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List of Issues
arising from the
Initial Periodic Report of Kenya
to the
**Committee on Economic, Social and Cultural
Rights**

November 2007

**A report compiled by the World Organisation Against Torture, in collaboration
with the International Commission of Jurists (ICJ) – Kenya, and the Centre For
Minority Rights Development (CEMIRIDE)**

In the context of the project

“Preventing Torture and Other Forms of Violence by Acting on their
Economic, Social and Cultural Root Causes”



The European Union through the European Initiative for Democracy and Human Rights is providing substantial support for this project. The contents of this report are the responsibility of the authors and do not necessarily reflect the views of the European Union.

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1. Addressing Poverty and Violence: “the very heart of human rights protection”

Introduction

It is increasingly acknowledged that torture and cruel, inhuman and degrading treatment or punishment and other forms of violence are related in many ways to disrespect for economic, social and cultural rights.¹ If, therefore, these phenomena are to be effectively eliminated, then their economic, social and cultural root causes must be, first, understood and, secondly, effectively addressed.²

The converse equally applies: acting to reduce levels of violence in a given society is a fundamental step toward ensuring the widespread enjoyment of economic, social and cultural rights. In the case of Kenya, conflict and lack of security expose Kenyans to situations that severely impede their possibility of escaping from poverty, of working in just and favourable conditions, of providing care and education to their children and enjoying an adequate standard of living and the highest attainable standard of health.

How the denial of economic, social and cultural rights is related to torture and other forms of violence

- *The poor, excluded and other vulnerable groups are often the first and most numerous victims of violence, including torture and cruel, inhuman and degrading treatment.*
- *Levels of violence in a given community or society can be such that individuals or groups are unable to enjoy their economic, social and cultural rights.*
- *Violence is inflicted on persons because they demand respect for economic, social or cultural rights – their own or those of others.*
- *Denials of economic, social and cultural rights are carried out so violently as to be considered ill-treatment under international treaties.*
- *Certain violations of economic, social or cultural rights can be characterized as cruel, inhuman and degrading treatment, or in some cases as a denial of the right to life.*
- *Policies and programmes by governments, private actors or development and financial institutions can exacerbate poverty and inequalities and lead to increased levels of official, criminal and domestic violence.*

This list of issues, prepared by the World Organisation Against Torture (OMCT) in consultation with the International Commission of Jurists-Kenya (ICJ) and the Centre for Minority Rights Development (CEMIRIDE) is intended to draw attention to some of the key areas where there is a direct and clear link between violations of economic, social and cultural rights and violence, or the threat of violence in Kenya. Providing guidance to the Government of Kenya on how to address obstacles to the full enjoyment of their citizens’ social, economic and cultural rights is, therefore, not only an end in itself, but also a central strategy for reducing levels of violence in Kenyan society.

As Ms. Louise Arbour, UN High Commissioner for Human Rights has observed in her preface to the OMCT study on this theme, the question of “how to prevent or reduce violence, including torture, by acting on its root causes, often found in violations of economic, social and cultural rights”, is one that “goes to the very heart of human rights protection.”³

Elements of poverty

Kenya has a high incidence of absolute poverty. It is estimated that 56 per cent of the population is poor. The number of poor increased from 3.7 million in 1972-1973 to 15 million today.⁴ OMCT and its partners are concerned that ill treatment of the poor and unemployed – and especially of young men - is now widespread in Kenya, and that police corruption is common.

Land and natural resources are crucial to the country's economy, and provide a livelihood to some 80 per cent of Kenyans.⁵ As a consequence, poverty in Kenya is closely associated with natural and man-made disasters, including drought, wild fires, floods and landslides. Indeed, an effective disaster prevention and response system is an important element in ensuring the security and well-being of a large part of Kenya's population.

Poverty in Kenya is exacerbated by the presence of significant ethnic conflicts and tensions.⁶ Furthermore, HIV/AIDS has had a catastrophic impact, both socially and economically, and has the potential to affect political stability.⁷ While prevalence rates are decreasing thanks to sustained Government efforts, HIV/AIDS continues to be a source of serious socio-economic stress: it both creates poverty and thrives on it. Further, it potentially undermines the enjoyment of a range of human rights: it lowers life expectancy, compromises children's education, reduces the earning capacity of families and exacerbates economic marginalisation and insecurity. In housing terms, those affected by HIV/AIDS often live in the poorest conditions. In urban areas such as Nairobi they find shelter in informal settlements or live on the street.

