being. Consumption is considered a better indicator of poverty measurement than income because consumption is not closely tied to short-term fluctuations in income, and is smoother and less variable than income. For example, incomes for rural households may fluctuate during the year, according to the harvest cycle, while income flows for urban households dependent on the informal sector may be erratic. This implies a potential difficulty for households in correctly recalling their income, in which case the information on income derived from the survey may be of low quality. The consumption measurement uses food consumption and non-food consumption components as detailed below.

**Food Consumption Component**

118. The food consumption aggregate includes four components, namely: i) food consumption derived from purchases; ii) consumption from own production; iii) own stock; and iv) gifts and other resources. The KIHBS 2005/06 collected over 276,000 observations of over 140 distinct food items that were reported to have been consumed by 13,158 households.

**Non-Food Consumption Component**

119. The poverty report also measured poverty using components of non-food consumption which included: i) about 80 regular non-food items during the past one month consisting of personal care, medical care, transport and communication; ii) 60 non-food items during the past one month comprising of domestic services, personal goods and recreation; and iii) 80 clothing items during the past one month.

**Methodology used to determine the official national poverty line**

120. Poverty lines are cutoff points separating the poor from the non-poor. They can be monetary (for example, a certain level of consumption) or non-monetary. The use of multiple lines can help in distinguishing among different levels of poverty.

121. The poverty lines in the poverty report for Kenya were calculated from the KIHBS data using Cost-of-Basic Needs (CBN) method. The CBN stipulates a consumption bundle deemed to be adequate for basic consumption needs and then estimate what this bundle costs in reference to prices.

## **The Food Poverty Line**

122. The food poverty line for Kenya is estimated as the cost of consuming 2250 kilocalories per adult equivalent per day. The food poverty lines in monthly adult equivalent terms were Kshs. 988 and Kshs. 1447 for rural and urban areas respectively. The rural and urban basic food bundles are determined using an iterative approach. The starting point is to calculate the average quantities of food items consumed by households in the middle quintile of the price adjusted (by median national prices) weighted (using sampling weights) rural and urban consumption per adult equivalent distributions.

## **Overall Poverty Line**

123. The rural and urban food poverty lines constitute the foundation on which to anchor the computation of the respective overall poverty lines. The rationale for this is the hierarchy of basic needs which begin with survival food needs and followed by basic non-food needs.

124. The starting point is to compute the mean value of total non-food expenditures consumed by households whose food expenditures fall within a one percent point interval around the food poverty line. The process is repeated ten times and at each stage the interval is increased by additional percentage points. The average of the mean total non-food expenditures from each stage provides a weighted non-parametric estimate of the value of the non-food component which is added to the food poverty line to compute the overall poverty line. This approach provides an upper bound to the overall poverty line and therefore insures against underestimating the incidence of poverty.

125. The *Basic Report on Well being in Kenya* (2007) estimates the overall poverty lines in monthly adult equivalent terms as Kshs. 1,562 and Kshs. 2,913 for rural and urban areas respectively.

## **How poverty is monitored by the State party**

126. Monitoring of poverty in the country is undertaken through periodic surveillance of poverty indicators. In the 1990s for instance, Kenya undertook three (3) Welfare Monitoring Surveys (WMSs) that it used to construct the poverty profiles in the country. The country also produced its first report on Poverty in 1998. This report highlighted the incidence and depth of poverty, poverty and social indicators in Kenya. The second report produced in 2000, also focused on the incidence and depth of poverty. The third and current poverty report (produced in 2007) focused on the well being in Kenya and was based on the Kenya Integrated Household Budget Survey (KIHBS) 2005/06.

127. Besides the poverty reports, the government has developed a monitoring framework, the National Integrated Monitoring and Evaluation System (NIMES), that is used to assess the effectiveness of public spending in achieving desired outcomes, based on some established inputs, outcomes and indicators.

**Question 31- Please provide information on the progress achieved in seeking an agreement between competing ethnic groups over water-sharing and access to pastures in the northern provinces of the State party.**

128. Most of the northern and north-eastern regions of Kenya are arid and semi-arid, lands (ASAL), aspects that lead to different types of conflicts among the communities living in those regions. These conflicts manifest themselves violently and non-violently. The causes of the conflicts are many and complex ranging from poverty, competition for scarce resources and identity based rivalries. The conflicts have caused damage to life, property and adversely impacted on economic development in the country.

129. In recognition of the negative impact of these conflicts, Kenya has initiated and implemented various conflict management initiatives, which have included:

- (a) The establishment and operationalisation of the National Steering Committee (NSC) on peace building and conflict management in 2002, as inter-agency forum to address issues of peace building and conflict transformation.
- (b) Development of a draft policy paper on peace building and conflict management through an all-inclusive process.
- (c) Streamlining and formalizing the operations of community-based institutions for peace in 20 Districts in ASAL areas through District Peace Committees (DPCs). The 20 Districts are: Wajir, Mandera, Ijara, Garissa, Tana River, Mwingi, Moyale, Samburu, Isiolo, Marsabit, Turkana, West Pokot, Marakwet, Baringo, Trans Mara, Kuria, Lamu, Gucha, Laikipia and Tharaka. Standard Guidelines and Terms of Reference for District Peace Committees were developed. Stakeholders harmonized the TORs for DPCs in June 2005 and reviewed them for validation in mid-2007. They have since been published and disseminated widely and are now applied by DPCs.
- (d) Encouragement and promotion of dialogue, including community civic dialogue and documentation of the outcomes/resolutions. Key examples of these are the Modogashe Declaration 2001 (for a number of communities in North-Eastern and Eastern Provinces); Garissa Declaration of 2005 (for a number of communities in North Eastern, Eastern and Rift Valley provinces), The Naivasha Peace Accord of September 2006 (for Pokot, East Baringo and Samburu communities); the Molo/Kuresoi Communities' Peace Agreement of December 2006, Marsabit/Moyale Peace Committees' Dialogue of November 2006, Pokot/Turkana peace meeting of April 2007, Orma' Wardei peace meeting of April 2007, among others.
- (e) Kenya encourages cross-border peace dialogue with her neighbours. Bilateral meetings are held especially between Kenya/Uganda and Kenya/Ethiopia through cross-border meetings. Through these arrangements, security related issues and other major issues of interest are discussed. At another level, Kenya has been supportive of cross-border projects that address the development needs of border communities. For instance, the

South Omo (Ethiopia)/Turkana (Kenya) initiative has enhanced dialogue and interaction between the Turkana and Nyangatom/Dessanach. This has gone a long way in reducing the conflict incidents along the Kenya/Ethiopia/Sudan axis. Kenya hosted a delegation of the Government of Ethiopia in August 2007. This was part of the exchange programmes in place on peace building and conflict management.

- (f) Implementation of the IGAD Conflict Early Warning and Response (CE WARN) Mechanism. NSC is the implementation unit for this IGAD initiative that focuses on clearly warning and response. This initiative came in place in 2002 with the signing of the CEWARN Protocol. There are Field Monitors reporting on the Kenyan side of the Karamoja cluster (i.e. Turkana North, Turkana South, Trans Nzoia East/West, Pokot North and West Pokot Districts), and Somali cluster (Garissa, Wajir, Mandera, Moyale, Marsabit, and Isiolo).
- (g) Resources are critical to conflict management and peace building. The Government's commitment came in the 2007/2008 budget, when a budget line was created for conflict management activities.

**Question 32- Please describe the concrete results of the following policies and programmes: the Land Resettlement Reform Programme, the Special Rural Development Programme, the Rural Works Programme, and the District Focus for Rural Development Strategy (para. 9).**

### **Special Rural Development Programme (SRDP)**

130. The SRDP was instituted in 1967 as an experimental effort at the sub-district level to conduct integrated development activities with substantial local contribution to planning and target setting. The fundamental logic of the SRDP was to try out and test programmes that might become a basis for a well conceived development thrust in rural areas. The SRDP had the following objectives:

- (a) To increase rural incomes and employment opportunities;
- (b) To develop methodologies for inducing self-generating rural development activities;
- (c) To improve capacity of civil servants operating at the rural level and;
- (d) To develop regional planning techniques appropriate to the Kenyan context.

### **Achievements of the programme**

- (a) Capacity for area coordinators was enhanced.
- (b) Promotion of participatory approach through involvement of field staff in planning projects.

- (c) Farmers' active participation through their village-based groups.

### **District Focus for Rural Development (DFRD)**

131. The DFRD strategy was launched on 1st July 1983. The strategy was the culmination of policies and measures that had been formulated since mid-1960s to decentralize the process of plan-making and plan implementation to the country's districts. The Strategy was based on the principle of a complementary relationship between ministries with their sector approach to development and the districts with their integrated approach to addressing local needs. The Strategy made districts the centres of development and introduced a bottom up approach to planning with the districts being given autonomy in setting their priorities. This was a major shift from the previous top-down strategy where ministries did the budgeting and planning for the districts.

132. The overall objective of the DFRD strategy is to provide a framework for enhancing coordination of development initiatives at the district level for improved public service performance and delivery. In particular, the strategy focuses on broadening and deepening the level of citizen engagement in district development and promoting greater equity and efficiency in the allocation of resources to reduce poverty across the board.

### **Achievements of the strategy**

- (a) Capacity for planning and coordination of District development initiatives was enhanced through posting of economists (District Development Officers)
- (b) Personnel were made available at district and local levels.
- (c) Sensitization of personnel involved through seminars/workshops.
- (d) Decision-making was institutionalized through DDCs and other development committees.
- (e) Many sectoral development projects have been implemented across the country.

**Question 33- In the light of the 2002 Water Act and the recent privatization of water services, please provide more detailed information on the measures taken to ensure affordable access to adequate water and sanitation and to reduce waiting times for collecting water, in particular in rural areas and in informal settlements such as Kibera/Nairobi (para. 96 et seq.).**

133. Kenya is classified as a "chronically water scarce" country with a limited natural endowment of fresh water of only 647 cubic meters per capita. This is projected to fall to 245 cubic meters per capita by the year 2025 well below the recommended minimum. The country therefore, suffers from water scarcity since the demand outstrips the stock of renewable freshwater. There are disparities in urban water access with informal settlements recording lower levels. Surface water resources

account for 86 percent while ground water accounts for 14 percent. Tran's boundary waters constitute 54 percent of water resources in the country.

134. The available water is often inadequate for industrial, commercial, domestic as well as livestock and wildlife use. This scarcity has intensified competition among various users and often results to conflicts. Involvement of local communities in the management of water resources through the formation of Water Resource Users Associations (WRUAs) has resulted in reduced illegal abstractions, reduced catchments encroachment, rehabilitation of catchment areas and river bank protection. A positive outcome has been observed in river Ewaso Nyiro North which is flowing up to 110 km as opposed to previous flow of 40 km, and the flow is for a longer period of time. (NB; Initiative are underway to resettle persons occupying water catmint areas e.g. the Mau Escarpment).

135. The government has implemented far reaching reforms in the water sector within the legal framework provided by the water Act 2002. Various water institutions have been established effectively separating the functions of policy formulation, service delivery and regulation of water supply and sanitation. In addition, a sector Wide Approach to planning has been initiated aimed at improving coordination of the sector.

**Some of the earmarked flagship projects in the water sector for the period 2008-2012 include:**

- (a) The rehabilitation and protection of indigenous forests in five (5) water towers; this project entails full rehabilitation of the five towers of Mau Escarpment, Mt. Kenya, Aberdare Ranges, Cherangani Hills and Mt. Elgon.
- (b) The promotion of sustainable management of forests to serve as water catchments areas, biodiversity conservation reservoirs, wildlife habitats and carbon sinks.
- (c) The introduction of high value tree species at farm level in order to contribute the targeted forest level of 4 percent in 2012. The initiative will lead to the introduction of commercial tree species in ASAL areas in order to control desertification and improve livelihoods.
- (d) Water harvesting and storage programme; water harvesting will particularly provide opportunities for ASAL communities to achieve food security. The Government intends to construct a 54 km inter basin water transfer canal in the Rahole area, connecting Tana River to Garrissa District, and development of high Grand falls multi purpose reservoir with a storage of 5.4 Billion cubic metres. The canal will also serve to tame river Tana in lower reaches and redistribute water resources to arid areas down stream.
- (e) Water Resource Information Management: The government intends to rehabilitate the hydro metrological network to reactivate 600 stations that are not functioning currently.

**Question 34- Please indicate the progress achieved by the State party in adopting guidelines and legislation strictly defining the circumstances and safeguards under which evictions must take place, in accordance with the Committee's general comment No. 7 (1997). Pending the adoption of such guidelines and legislation, please indicate whether a comprehensive resettlement plan has been adopted for persons forcibly evicted from informal settlements in Nairobi, forest areas, or elsewhere, or in the absence of such a plan, whether a moratorium has been imposed on forced evictions (para.132).**

136. The essence of 'informal' or 'spontaneous' or 'squatter' settlements is the absence of security of tenure and planning. Many Kenyans live as squatters, in slums and other squalid places. Squatters are found on public, community and private land. To deal with the difficulties experienced and caused by squatters and informal settlements, the National Land Policy recommends several measures to help safeguard the rights of both the informal settlers and the land owners. These include:-

- (a) Taking an inventory of genuine squatters and people who live in informal settlements;
- (b) Put in place appropriate mechanisms for the removal of squatters from unsuitable land and their resettlement;
- (c) Ensure that land subject to informal settlement is developed in an ordered and sustainable manner;
- (d) Facilitate the registration of squatter settlements found on public and community land for purposes of upgrading or development;
- (e) Develop, in consultation with affected communities, a slum upgrading and resettlement programme under specified flexible tenure systems;
- (f) Put in place measures to prevent further slum development on private land and open spaces;
- (g) Prohibit sale and/or transfer of land allocated to squatters and informal settlers; and
- (h) Put in place an appropriate legal framework for eviction based on internationally acceptable guidelines among

**Question 35- What mechanisms are in place to ensure that slum upgrading projects implemented between 2002 and 2007, such as the Kenyan Slum Upgrading Programme (KENSUP) for Kibera/Nairobi, give priority to the construction of social housing which is affordable and meets the expectations of inhabitants, that affected communities are effectively consulted and involved in the planning and implementation of such projects, and that inhabitants of informal settlements enjoy legal security of tenure (para.132)?**

137. The Ministry of housing has introduced a registration system of the residents of the areas which are being upgraded. Working through a Settlement Committee based in the area, the Ministry encourages the residents not to relocate to other informal settlements so that they benefit from the upgrading project. The Ministry has put in mechanisms to ensure that each resident will be allocated only one unit. The Ministry and the Settlement Committee consult on a regular basis to ensure that the residents take part in decisions on the developmental issues concerning them.

**Question 36- Please provide information on the measures taken to protect women from expulsion from marital lands and property in case of divorce or death of the husband, coercion into risky sexual behaviours by landlords, eviction or discrimination in case they have HIV/AIDS, and sexual violence, particularly in informal settlements and refugee camps where Kenya Police is reportedly absent.**

138. Whereas the Bill of Rights as stated in the Constitution is the framework for Social, Economic and Cultural policies, application and implementation of the values and principles proposed in the bill has not given women the equality, equity and freedom enjoyed by the male gender in relation to land access and ownership.