There have been occasional reports of violence against persons with HIV/AIDS. It was reported that on 15 April 2006, a 15 year-old boy was killed by his uncle because of his HIV status. On 26 April 2006 a media report indicated that military members with HIV/AIDS were ostracized by their colleagues.⁸ More generally, the effects of HIV/AIDS contribute to the social and economic marginalisation of those affected by the disease which, in turn, makes them more vulnerable to a range of violence and exploitation.

The State Report on HIV/AIDS

§29. The reduction of the National HIV prevalence rate from 13.6% in 2002 to about 7% in 2004. Various measures put in place by the Government contributed to this positive change. These measures include declaration of HIV/AIDS as a National Disaster and relentless, concerted and well-coordinated battles against the pandemic by all stakeholders and especially the Government with help from development partners were put in place. To spearhead the fight against HIV/AIDS the Government established the National Aids Control Council. The Government led by the President himself launched a campaign to fight against HIV/AIDS. Voluntary Counselling and Testing (VCT) centres have been established up to the local level. Many of these measures have cumulatively led to reduction of the prevalence of HIV/AIDS in Kenya.

In addition to HIV/AIDS, the elements of poverty in Kenya include the lack of capacity of individuals, families and communities to meet basic needs, as well as unemployment, malnourishment, lack of adequate housing, poor health, and low levels of child education. The 2003 UNDAF Report for Kenya further underlines that

poverty is associated with a lack decision-making power and lack of security: “To be poor is also to be exposed to ill treatment or to be powerless in influencing key decisions affecting one’s life.”⁹ This is reflected in the relative weakness of local communities, NGOs and industrial and business communities in structures of governance. All of these groups are inadequately mainstreamed to be able to advocate rights and interests and to influence state policy.¹⁰

The State Report on Economic, Social and Cultural Rights

§3. The total population is estimated at 32 million people¹¹. Of these, approximately 75% live in sparsely populated rural areas while the remaining 25% constitute the urban population.

§14. The Bill of Rights in the Current Constitution has not provided for economic, social and cultural rights hence the courts have been reluctant to pronounce judgments that promote and protect the rights. This challenge was however sought to be addressed by the Draft Constitution of Kenya (2004) which had a comprehensive Bill of Rights that protects economic, social and cultural rights as justiciable rights. The Draft Constitution was rejected by 57% of Kenyans who voted at the constitutional Referendum held on 21st November 2005.

§23. Although social, economic and cultural rights are not expressly protected under the Kenya Constitution (but were envisaged as justiciable rights in the Draft Constitution), the Government endeavours to respect, protect, promote, fulfil and ensure these rights.

§28. Concerning the justiciability of the economic, social and cultural rights to the extent that the Economic Social and Cultural Rights are not enshrined in the Constitution; they are not justiciable per se under enforcement of rights in Section 84.

The Economic Recovery Strategy for Wealth and Employment Creation established under the National Rainbow Coalition government represents a roadmap for Kenya’s economic and social development. It rests on four pillars: the drive for rapid economic growth; strengthening the institutions of government (including combating corruption); rehabilitation and expansion of the country’s physical infrastructure; and, lastly, investment in the human capital of the poor, with particular emphasis on education, health and employment creation. OMCT and its partners encourage the Government to maintain the commitments it has made under this Strategy, but also draw attention to the risks associated with privileging rapid economic growth over other measures of development: especially as regards the impact of this drive for growth on the poorest and most marginalised sectors of society.