139. Gender issues and mainly women are found in several statutes. In line with the recommendations of Sessional Paper No. 5 of 2005 (which provides for gender mainstreaming in policy, planning and implementation of programmes) the Ministry of Lands established a gender desk to see to it that gender issues are mainstreamed in all programmes and work process.

140. Further to this, during the National Land Policy Formulation Process, gender, HIV and AIDS, refugees and Internally Displaced Persons were considered as cross cutting issues requiring special intervention.

141. The Constitution prohibits discrimination on the basis of sex. In practice, discrimination of women remains widespread even though women's full participation on the basis of equality in all spheres of society, including equal rights, opportunities, access and control of land and its resources are critical to the development of a country. In Kenya women account for just 5% of registered land holders nationally and yet they contribute over 80% of the agricultural labour force, 64% of subsistence farmers and produce approximately 60% of farm derived income.

142. The present land tenure systems tend to emphasize the extinguishing of customary land tenure system which provided some protection to women's access and use of land and replacing it with individual tenure systems and title deeds. Culture and customs continue to support registration and inheritance of land rights to males. The Islamic Law recognizes women's rights of inheritance but their share is usually smaller than that of a male relative. Social cultural factors limit women from rights enshrined in the Succession Act and land markets which are usually based on the principle of a 'willing buyer, willing seller do not favour women due to their lack of registration documents. Few women have land registered in their names and lack of financial resources restricts their entry into the land market.

143. There is conflict between constitutional and international provisions on gender equality vis-à-vis customary practices that discriminate against women in relation to land ownership and inheritance. Women are not sufficiently represented in institutions that deal with land. Their rights under communal ownership and group ranches are also not defined and this allows men to dispose of family land without consulting women.

144. Moreover International Conventions on women's rights relevant to women's land rights ratified by the Government of Kenya have not been translated into policies or laws.

145. To protect the rights of women, the Draft National Land Policy recommends that the Government exercises the following actions:-

- (a) Put in place appropriate legislation to ensure effective protection of women's rights to land and related resources;
- (b) Repeal existing laws and outlaw regulations customs and practices that discriminate against women in relation to land;
- (c) Enforce existing laws and establish a clear legislative framework to protect the rights of women in issues of inheritance to land and land-based resources;
- (d) Make provision for joint spousal registration and documentation of land rights, and for joint spousal consent to land disposals applicable for all forms of tenure;
- (e) Secure inheritance rights of unmarried daughters in line with the practices of the respective communities;
- (f) Facilitate public awareness campaigns on the need to write wills to protect dependants in the event of death;
- (g) Carry out public education campaigns to encourage the abandonment of cultural practices that bar women from inheriting family land; and
- (h) Ensure proportionate representation of women in institutions dealing with land at all levels.

### **Women and Matrimonial Property**

146. The existing laws and practices governing matrimonial property in Kenya discriminates against spouses whose contribution to the acquisition of such property is indirect and not capable of valuation in monetary terms.

147. Further, the courts have been inconsistent in determining what amounts to such contribution, with the result that some spouses have unfairly been denied of their rights to land.

148. To secure the rights of spouses to matrimonial property, the Draft National Land Policy recommends the following:-

- (a) Review of the succession, matrimonial property, and other related laws to ensure that they conform to the principle of equality between women and men;
- (b) Enactment of specific legislation governing division of matrimonial property to replace the Married Women's Property Act of 1882 of England;
- (c) Protection of the rights of widows, widowers and divorcees through the enactment of law on co-ownership of matrimonial property;
- (d) Putting in place of appropriate legal measures to ensure that men and women are entitled to equal rights to land and land-based resources during marriage, upon dissolution of marriage and after the death of the spouse ; and
- (e) Putting in place of mechanisms to curb selling and mortgaging of family land without involvement of the spouses.

#### **Impact of HIV/AIDS on Land Rights, Access, Ownership and use**

149. The HIV and AIDS pandemic has had a significant impact on economic productivity, specifically on utilization and production from land based resources. It has affected the most productive from land based resources. It has affected the most productive age bracket. The pandemic has thus raised the need to reorganize rural settlements with a view to rationalizing agricultural production systems. Further, it has adversely impacted on the land rights of widows and orphans, who are invariably disinherited of their family land whenever male house heads succumb to illnesses occasioned by the pandemic. Moreover traditions, customary laws and illiteracy reduce women and youths power to fight for their rights on family land.

150. The Draft National Land Policy thus recommends that the Government:

- (a) Puts in place mechanisms to protect the land rights of people living with HIV and AIDS and ensure that these rights are not unfairly expropriated by others to the detriment of such persons and their families;
- (b) Facilitate public awareness campaigns on the need to write wills to protect land rights of dependants in the event of death.

## **Refugees and Internally Displaced Persons**

### **Refugees**

151. Kenya hosts a large number of refugees as a result of the civil strife in neighbouring countries. Due to the unpredictable nature of refugee influxes, resources such as land, fuel wood, water and pasture are overstretched in already stressed environments. Widespread underdevelopment of infrastructure in the affected areas exacerbates the situation. The location of refugee camps in fragile eco-system causes systematic ecological degradation.

152. To address the refugee's issues, the Government intends to:-

- (a) Ensure that the establishment of refugee camps is subject to development planning and control;
- (b) Put in place a legislative and administrative framework for establishing, planning and managing refugee camps taking into account this Policy, the Environmental Management Coordination Act and other sectoral laws on natural resources;
- (c) Build the capacity of relevant ministries, communities and the private sector to appreciate and address land-related environmental concerns in refugee camps;
- (d) Involve host communities in setting up, planning and managing refugee camps; and
- (e) Ensure the provision of adequate resources for the conservation and rehabilitation of refugee camps.

### **Internally Displaced Persons**

153. A significant number of Kenyans have been displaced from their land as a result of tribal and land clashes. These people are currently hosted in camps for Internally Displaced Persons, roadside settlements, market centres and colonial villages established as community concentration centres. There is no legal, policy or institutional frameworks for dealing with the issues that arise from internal displacement and the Land Policy proposes that the Government:-

- (a) Undertakes an inventory of all genuine Internally Displaced Persons;
- (b) Identifies problems associated with the presence of Internally Displaced Persons such as additional land pressure and competition for land based resources;
- (c) Establishes legal, policy and institutional frameworks for dealing with the issues that arise from internal displacement; and
- (d) Resettles as appropriate all Internally Displaced Persons.

154. The Land Policy principles will be articulated during the review of the Country's Constitution and in the harmonization of current laws touching non women, refugees and vulnerable groups in the development of new statutes that will guide the administration and management of land once the land policy is approved.

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

**Question 37- Please provide information on the programmes and health policies in place to ensure access to adequate health services, goods and facilities, in particular at the community level, and provide statistical data on trained medical personnel, disaggregated by rural and urban areas, including deprived urban areas, and by disadvantaged or marginalized individuals and groups.**

155. The overall policy guidance for health in Kenya is provided through the Government of Kenya's Vision 2030 and the Kenya Health Policy Framework (KHPF, 1994 – 2010).

156. The Kenya Health Policy Framework of 1994 – 2010 which elaborates the overarching Health Policy imperatives for the country. These are:

- (a) Ensure equitable allocation of Government of Kenya resources to reduce disparities in health status;
- (b) Increase cost-effectiveness and efficiency of resource allocation and use;
- (c) Manage population growth;
- (d) Enhance the regulatory role of the government in health care provision;
- (e) Create an enabling environment for increased private sector and community involvement in service provision and financing; and
- (f) Increase and diversify per capita financial flows to the health sector.

157. At the strategic level, Medium Term Strategies are elaborated to elaborate strategic objectives for focus in the Medium term. For the Vision 2030, the current medium term strategy is the Strategy for National Transformation (SNT, 2008-2012) that has been elaborated taking into consideration the implications of the 2008 post election events, and National Accord and Reconciliation Act. For the Health Sector, it is the 2<sup>nd</sup> National Health Sector Strategic Plan (NHSSP II, 2005 – 2010). The NHSSP II aims to reverse the downward trends in health indicators seen in the prior years, through:

- (a) increasing equitable access to health services;

- (b) improving service quality and responsiveness;
- (c) improving efficiency and effectiveness;
- (d) fostering partnership; and
- (e) improving financing of the health sector

158. The health sector jointly reviewed progress towards achievement of NHSSP II objectives at its Mid Term in November 2007. It was clear that health inequalities in achievement of health outputs and outcomes still existed between urban and rural areas as well as at regional and district levels. These inequalities are related to several factors which include education level, per capita income. It was recognized that the goal of the health sector of reversing the declining health status of Kenyans can only be achieved by involving the local population in priority setting and in allocation of resources. This involves a fundamental change in existing governance structures at all levels but with special emphasis on primary health structures to allow the community ownership to prosper.

159. The sector, therefore, identified the key priorities for scaling-up implementation during the period 2007-2010. These priorities were elaborated in the 'Roadmap for acceleration of NHSSP II objectives'.

160. Since March 2008, the health sector stewardship function of the Government of Kenya is being managed through 2 Ministries; the Ministry of Medical Services (MOMS), and the Ministry of Public Health and Sanitation (MOPS). This is in pursuit of the National Accord and Reconciliation Act. Their respective roles and functions were stipulated in the presidential circular No.1/2008

**Question 38- Please provide more detailed information on the health protection available to persons with HIV/AIDS, including information on achievements and plans to provide equal access to adequate and affordable treatment and medication for these persons.**

161. HIV/AIDS poses a biggest challenge in development of Kenyan growth in terms of economy, health, agriculture and even life expectancy.

162. Ministry of Health has established NASCOP as technical arm to deal with HIV AIDS issues. NASCOP care and treatment program is mandated to provide quality services to people living with HIV AIDS (PLWHA). The ART team has put the following measures to assure quality care and treatment to these PLWHAs.

### **Achievements**

- (i) 500 comprehensive care centres are established to offer HIV care for adults and out of these 300 sites are also offering Pediatric services.

- (ii) 547,000 in HIV care and 219,000 patients receiving FREE ART, 12% of these patients are children.
- (iii) Free Diflucan for treatment and prophylaxis for Cryptococcus meningitis and oesophageal candidiasis through Pfizer
- (iv) Provision of certain Opportunistic Infection (OI) drugs through essential drugs from KEMSA
- (v) Free CD 4 testing to all who need it when reagents are available
- (vi) Training of health care providers to provide appropriate services-Adult ART, Paediatric ART, PMTCT, DTC/PITC, TB/HIV training, IMAI, psychosocial training, adherence trainings etc
- (vii) Development of manuals and guidelines on management of HIV
- (viii) Decentralization of services with many satellite sites
- (ix) Establishment of public-private partnership
- (x) Development of HIV Drug resistance country plan to monitor the ART program
- (xi) Reproductive Health HIV integration in CCC

### **Plans**

- (i) To sustain all the achievements with collaboration with development partners and GOK
- (ii) Roll out decentralization guidelines to streamline the process
- (iii) Roll out mentorship program to achieve quality services at level 4,5 and 6 with decentralization
- (iv) Roll out HIV DR country plan to sustain the gains made through ART
- (v) Research on certain HIV related programs
- (vi) Regular updates and recommendations on patient management in HIV management
- (vii) Provision of necessary equipments for laboratory monitoring of PLWHA with NPHL and partners

(viii) Regular projections on ARVs to meet the need to achieve “Universal Access”

### **Prisons VCT sites**

163. Nationally we have 10 prison VCT sites registered by NASCOP.

164. The growth of the sites is as follows:-

- 2003 - 3 sites
- 2005 - 2 sites
- 2006 - 1 site
- 2007 - 1 site
- 2008 - 3 sites - Thus making a total of 10 sites

165. We receive District reports at National level and no facility reports and so we lack data for these specific VCT sites.

**Question 39- Please provide information on the impact of measures taken to reduce the high maternal mortality rate in the State party, and to eliminate discrimination against poor women, older women and women with HIV/AIDS in access to maternal health care and to improve the quality of maternal health care (para.137).**

166. Maternal and neonatal morbidity and mortality levels in Kenya have remained unacceptably high. Maternal mortality ratios have remained at over 400 per 100,000 live births since 1998.

167. All pregnant women need to have access to skilled care throughout pregnancy, delivery, postpartum, and postnatal periods. However, the KDHS-2003 showed that only 42% of births in Kenya were attended to by a health professional, a figure that varied regionally and by economic status. Skilled attendance implies access to appropriately trained health providers whether in a health facility or through domiciliary care, and having access to a rapid means of referral in case of emergency. This implies that the TBA is not a provider of skilled care, and calls for strategies towards assuring access by all pregnant women to adequately trained providers in all areas of Kenya. However, the Kenya Service Provision Assessment (KSPA-2004) Survey revealed considerable weaknesses in the health system, including staff shortages, unmet need for training, inadequate health facilities, poor infrastructure and support systems that affect access to and quality of services.

168. To reduce maternal, perinatal and neonatal morbidity and mortality in Kenya, the Safe Motherhood component of the Reproductive health Programme will:

- (a) Ensure that all women, including adolescents/youth have access to Reproductive health information, counselling and services for the prevention of unwanted pregnancy;
- (b) Ensure that all pregnant women including the poor and 'hard-to-reach', have access to skilled care throughout pregnancy, delivery, postpartum, postnatal periods and care of the newborn; The TBA's are not recognized as providers of skilled care;
- (c) All barriers, geographic, socio-cultural, economic, legal or regulatory, that impede access to skilled care for poor and 'hard-to-reach' women will be addressed, including promotion of community midwifery services, and establishment of maternity shelters, as appropriate;
- (d) The capacity of the health system at all levels will be strengthened for efficient and effective delivery of RH services;
- (e) The capacity of CORPs including TBAs will be strengthened to enable them play designated roles such as promotion of birth-preparedness, early identification and referrals of complications, post natal care and registration of births;
- (f) Review of all maternal deaths and perinatal deaths and provide notification on maternal deaths.

169. To contribute to the reduction of HIV/AIDS burden and improvement of RH status of the infected and affected, the Reproductive Health Programme will:

- (a) Ensure integration of HIV/AIDS information and services into RH services at all levels of health care, including integration of HIV counseling and testing as part of a comprehensive antenatal package of care;
- (b) Ensure adequate capacity at all levels for the provision of integrated quality RH services in the context of HIV/AIDS.

**Question 40- Please indicate whether the State party intends to decriminalize other cases where an abortion, which is currently only permitted to save the life of a pregnant woman, might be indicated, with a view to reducing the high number of unsafe clandestine abortions. What measures are being taken to ensure post-abortion care without risk of criminal sanctions and to promote access to contraceptives and sexual and reproductive health services and education (para.76)?**

170. To reduce the unmet need for family planning, unplanned births, and regional and socio-economic disparities in CPR, the Family Planning Programme will:

- (a) Create sustained demand for family planning and guarantee contraceptive commodities security.
- (b) Ensure involvement of males in family planning programmes.
- (c) Promote participation of communities and the private sector in provision and financing of services.
- (d) Ensure strengthened RH service delivery systems at all levels to improve efficiency, quality and integration of FP and HIV/AIDS services.