Violence and access to livelihoods

Land in Kenya is both an important source of livelihood and the source of disputes and conflict, frequently along ethnic lines.¹² Ethnic clashes have been particularly violent in regions with a long history of land disputes, and have been intensified by weak governance and growing poverty. Thousands of victims of Kenya’s land conflicts have been internally displaced. It is reportedly common for people to be pressured to sell their land (at prices far below its real value), or for title deeds to be changed without their knowledge. When victims seek redress from courts, district authorities, or the Land Registration Office, it is not uncommon for them to be told to go elsewhere.¹³

The informal sector represents another important source of livelihood, and many Kenyans rely on this sector for their day-to-day survival, earning their livelihoods as street hawkers, kiosk vendors, commercial sex workers, casual labourers etc. Despite the importance of this sector, the Government has so far failed to establish clear policies to govern the rights of workers in the informal economy. Workers on the margins of society are vulnerable to arbitrary and ill-treatment by the police and local authorities. Informal sector workers claim to be harassed by police and city council *askaris* (guards), who extort bribes, destroy their property, steal their goods, or hold them in prison until they are able to buy their way out. Sometimes they are beaten.¹⁴ Kiosk owners and hawkers report that these sweeps are often carried out early morning, without warning

The State Report on Livelihoods

§30. Introduction of the Constituency Development Fund (CDF) to expedite rural/ grassroots development by alleviating poverty among the rural poor.

CDF is a fund established under an Act of Parliament, the Constituency Development fund Act 2003.

§62. The Government is concerned about the categories of workers who are not covered by the above framework, such as domestic workers, workers in the Export Processing Zones (EPZs) and workers in the informal sector, and is exploring ways of including such groups within the provisions of the Country's labour laws.

§85. The proportion of Kenyans living below the poverty line is on the increase.

§89. The Government continues to lay emphasis on economic growth as the principal means for reducing poverty and improving the standards of living of Kenyans. In this regard the Government has initiated policies and programmes such as the Land Resettlement Reform Programme; the Special Rural development Programme; the Rural Works Programme; the District Focus for Rural Development Strategy

§122. About 80% of the Kenyan population live in the rural area and derive their livelihood from agriculture. 56% of the population live below the poverty line 80% of which are in the rural area.

§123. Kenya's Agriculture is rain dependant and an estimated two million people in drought prone areas suffer from transitory food insecurity (...).

2. Ethnic Groups, Economic, Social and Cultural Rights and Violence

Kenya's population consists of more than 40 ethnic groups. There are frequent allegations of discrimination and occasional violence among some of these groups,¹⁵ often in the poorest areas of the country, where resources are scarcest. In some cases, this leads to internal displacement, with inevitable implications including loss of livelihood and economic assets.

Historical injustices and marginalization, increased competition over land claims and resources, and political manipulation are among the factors that contributed to interethnic conflicts.¹⁶ The Special Rapporteur on indigenous people has noted that pastoralists have historically been considered as an obstacle to Kenya's economic development. For this reason these communities were subject to harassment, land grabbing and forced displacement.¹⁷ Episodes of violence in the north, the Rift Valley and coastal areas reached a peak in 2004-2005.¹⁸ In the Rift Valley, conflicts between land owners and squatters were particularly severe. Competition for resources characterized disputes in the northern districts of Eastern Province and in North Eastern Province.¹⁹

As regards Kenya's ethnic divisions, violence and the denial of economic, social and cultural rights form a vicious circle, whereby endemic tensions and insecurity - particularly in northern Kenya - along with the violent outburst of dissatisfaction can be attributed to poverty and lack of power. In turn, this violence exacerbates the poor economic conditions of those communities affected by these struggles,²⁰ and compromise the enjoyment of their economic, social and cultural rights. In August 2007, for example, it was reported that poverty and frequent clashes among pastoralist communities in northern Kenya have prevented thousands of children from enrolling in school and made them more likely to commit acts of violence. Children of school age had been involved in inter-community violence, and conflicts between the Pokot and Samburu communities were reported to have adversely affected education in the Samburu and Laikipia Districts over the last two years.²¹

The Special Rapporteur on indigenous peoples indicates that the privatization of land has led to the fragmentation of traditional, communally-owned areas. In turn this has increased competition and conflict over diminishing resources. This process has been accompanied by the growth of social and economic inequality among indigenous communities.²² The Special Rapporteur has also drawn attention to police abuses in relation to social protests associated with land rights claims involving the ill-treatment and arrest of community members.²³ A number of organizations active in denouncing abuses against indigenous communities have allegedly been the object of systematic harassment and intimidation by the authorities.²⁴

Examples of groups at risk of violence due to poverty and land disputes include²⁵:
Maasai - Masaai protests aim at protecting their land and culture from encroachment by other groups. They also engage in conflict over land and cattle with other indigenous communities.²⁶

Kalenjin - the Kalenjin assert that they are being marginalised as a result of their loss in the 2002 elections and their subsequent decline of political influence.