171. To improve the sexual and reproductive health of Kenya's adolescents and youth the Reproductive Health Programme will:

- (a) Ensure that adolescent and youth have full access to sexual and reproductive health information and services;
- (b) That the diverse needs of adolescents and youth especially the vulnerable and hard to reach are met;
- (c) Ensure quality and comprehensive youth friendly RH services.
- (d) Promote multi-sectoral approach to adolescent sexual and reproductive health needs.

172. To promote gender equity and equality in decision making in matters of reproductive health and to contribute to the elimination of harmful practices within a multi-sectoral and legal frameworks, the Reproductive Health Programme will:

- (a) Ensure access to quality treatment and rehabilitative reproductive health services for those affected by harmful practices and gender-based violence;
- (b) Promote male involvement in the RH programmes including provision of male friendly services;
- (c) Promote empowerment of women in RH decision making;
- (d) Promote participation of household and communities in addressing harmful practices and gender balance in RH.

**Question 41- Please indicate the impact of measures taken to reduce the high infant and under-five mortality rates, especially during the period 2002-2007.**

**(Ref: Kenya Demographic & Health Survey 2003 and Lancet Child Survival series 2003)**

**(a) Child mortality**

- Infant mortality rate 77/1000 live births
- Under-five mortality rate 115/1000 live births

173. Neonatal mortality rate (NMR) was estimated at 33 per 1,000 live births in KDHS-2003 (28 per 1,000 live births in KDHS-1998), while Perinatal Mortality Rate (PMR) was estimated at 40 in 2003 and 45 per 1,000 live births in 1998. The majority of neonatal deaths are due to infection, birth asphyxia, birth injuries, complications of prematurity and low birth weight, and birth defects.

174. There are wide disparities across the country and within provinces. According to the KDHS, there was a huge difference in under-five mortality rates across the country from 54 per 1,000 live births in Central province to 206 per 1,000 in Nyanza province and 163 per 1,000 in North- Eastern Province (NEP). Children living in slums had a higher mortality rate compared to rural children, (150.6/1000 vs. 113/1000). These figures mean that 1 in every 14 babies born in Kenya will die before their first birthday and about 1 in 9 before their fifth birthday. Table 1 shows what these figures translate to in absolute numbers of child deaths.

**Table 1: National and provincial child mortality rates (KDHS 2003) and absolute number of deaths (based on 2005 population projections)**

Child mortality rates and absolute numbers- provincial differences							
		Rates per 1000			Absolute figures		
Provinces/ Kenya	Total Live births	NNM	IMR	U5MR	NNM	IMR	U5MR
<b>Kenya</b>	<b>1374195</b>	<b>33</b>	<b>77</b>	<b>115</b>	<b>45348</b>	<b>105813</b>	<b>158032</b>
NEP	36572	50	91	163	1829	3328	5961
Central	126143	27	44	54	3406	5550	6812
Nairobi	104827	32	67	95	3354	7023	9959
Coast	123040	45	78	116	5537	9597	14273
Eastern	200645	32	56	84	6421	11236	16854
Rift Valley	353628	37	61	77	13084	21571	27229
Western	202320	25	80	144	5058	16186	29134
Nyanza	227020	27	133	206	6130	30194	46766

**(b) Childhood illness**

**(i) Acute respiratory tract infections**

175. 18% of under-fives had an episode of acute respiratory tract infection in the two weeks preceding the survey. **Acute Respiratory Infections (ARI)** is the second highest contributor to the burden of diseases in Kenya with a high prevalence in children aged six to 11 months of age (2003 KDHS). It is the leading cause of childhood morbidity in areas with low prevalence of malaria. ARI prevalence is slightly higher in rural areas (19%) compared to urban areas, (16%). There are also provincial variations with Western Province having the highest levels (30%) and NEP the lowest levels (10%) -2003 KDHS.

**(ii) Diarrhea episodes:**

176. 16 percent of under-fives had an episode of diarrhea in the two weeks preceding the survey. **Diarrhea** - The prevalence of diarrhea is 16% in Kenya and contributes to almost 20% of the under five mortality.

**(iii) Malaria**

177. **Malaria** is a major cause of morbidity and mortality in the under fives responsible for 34,000 deaths per year. It accounts for 30% of all new outpatient consultations and has case fatality rates that range from 3.5 per cent to 8.5 per cent. It causes anemia in 16,000 pregnant women and low birth weight in close to 25,000 mothers.

178. Achievements .There has been a reduction in child deaths down by 44% in four sentinel malaria endemic districts and an increase in the national net coverage from 4% in 2003 to 52% in 2006.

**(iv) Nutritional status of children**

179. During the survey, the prevalence of malnutrition among under-fives was as follows;

- **Stunting** (Height for age): 31%
- **Wasting** (Weight for Height): 5%
- **Underweight** (Weight for age): 19%

**Question 42- What concrete measures has the State party taken during the period 2002-2007 to ensure adequate occupancy levels and medical treatment, access to adequate food and water, and the availability of voluntary testing and medical counselling services for prisoners, with a view to reducing the number of deaths, as well as the high incidence of HIV/AIDS and other infectious diseases among the prison population?**

## **Background**

180. During the period 2002 to 2006, the health services unit was run directly by the Ministry of Health through the respective medical officers of Health. In 2006, the Government established the Directorate of Health within the prisons services to coordinate the health services.

### **Access to Medical Treatment**

181. The Ministry of Health has over 50 clinics inside prison setting (out of 96 prisons) manned by staff from the Ministry. They have been offering:-

- (a) Curative Services: - Treatment of minor ailments and referring more complicated cases to Ministry of Health facilities.
- (b) Promotive and Preventive Services:
- (c) Health education
- (d) Vaccination of mothers, babies and inmates.
- (e) Inspection of prisoners' food, accommodation and making recommendations to prisons' authorities.

182. Since the formation of the Directorate, the Kenya Prisons Health service has led to;

#### **(a) Improved healthcare to patients by:-**

- (a) Renovating and equipping four (4) hospitals within the prisons. These are Kodiaga, Shimo La Tewa, Naivasha and Kamiti.
- (b) Renovation of seventeen (17) health centres and dispensaries.
- (c) Training of health personnel.
- (d) Ensuring adequate supplies to health facilities from KEMSA and Ministry of Home Affairs.
- (e) Regular supervisory visits by the Director and the team.

183. The above has resulted to:

- (i) Reduction of referral cases by 66%.

(ii) Reduction of inmates' mortality by 38% and prison staff by 30%.

(iii) Savings from transporting and escorting patients from prisons to hospitals outside prison.

**(b) Improved Prison conditions by:-**

184. Posting public health officers and technicians to all 93 prisons in Kenya, who were able to ensure:-

- (a) Food handlers were examined and certified to handle food.
- (b) Cooking is done in healthy environment; ensuring sanitation of kitchen is acceptable.
- (c) Waste disposal is done in acceptable manner.
- (d) Fumigation and spraying of prison wards and cells.

185. Although a lot of ground has been covered here especially the drop of malaria and diarrhoea cases seen some work need to be done especially in the area of:-

- (a) **Disposal of waste:** This is because 40% of all prisons in Kenya still use bucket latrines, including women prisons. There is urgent need to get rid of this primitive and hazardous way of waste disposal.
- (b) **Provision of water:** There has been marked improvement in that, in the last three (3) years, the government has sunk six (6) boreholes, harvested rain and river waters in five (5) prisons but there is room for improvement especially in areas where the water authorities tend to disconnect water.