Somalis: Somalis face social stress, declining public health conditions and competition with other groups for the use of land. Somalis are pastoralists who are strongly affected by the consequences of drought. They complain of the

Government's poor response to famine in the region. Relations between the Somalis and other ethnic groups have regularly erupted into violence.²⁷

Kikuyu: Kikuyu complaints are based on political, economic and social concerns. They call for greater political participation and a larger share of public funds, as well as assurance that their land and activities will be protected from the encroachment of other ethnic groups.

*The case of the Ogiek*²⁸

The Ogiek occupy the Mau escarpment around the Rift Valley. Under their traditional form of social organisation they have no centralised leadership institutions. Since the Colonial period, Ogiek groups have repeatedly been displaced from their ancestral lands without consultation, consent or compensation. They have also been excluded from development plans and been forced to move onto land that is not suitable for the pursuit of their traditional livelihoods. The loss of ancestral land has contributed to poverty, illiteracy, poor health and low life expectancy among the Ogiek.

Factors forcing the Ogiek off their lands include: logging and destruction of forests in the areas they inhabit; the allocation of land to politically influential individuals under the pretext of resettling squatters; development projects (e.g. the establishment of the Mt Elgon Game Reserve/National Park in Western Kenya, during 1980s); and private interests promoting the cultivation for products for exportation, including tea, flowers and pyrethrum (a plant used to make insecticides). The Special Rapporteur on adequate housing²⁹ met with representatives from the Ogiek community whose home is in the Mau Forest.³⁰ According to the facts brought to the attention of the Special Rapporteur, the Ogiek have been deprived of their traditional sources of livelihood and are forced to work as labourers on the farms of new settlers in order to survive, or to leave their traditional homes and move elsewhere.³¹

The State Report on resource conflict

§115. Conflicts exist as to use and sharing of water resources between communities and private land owners who are often foreigners. The conflict resolution of common resources especially water bodies that are a source of subsistence and economic well-being of marginalized Kenyan communities by private land owners, often foreigners, have not been dealt with by the government.

3. Forced Evictions, Violence and the Right to Housing

Adequate housing is a fundamental right under the International Covenant on Economic, Social and Cultural Rights. It also contributes directly to the enjoyment of other fundamental human rights. Thus, for example, the homelessness provoked by internal displacement can directly affect levels of child education, impact livelihood and jeopardise access to health services. Evictions from housing and land take place in both rural and urban contexts.

a) Forced evictions in forest and rural areas

The majority of forced evictions carried out in Kenya in recent years have involved forest areas, and the Ministry of Environment has indicated that it intends to continue such actions.³² These evictions are justified on the grounds of protecting the forest cover and water catchment areas. Irrespective of the validity or otherwise of these justifications, associated evictions have been characterised by violence, lack of adequate resettlement and a failure to use the mechanisms recommended in the Report of the Commission on Irregular Allocation of Public Land. This Report was issued by the Ndungu Commission, which was set up in 2003 by the Government of Kenya to investigate cases of land grabbing.³³ This Commission issued a Report - made public in December 2004 - that lists all irregularities and violations in the allocation of public lands under Presidents Kenyatta and Moi. According to this Report, the major beneficiaries of these irregularities were senior political figures, civil servants and military officers. In some cases, public land - including large forest areas - was used for the settlement of landless people, but in others, this land was given to political elites. Furthermore, the Ndungu Commission - having deemed that any alleged illegal allocation of land had to be dealt with on its own merits - recommended the urgent need for a Land Titles Tribunal to deal with the process of revocation and rectification of titles in the country.³⁴

*Forced evictions in the Mau Forest*³⁵

Environmental groups and UN agencies have expressed concerns over forest loss in Kenya. Under national and international pressure, the Government of Kenya began evictions from the Mau Forest in 2004. These evictions have been characterised by violence and have not been conducted according to the human rights principles governing such procedures, specifically:³⁶

- there was no consultation of local communities;
- evictions were not based on a court order;
- a court order injunction halting evictions was ignored;
- there was excessive use of force by the security forces;
- in many cases no alternative resettlement was provided.