**HIV/AIDS/TB Services**

186. The Kenya Prisons Service has established an Aids Control Unit (ACU) which has been running services since 2004. Between 2004 to 2006, the ACU has been running VCT among prisoners and the prison staff and had managed with development partners to test about 18,000 inmates. From 2006 to 2007 the services have improved through:-

- (a) Establishing 21 VCT centres within the prison setting.
- (b) Regular mobile VCT.
- (c) Training and deployment of over 100 VCT counselors.

- (d) Establishing comprehensive care Centres in four (4) prisons namely; Kodiaga, Kamiti, Shimo la Tewa and Naivasha. Over 800 HIV inmates have been put on treatment.
- (e) Establishing TB diagnostic laboratories in eight (8) prisons.
- (f) Training health workers and sensitizing prison officers on TB.
- (g) Sensitizing staff and health workers on drug abuse.
- (h) Incorporating HIV/AIDS training to new recruits curriculum.
- (i) Research work on HIV/AIDS. Two studies have been completed and two are in progress.

187. With the above, we have managed to:-

- (a) Conduct VCT on over 50,000 inmates and staff.
- (b) Establish the prevalence and risk factors of HIV/AIDS in prison setting.
- (c) Put over 800 patients of HIV/AIDS on treatment.
- (d) Put over 600 patients on TB treatment.

188. Generally, the prison conditions in terms of health indicators like; properly cooked food, provision of clean water, has improved, but this has been negated by overcrowding.

189. The health of prisoners going by the morbidity and mortality rate has shown improvement. On HIV/AIDS and TB, although some work has been done, a lot needs to be done to cover all prisons.

**Question 43- Please provide detailed information on the availability and types of mental health services, as well as on the number of psychiatric patients who are voluntarily and involuntarily institutionalized.**

#### **Promotive and Preventive Mental Health Services**

190. These are services which are available at the community level. They include mental health talks in schools, churches and public barazas which are carried out by general health workers and community health workers. They include domiciliary visit to known patients at their homes and individual counseling as well as family and group therapy.

#### **Curative and Rehabilitative Mental Health Services**

##### **Outpatients:**

191. These services are available at clinic, dispensary, health centre as well as hospitals. The services are offered by general health care providers in filter clinics as well as specific outpatient clinics. However, specialized clinics have been established in most hospitals to treat those with severe mental illnesses. These clinics are held on regular bases and are run by Psychiatrists and Psychiatric Nurses within outpatient departments of the hospitals.

#### **Inpatients:**

192. Patients with severe mental illnesses may from time to time require admission for inpatient treatment.

193. Such patients are admitted in psychiatric wards and where there are no psychiatric wards, they are admitted in the general wards as per Mental Health Act Cap.248 of the Laws of Kenya.

#### **Psychiatric Patients:**

194. Although majority of the patients are admitted involuntarily under section 14 of the Kenya Mental Health Act Cap.248 and under the Criminal Procedure Code (CPC) Cap 75 of the Laws of Kenya, most of them do not stay and are discharged as soon as they are well enough to avoid institutionalization.

195. Mathari Hospital has a bed capacity of 750 beds. At any given time, the number of patients admitted as inpatient is 500-600 range. Out of these about 250 are mentally-disordered offenders in the Maximum Security Unit under the Criminal Justice System awaiting trial (pre-sentence), committed for treatment or committed under President's pleasure. All the patients are reviewed regularly and recommended for discharge to the respective advisory board or court. The other hospitals are 14 General Hospital with Psychiatric Units with bed capacity of 22 beds and bed occupancy of 50 averages.

### **H. Articles 13 and 14 – The right to education**

**Question 44- Please indicate why the State party has reduced the budget for primary education in 2006, and provide detailed information on the budgetary allocations for the construction of new classrooms and schools, as well as on the number of qualified teachers, including women, trained and recruited in 2006 and 2007, so as to ensure access to primary and secondary education across the State party, including in rural and deprived urban areas, in accordance with the Committee's general comment No. 13 (1999) (paras.162-163)**

196. One of the key Government's development agenda is poverty reduction through development of human capital. The Ministry of Education (MOE) plays a critical role towards the realization of this goal through the formulation of policies, strategies and programmes that ensure access to quality education and training at various levels. To support the implementation of the

programmes, the Government allocates budgetary resources to the MOE for both recurrent and development expenditures

197. MOE receives the largest share of Kenya Government's financial resources. The percentage of total Government spending on education (both recurrent and development) has been 26.13 per cent on average over the last five years (with a record of 27.43 per cent in 2003/04 FY reducing to 23.55 per cent in 2006/07 before increasing to 27.16 in 2007/08). This reflects the Government's commitment to ensuring provision of adequate grants for Free Primary Education (FPE) and Free Day Secondary Education (FDSE) in 2007/08. In absolute terms the expenditure has steadily increased from Kshs. 72.29 billion in 2003/04 to Kshs. 114.36 billion in 2007/08. Apart from the Free Primary Education funding, this relatively high investment in education is largely on teachers salaries. This is likely to increase further with the implementation of FDSE

198. The total MOE development budget as a percentage of total Government development budget dropped from 6.83 per cent in 2003/04 FY to 3.98 in 2004/05 FY before picking up to 7 per cent in 2005/06 FY and then dropping again to 4.24 per cent and 3.29 per cent in 2006/07 FY and 2007/08 FY respectively. In absolute terms the total development expenditure for MOE rose from KSh. 4.0 billion in 2005/06 FY to KSh. 10.0 billion in 2006/07 FY and to KSh. 12.8 billion in 2007/08 FY.

199. Primary education development expenditure increased from KSh 1.3 billion in 2005/06 FY to KSh. 6.4 billion in 2006/07 FY and to KSh. 10.4 billion in 2007/08 FY. The Government primary education development expenditure has been the highest compared to the other sub-sectors except for the 2005/06 where there was a drop. This was attributed to increased funding in general administrative cost including capacity building of the School management committees to be able to cope with the increased demand for resource management, school mapping as well as expansion in teacher education facilities.

### **Construction of Classrooms and Schools**

200. Physical facilities are an important factor in both school attendance and achievement. Improving primary schools infrastructure is a high priority of MOE. There are a number of projects that either wholly or partly support school construction. These include: infrastructure support for North Eastern Province (GoK/USAID) which constructed 215 classrooms in the province; basic education project (GoK/OPEC), that targeted construction of 1,400 classrooms country wide in 2007, this is on-going; Arid Land Resource Management Project (GoK/World Bank); and the Community Development Trust Fund (EU). Local Authority Trust Fund (LATF) and Constituency Development Fund (CDF) also provide funds for school construction.

201. The Government spent KSh. 214 million in 2005/06 FY for primary education school construction and rehabilitation. This increased to KSh.1, 919.80 million and KSh. 1,528.96 in the 2006/07 FY and 2007/08 FY respectively. During the same period the Government spent Kshs 113

million, Kshs 300 million and Kshs 300 million respectively for Secondary school classroom construction in ASALs and urban slums.

202. In order to address the inadequate physical facilities at the secondary level to support the attainment of the desired transition rate of 75 per cent by 2012, MOE has planned to construct more schools and expand and rehabilitate existing ones. The newly developed school mapping (Geographical Information System) will assist in the identification and appropriate location and expansion of schools to the needy areas.

### **Expenditure on Core Poverty Programmes**

203. The Ministry over time incurs expenditure on core poverty programmes, which contribute towards realization of its goals and objectives. The bursaries programme provides assistance to children from poor economic backgrounds and therefore enhances access, ensures retention and reduces disparities and inequalities in the provision of secondary education. In particular, the bursaries are targeted to students from: poor families, slum areas, living under difficult circumstances, pockets of poverty in high potential areas, ASAL districts, orphans, and the girl child. At constituency level, the bursary fund is managed by a Constituency Bursary Management Committee (CBMC) in consultation with the MOE in accordance with the Constituency Development Fund (CDF) Act of 2004. MOE increased secondary education bursary allocation from KSh 770 million in 2004/05 FY to KSh 800 million in 2005/06 FY. In 2006/07 FY KSh. 800 million was allocated to secondary education bursaries and this rose to 1,121 in the 2007/08 FY. In order to ensure access and retention the Government introduced Free Day Secondary education with effect from January 2008. This will reduce costs of the household expenditure on education at this level.

204. Under a targeted support programme, the Government is supporting schools to improve teaching and learning materials, including laboratory/science equipment. During 2003/04 FY a total of KShs 150 million was allocated for science equipment/laboratory. This allocation increased from 160 million to KSh 170 million in 2005/06. In 2006/07 FY and 2007/08 FY, the government allocated KShs 160 million and KShs 165 million respectively for science/laboratory equipment. This funding is expected to increase in the next and subsequent financial years (2008-2012) in order to create the required critical mass/capacity for training the anticipated science based skills necessary for the attainment of vision 2030 objectives.

### **School Health Nutrition and Feeding Programme**

205. Health and nutrition have significant impact on the overall education achievements of school age going children. In 2004/05 FY, KSh. 1,346 million was spent on school feeding and health. This increased to KSh.1,371 million in 2005/06 FY and further to KSh. 1,374 million and 1,344 million in 2006/07 FY and 2007/08 FY respectively. Through this programme the ministry aims at promoting good health, hygiene and nutrition among school age children. Under this the following have been undertaken: provision of a mid-day meal to 1.1 million pre-primary schools in

29 ASAL districts and Nairobi slums; de-worming of children; and immunization activities in collaboration with the Ministry of Health.

### Teachers

206. Teachers are an important resource in the learning and teaching process and their training and utilization therefore requires critical consideration. Current teacher training programmes cater for the production of teachers for pre-primary, primary, secondary, special needs, vocation and technical institutions and other tertiary institutions. The aim of teacher training is to equip teachers with relevant knowledge, skills, values, attitudes, and ability to identify and develop the educational needs of the child.

207. The total number of public primary school teachers grew by 6.2 per cent from 162,993 in 2006 to 173,157 in 2007 with male teachers constituting 54.3 per cent. The Government recruited 4000, 6,500 and 10,306 primary school teachers in 2006, 2007, and 2008 respectively. This recruitment has raised the total number of teachers to 239,000. The number of recruited was 50-50 for male and female as per the Government's policy on recruitment and training. The number of trained teachers rose by 5.9 per cent from 162,072 in 2006 to 171,643 in 2007. In 2007, trained teachers constituted 99.1 per cent of the total number of primary school teachers. However, the Public schools Pupil Teacher Ratio (PTR) decreased from 43:1 in 2006 to 44.2:1 in 2007.

208. The number of public Secondary school teachers rose by 4.5 per cent from 42,403 in 2006 to 44,076 in 2007. Similarly, the number of trained teachers at this level increased by 4.5 per cent from 42,183 in 2006 to 44,076 in 2007 and constituted 99.5 per cent of secondary school teachers. The total number of male teachers rose by 4.0 per cent from 27,442 in 2006 to 28,544 in 2007 while the number of female teachers increased by 5.3 per cent from 14,961 in 2006 to 15,761 in 2007. The student teacher ratio in public secondary schools decreased from 19.8:1 in 2006 to 23.3:1 in 2007

209. Enrolment in primary teacher training colleges increased marginally (1.2 per cent) from 22,620 in 2006 to 22,908 in 2007. Enrolment in Diploma teacher training colleges increased by 5.0 per cent from 1,847 trainees in 2006 to 1,939 trainees in 2007. Female enrolment in P1 and Diploma colleges constituted 50.7 per cent and 44.2 per cent of the total number of trainees respectively. Affirmative action is being implemented in teacher trainee recruitment to ensure gender equity

**Question 45- Please indicate the impact of measures taken to ensure that children and orphans affected by HIV/AIDS are enrolled and attend regular schools without discrimination and that they receive adequate material and emotional support for their education. In particular, please refer to measures taken to provide such children with financial assistance, free school uniforms, textbooks, transportation and midday meals, and adequate foster or other alternative care, monitor their school enrolment and attendance, combat discrimination by school officials, and support community-based organizations providing assistance to children and orphans affected by HIV/AIDS (para.160).**

210. HIV and AIDS pose a great challenge to the efficiency and quality of education delivery. It leads to increase in the number of orphans, loss of trained teachers and high absenteeism among teachers and learners. In its efforts to reduce impact of HIV and AIDS pandemic on the Education Sector, MOE has put in place several mitigation measures to ensure that children and orphans affected by HIV/AIDS are enrolled and attend regular schools, without discrimination and that, they receive adequate materials and emotional support for their education. MOE has therefore, put in place the following measures:-

211. **Most Vulnerable Children (MVC) Support Grant Programme:** The programme which targets schools with high prevalent rate of MVC is aimed at retaining MVC's currently enrolled in schools; readmission of MVC's who have dropped out of school to school and enrolling MVCs who have never been to school. The MVC grant is used to purchase uniforms, shoes, desks and sanitary towels for MVC girl child.

212. **Guidance and Counselling:** To address issues of stigma and discrimination of pupils who are either infected or affected by HIV/AIDS, the Ministry has established school based HIV spread prevention programmes. Teachers have been trained and deployed to undertake guidance and counselling in schools. The teacher counsellors are expected to help the infected and affected through provision of emotional support. Establishment of guidance and counselling programmes helps those children in the development of social relationships and creating a sense of belonging through peer support activities. Substantial progress has been made in developing capacity among teachers at primary level to facilitate behaviour change and the use if available resources to support teaching and learning about HIV and AIDS. Although the prevalence rate has considerably declined, the issue of orphans still remains a challenge.

213. **Free Primary Education and Free Day Secondary Education:** The Government, in its efforts to achieving Education For All (EFA) and Millennium Development Goals (MDGs), introduced Free FPE in 2003 and FDSE in 2008. The broad objectives of FPE and FDSE are to give every Kenyan child the right to free and compulsory quality basic education and training regardless of his/her social-economic status. MOE has undertaken to finance the purchase of textbooks and other learning materials through the School Instructional Materials and Tuition Waiver Funds in schools.

214. **Effects of 2007 post-elections violence:** The post-election crisis had a negative impact on the educational sector. The main affected areas are in Rift Valley, Nyanza, Western, Coast, Central and Nairobi Provinces. There was massive displacement of students, burning and looting of schools as well as teacher migration. An assessment has been undertaken to determine the extent of the damage, with a view to identifying the necessary interventions. This crisis is being managed by placing children in local schools as well as establishment of temporary classrooms in host community schools. The displaced teachers have also been deployed appropriately. Other measures undertaken include: integrating over 120,000 displaced learners into existing learning institutions and provision of teaching and learning material as well as financial support; addressing the psycho-social and peace education needs on children and teachers; Creating new structure and services where necessary such as Internally Displaced People (IDP) camps; and continuous monitoring of the

educational situation to facilitate appropriate interventions. The Government will provide an extra bursary of KShs. 50 million in the 2008/09 FY to support the students in the Technical Training Institutions who were affected by the post-election violence.