It is reported that the principal obstacle to ensuring appropriate resettlement has been a lack of coordination among different branches of the Government. In the case of the Mau Forest evictions of 2004-2005, neither responsibilities nor procedures were clearly defined. In particular, the Ministries of Environment and Land failed to coordinate on the issue of resettlement.³⁷

Ironically, the failure to protect human rights in implementing evictions in the Mau Forest has undermined the protection of the forest itself, since the lack of adequate land and facilities for resettlement induced people to return to their original forest locations, or to occupy new sectors of the forest.

Specific cases of forced evictions and violence in the Mau forest, documented by COHRE

Forced Eviction in Maasai Mau:

“On an unspecified day in June 2005, police arrived at about noon and told people they had until 4pm to get out of their houses, which were to be burnt down. Those who tried to assert their title deeds were ignored. Residents salvaged what they could and moved onto the road. The police came back after dark and burnt every house, the local school and crops. No alternative accommodation was provided to the evictees. The displaced were left without any access to shelter or sanitation facilities, and for many their access to food and education was also compromised as a direct result of the forced evictions. The victims were forced to find their own solutions. Some received assistance from relatives and friends in nearby areas. Others constructed temporary shelters.”³⁸

Forced Eviction in Sururu:

“The morning of 28 August 2004, police and forest guards arrived and began to burn their homes. Up to 2000 families were evicted, and were not offered any alternative place to live. Many of those interviewed had moved onto their land in 1997/98 after being told by local government officials to do so, and community leaders claim that some 300 families had title deeds to the land they occupied. Other families reported that they had been told at the time they moved in to the area that title deeds would be provided later, although this did not happen.”³⁹

b) Forced evictions in urban areas

Slum upgrading

There are currently two major slum upgrading initiatives underway in Kenya: the Kibera-Soweto pilot project in Nairobi, and the Kisumu project in the city of Kisumu, being carried out within the framework of the international Cities Alliance project “Cities without Slums”, a joint project of UN-HABITAT and the World Bank.

1. Kibera - Soweto East up-grading⁴⁰

Kibera is the largest slum in Nairobi, housing some 600,000 people. The Soweto slum upgrading project is a pilot project of the Kenyan Slum Upgrading Programme (KENSUP). It is the result of a joint initiative of the Government of Kenya and UN HABITAT. In 2001, after a detailed analysis of the situation in Kibera, it was decided to limit the project to Soweto village in the eastern part of Kibera, home to a population of 60,000. The project was launched in 2004 with the idea upgrading the slum housing to blocks of flats.⁴¹

The Kibera project has raised a number of concerns:

- During 1990s, the National Housing Corporation (NHC) initiated a Kibera High Rise Project. This project was originally intended to provide housing for the benefit of Kibera’s residents, however the housing units were designed to middle-income standards. Consequently these housing units came to be assigned to middle-income groups. Kibera residents fear that this could happen again and are concerned that the KENSUP project is intended to drive the poor residents of Kibera out of a convenient location in Nairobi. These fears have been exacerbated by government corruption in housing allocation.

- The community claims that the Settlement Executive Committee (SEC) – intended to represent the residents’ interests - was not elected by the residents, but rather imposed by the provincial administration. It therefore has no legitimacy in the eyes of the residents, who are concerned that they will not be involved in the organisation of the proposed housing cooperatives. Their concerns stem from the fact that officials from the Ministry of Cooperative were already in possession of prepared templates.⁴² Residents are calling for community participation in the design of the project, and for the systematic provision of information on the progress of the project, in written form (in Kiswahili).⁴³
- The community of Kibera is concerned that the high-level coordination of the project, involving several government ministries and UN-HABITAT, may impede the participation of the community in the redevelopment project.

2. Kisumu Slum Upgrading⁴⁴

The Kisumu slum upgrading initiative is still under development. Slum housing in Kisumu is mainly held privately under freehold title.