**Question 46- Please explain why only 36 per cent of the university students are women and indicate the measures taken by the State party to promote greater enrolment of women in higher education (para.158).**

215. Earlier studies on women's education in Kenya, for example Kinyanjui (1975) Maleche (1976), Eshiwani (1985), all seem to agree that the number of female students drastically thins out as one ascends the educational ladder, that girls perform poorly than boys in science subjects, that girls have low educational aspirations, and that girls are grossly underrepresented in higher education, particularly in the University. Available statistics show that even fewer women have access to the graduate level. For example, at Kenyatta University, during 1989/90 academic year, out of 227 people admitted to the graduate programs, only 54 (4.2 percent) were women.

216. Moreover, as Robertson (1985) clearly indicated, possession of western formal education creates a new dilemma for African women. The colonialists initially introduced formal western education, to the male gender, with an express aim of serving the need for manpower development. When it was later introduced to some few colonial Kenyan women, it was an education for adaptability whereby, the African woman was encouraged to remain the custodian of African culture while at the same time internalizing 19th century western Victorian capitalistic patriarchy ideas of domesticity. In Kenya, therefore, women's lives began to be shaped and continue to be shaped by both old forms of indigenous culture and Westernization—forms that live side by side, at times, in clear lines of confrontation and at times with blurred distinctions.

217. Cognizant of this the Government has introduced some affirmative actions in various levels of education to address the causes of female drop outs. These include taking measures against early marriages, giving sanitary towels to the girl child and allowing female candidates to access university education with lower points than their male counter-parts.

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

218. The Kenya Institute of Special Education (KISE), a government institution, was established in 1986 through Legal Notice No. 7, with a view to meeting the educational needs of disabled children, youth and adults. Its main functions include the training of teachers and other personnel to work in the field of special education; the conducting of research on special education; the provision, production, and repair of special education materials and equipment; the production and dissemination of information on disabilities to personnel involved in special education and the general public; and the provision of educational and psychological assessment for children with disabilities.

219. This has been instrumental in the establishment of policies to ensure that girls and boys with disabilities have access to relevant education in integrated settings at all levels, paying particular attention to the requirements of children in rural areas.

### **I. Article 15 – The right to take part in cultural life**

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

220. The Government of Kenya recognizes the multicultural status of the Kenyan society. The Government therefore put in place mechanisms to spearhead the protection, promotion and development of the over forty-two (42) community cultures that constitute Kenyan culture.

221. The marginalization of certain communities such as the Nubians and Ogiek was a deliberate effort by the colonial Government that failed to take into account the future role of such communities. The Government put deliberate efforts to re-discover the best of policies for each community that suits their cultures, traditions and customs.

222. The Government, by establishing a Ministry responsible for culture, aimed to streamline various Kenyan cultures so as to correct the wrong impression given by the colonial missionaries that African cultures are savage, demonic and backward. This will be achieved through establishment of a cultural policy that will address the institutional, legal and policy structures of our rich and diverse cultures. A draft cultural policy document had been developed to protect our cultural values. The policy recognizes the diversity of our cultural expressions as strength to our Nation Kenya rather than a weakness.

223. The development of a National Cultural Policy forms the basic for advocacy for a more vigorous concept in the development process. Past development projects established for the communities failed because they ignored the cultural components of such communities as it regards to projects initiated.

224. The Government creates awareness of the rich and diverse cultures to bring better understanding for both social and economic development as well as for communities' co-existence.

225. This is achieved through deployment of cultural experts to work with the community leaders and other cultural stakeholders that link the Government with the grassroots communities.

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

226. The Government supported the establishment of languages committees that will revive research and promote our indigenous languages alongside the Kiswahili in the marginalized areas. Our rich and valuable culture is preserved, transmitted and interpreted through languages.

227. The Government supported and promoted the performing arts talents of our communities. Most of the marginalized communities in Kenya have great artistic dance, drama and music that can be improved and enhanced for economic domestic cultural tourism by the community.

228. The Government has local programmes that assist the community to develop cultural industries based on cultural artifacts, carvings, traditional weaving and basketry, paintings, drawing as well as leather works. Such products can be re-branded, repackaged and be both foreign and domestic markets.

229. The marginalized communities are well known for use of their indigenous knowledge to treat, manage and protect their livestock from diseases and calamities. Traditional medicine is also widely used to manage various ailments afflicting human being. This knowledge of indigenous medicine need to be protected and promoted and should also be marketed to other Kenyans. Government promotes the traditional use of indigenous foods, traditional protection of our environment as well as traditional conservation and knowledge inherited in understanding diseases, calamities and their interventions.

230. The Government continued to support communities' cultural festivals that operate as windows for understanding our potentials in using our cultures to achieve sustainable social economic development. The community cultural festivals enable us to showcase our rich knowledge in understanding our environment, co-existence between man and biosphere, interventions to human animal and physical calamities, as well as applications of traditional knowledge acquired from our past descendants through conscription and apprenticeship from the community experts.

231. Construction of the cultural centres for the communities is a programme to enable them preserve their rich cultures by establishing community galleries, theatres, libraries, data centres as well as exhibitions halls for the various cultural artifacts, medicine, traditional foods and drinks etc. The community cultural centres will act as marketing avenues where the community can venture into cultural tourism as well as use them for their social cultural activities such as wedding, fundraising and any other social amenities. Such cultural centres have been earmarked in areas inhabited by marginalized communities.

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

232. The Government through the Ministry responsible for culture ensures that the diversities of cultures existing among Kenyans are used appropriately to play the unique role of uniting Kenyans and promoting the process of nationalism and sovereignty. Cultural diversity in Kenya is strength rather than a weakness and can be an asset towards the achievement of sustainable development. Through forums such as cultural festivals, music, sports, beauty competitions, cultural nights and internal cultural exchange among the various ethnic communities, the Government strives to

enhance the understanding of cultural diversities among Kenyans to create Kenyan culture. In order to accelerate this effort, the Government signed two very important UNESCO cultural instruments namely; the 2003 Convention for safeguarding of the Intangible Cultural Heritage and the 2005 Convention on the Protection and Promotion of the Diversity of cultural expressions.

233. The two UNESCO Conventions are very important to Kenyans, particularly the minority communities, because they are intended to safeguard our cultural heritage that has been transmitted from generation to generation as well as that one that is constantly created by communities and groups as they respond to the environment.

234. The Conventions will protect the communities' sense of identity and continuity, cultural diversity, human creativity and bring the necessary mutual respects among communities and groups.

### **Cultural Rights**

235. The Government promotes the Human Rights and fundamental freedoms of Kenyans as the birthright of mankind. Every person should be entitled to participate in, contribute to and enjoy Cultural, Economic, Political, Religious and Social development. In many cases, women and girls suffer discrimination and this directly violates their Economic, Social and Cultural Rights.

236. Finally, the Government through the Ministry responsible for Culture seeks to improve the live of the pastoralist communities through community cultural festivals that address issues facing them. Activities to improve their welfare include exhibitions of their talents in medicine, art and craft, traditional dances, mock war songs, traditional environmental conservations as well as traditional farming methods. This guides the decision markers, development partners and international donors on the best projects to start or initiate among such communities that have close meaning to their lifestyle. The Government encourages the accommodation of people's demand for inclusion to sharing of the national cake, respect of their ethnically, religion and languages as well as allowing them to participate in shaping their future. During the last conference of all Ministers of Culture in Africa held in Nairobi in December 2005 the conference delegates came up with the Nairobi declarations which our president lead other heads of States and Governments in adopting the "Nairobi Declarations" during their summit in Khartoum Sudan in January, 2006. The Nairobi Declaration on culture, integration and African Renaissance considered culture as a foundation for socio-economic development and as the best too to addressing the present day human challenges, particularly those facing women and children in marginalized areas.