The residents of Kisumu share the concerns of Kibera’s residents. Indeed, in the light of what occurred in Kibera, slum upgrading is perceived as a process of slum demolition followed by the construction of middle-income housing. This threat is underlined by the recent decision of the Government to upgrade the nearby airport to international status. This resulted in a dispute between the Kenyan Airport Authority and members of the Kogony clan who occupy an area called Usoma, adjoining the airport. At no point did the Airport Authority engaged in direct negotiation with the residents of Usoma, but rather dealt exclusively with brokers. This has contributed to serious tensions, and fear among the community that they may be evicted at any time.

Avoiding the negative outcomes of slum upgrading

The Committee on Economic Social and Cultural Rights general comment no. 4, identifies “affordability” as a element of the right to housing.⁴⁵ The housing market dynamics of excessively improved slums undermine this principle of affordability. Excessive improvements in housing conditions risk provoking the displacement of those residents originally intended to benefit from such schemes, either because they lack the financial means to accede to this housing, or because they accept cash offers from wealthier individuals and families to move out. These offers may be attractive, but not sufficient to ensure a sustainable higher standard of living elsewhere.⁴⁶ This process ultimately leads to the creation of new slums.

Poorly-targeted upgrading potentially leads to social conflict, in particular when adequate alternative housing solutions are not provided. Threatened by eviction, residents may react by defending their homes and engaging in protest activities. In turn, there is a serious risk that government authorities will react to this resistance with repressive measures.

Slum upgrading initiatives must therefore incorporate adequate mechanisms to ensure that the principal beneficiaries of such initiatives are the inhabitants of the slums themselves. In this respect, slum demolition and upgrading schemes should not take

western urban standards as a reference of habitability.⁴⁷ The provision of housing in keeping with local standards and expectations (e.g. decent rooming, shared access to water and sanitation) would discourage wealthier groups encroaching on slum improvement areas.

On 16 March 2007, the Special Rapporteur on adequate housing addressed a letter to the Government of Kenya, focussing on the negative impact of forced evictions on the poorest and already marginalized groups of society. He also recalled the commitment of the Government to addressing the growing slums in urban areas, particularly in Nairobi. The Special Rapporteur reiterated that “in order for slum upgrading to achieve its ends, it must be done within a city- or countrywide- strategy and action plan based on consultation and participation, in order to identify geographical housing alternatives that would enable those relocated to sustain their livelihoods.”⁴⁸

Control of resources in poor urban areas

Recently, and in particular in the build-up to the elections in 2007, violence associated with the activities of Kenya’s Mungiki sect has drawn international attention. The Mungiki leadership has openly claimed to have two million members around the country. Their influence is particularly strong in city slums, where it has been reported that residents have to pay a levy to the sect to be able to access communal latrines and for security at night. In the Mathare informal settlement in the east of Nairobi, they are said to provide illegal water and electricity to residents of the area.⁴⁹ Not only are the poorest members of society directly exploited and threatened by this sect, they are also caught up in police reprisals against the Mungiki – notably in a series of police shootings when the Mathare slum was closed off in June 2007 in a clampdown on the sect.

The State Report on Housing and Housing Conditions

§95. Only 31% of households in Kenya had access to piped water in 1999 compared to 32% in 1989. This reduction is attributed to unsatisfactory performance of the piped water scheme in some areas. Less than 45% of rural households had access to piped water systems, boreholes and wells in 1999 compared to 80% in urban areas. About 28% of rural population depended on rivers and lakes for their water requirements.

§130. [Housing] Demand far outstrips supply, particularly for the middle and low income groups and especially in urban areas. In rural areas, the problem is not so much of housing shortage, but rather that of poor quality housing.

Vulnerable and Disadvantaged [with respect to housing] groups are:

- Women
- Children
- Physically handicapped disabled
- The poor

§131. Individuals inadequately housed are those living in slums and informal settlements. Data is not readily available, but the estimates for Nairobi, Kisumu and Mombasa are 30%, 35% and 30% of the population respectively. This is based on a slum mapping exercise conducted in June 2002 in a collaborative effort between Nairobi City Council, UN-Habitat, Central Bureau of Statistics and Housing Department

§132. Measures taken by state to build housing units:

- The Government is now constructing houses for civil servants through the Civil Servants Scheme.
- Government in collaboration with UN-Habitat and others is undertaking upgrading of slums to increase and improve housing units.
- Land that was previously under-utilized is now being utilized through urban renewal and re-development under the Civil Servants Programmes.
- Increase of the slum upgrading fund whereby in Financial Year 2005/06, Government allocated 488 million to the programme.
- Encouraging growth of small and medium centres which promote equal housing.
- Training on the use of locally available building materials and technologies to promote better housing quality.
- Urban renewal programmes, including where people have settled on public utility land, negotiations and consultations are conducted and residents given adequate notice. In the recent times, there has been minimal if not a halt to forced evictions.

4. Women's Economic, Social and Cultural Rights and Violence

The socio-economic situation of women in Kenya

The persistence of adverse cultural norms, practices and traditions, as well as entrenched stereotypes regarding the roles of women perpetuate discrimination against women and girls and exacerbate gender inequality in Kenya. The Committee on the Elimination of Discrimination against Women has expressed concern that the “State party has not taken sustained and systematic action to modify or eliminate stereotypes and negative cultural values and practices”.⁵⁰ The significant challenges women face in enjoying human rights make them more vulnerable to violence and ill-treatment. Indeed, violence against women will not decline so long as harmful practices such as wife inheritance, bride price, forced marriage and FGM remain institutionalized or publicly accepted.

The situation of women in Kenya is also inextricably linked to the issue of HIV/AIDS. Their vulnerability to sexual violence – including rape in times of conflict⁵¹ - their relative powerlessness in the face of violations of their property rights, exposure to harmful traditional practices and their economic marginalisation all contribute to a greater risk of HIV infection. HIV/AIDS in turn exacerbates poverty and undermines protective environments traditionally provided by families and communities. Conversely, efforts to ensure the socio-economic wellbeing of women are likely to contribute to slowing the spread of the disease.

Violence and violations of women's property rights

In Kenya there is a plethora of customary laws, reflecting the country's ethnic diversity. In many cases, customary law can seriously compromise women's property rights, including rights to inheritance and to manage and dispose of property. Furthermore, in Kenya there are five separate legal systems for marriages: civil, Christian, Islamic, customary and Hindu. These systems are not coordinated and, as a result, there is no unique registry of marriages and no corresponding record of co-ownership of family property.

Discriminatory property rights can have a devastating effect on women's livelihoods. In conflict situations, women's property rights are still more at risk – their property is easily appropriated by others, and in some cases women may lose any proof of joint ownership of their property with their husbands.⁵² Vulnerability to poverty, disease, violence, and homelessness are direct consequences of the violation of women's property rights. This vulnerability not only brings direct harm to women, but also has a serious impact on their children, and therefore on Kenya's overall social development.⁵³

In Kenya, the violation of women's property rights is directly linked to violence and poor health. Women's economic dependency on men prevents them from being able to afford a lawyer to protect their rights, defend their housing, land or property or to initiate divorce proceedings in the case of domestic violence.⁵⁴ Many widows and abandoned wives, excluded from inheritance, thrown out their homes by in-laws, and stripped of their possessions, are forced to engage in commercial sex work in order to make a living. This in turn exposes them to a high risk of HIV infection. Women and girls in this situation are also at a higher risk of being trafficked.

Under some customary laws, widows must submit to the practice of “wife inheritance” or ritual “cleansing”, involving sexual intercourse with another member or members of their dead husband’s family or community. Women who are coerced into these practices run a higher risk of becoming infected by and spreading HIV. Widows who protest against their treatment are often subjected to violence by their in-laws.

Women and the right to adequate housing

The Special Rapporteur on adequate housing has noted that women in urban slums and informal settlements tend to live in poorer housing than men. As a consequence, and in an attempt to secure adequate housing, single mothers may turn to unsafe or exploitative occupations, including commercial sex work. Furthermore, the lack of proper sanitation in slum areas poses a threat to women and girls’ personal security: visiting communal latrines after dark puts them at risk of sexual violence.⁵⁵ The Special Rapporteur reiterated that violence against women and housing violations are “inextricably linked as causes and consequences of each other”; in fact, “inadequate housing in the slums leads to risk of violence, a situation of domestic violence can lead to a woman being deprived of housing.”⁵⁶

Domestic violence and economic, social and cultural rights

Domestic violence in Kenya is a serious and widespread problem. The Kenyan penal code does not contain specific provisions against domestic violence, but rather deals with it with under the category of “assault”. Police normally do not investigate in cases of domestic violence, since it is generally regarded as a private family matter.⁵⁷

Many women are unable to afford the cost of bringing a case of domestic violence to court, and in particular to meet the fees for legal counsel.⁵⁸ This is due to their economic dependence on their husbands or other male family members. This economic obstacle, together with the fear of losing custody of their children, induces women victims of violence to remain with the perpetrator – be it their husband or other family member.⁵⁹ The threat of violence also undermines the capacity of women to negotiate safe sexual practices with their partners, thus exposing them to the risk of infection from HIV and other sexually transmitted diseases.

Female Genital Mutilation

Despite the fact that the law prohibits FGM, it is still practiced in Kenya, particularly in rural areas. The Special Rapporteur on Indigenous Peoples reiterated that “FGM poses serious problems for the physical and mental health of girls and, being a form of gender violence, it is also a major human rights violation.”⁶⁰ The most recent work on the subject emphasises the importance of promoting girls’ education, women’s economic empowerment and, above all, carefully conceived community human rights initiatives as a means of discouraging this culturally-rooted practice.⁶¹

Trafficking in women and girls

Despite measures undertaken to combat trafficking of human beings, in Kenya the problem of exploitation of and trafficking in girls persists and is intimately linked to poverty. As the Committee on the Elimination of Discrimination against Women underlines, trafficking and sexual exploitation affect women from the poorest and most disadvantaged backgrounds.⁶²

The State Report on the situation of women

§31. The Government of Kenya has demonstrated concern for the welfare and special needs of women.

§32. The Government strengthened the structure for the rights of women by establishing the National Commission on Gender and Development in November 2004 and by elevating the Women's Bureau into the Department of Gender in the Ministry of Gender, Sports, Culture and Social Services in December 2004.

§39. (...) Various efforts have gone into trying to level the ground to bring men and women at par, for instance the Equality Bill mentioned above.

§40. The Constitution of Kenya prohibits discrimination on the basis of sex. It recognises customary law for the determination of matters of adoption, marriage, divorce, and burial, devolution of property on death or other matters of personal law. This recognition of customary laws brings with it customary practices that are in some cases, discriminatory in their very nature. The discriminatory nature of African Customary Laws is reflected in women's inheritance and property rights suffice to note that the courts have been very proactive in declaring the rights of women as far as property is concerned whether in matrimonial, succession or other suits. Other types of personal law like Islamic Sharia and practices are sometimes discriminatory. Cultural aspects which define the basis of customary law continue to be a challenge to realisation of rights for the marginalised groups especially women and children.

5. Children's Economic, Social and Cultural Rights and Violence

Street children, juvenile justice and violence

Harsh economic conditions and the spread of HIV/AIDS exacerbate the problem of child-headed households, homeless and children living on the street.⁶³ Street children are vulnerable to harassment as well as to physical and sexual abuse by police, who frequently regard them as criminals, and other individuals.⁶⁴ With respect to Kenya, the Committee on the Rights of the Child has noted, "the large number of street children, the denial of their right to education and health care, and their vulnerability to various forms of violence, including sexual abuse and exploitation and arrests that are arbitrary and abusive."⁶⁵

Child exploitation and child labour

Poverty, along with the increase in the number of children orphaned as a result of the spread of HIV/AIDS increases the vulnerability of children to exploitation, including sexual exploitation and harmful forms of child labour. This in turn has implications for children's enjoyment of their rights to health, education and development. According to UNICEF, 26 per cent of children in Kenya are involved in child labour activities and approximately 30 per cent of girls living in coastal cities and aged between 12 and 18 work as part-time informal sex workers or in sex work as a full-time income generating activity.⁶⁶

Under Kenyan law, children under the age of 16 are prohibited from working, however this restriction does not apply to the agricultural sector. This makes children vulnerable to being taken out of school to work on family plots, particularly in periods of economic difficulty. Poverty and the growing number of HIV/AIDS orphans has also led to an increase in child labour in the informal sector, which is more difficult to monitor and control. Indeed, the Committee on the Rights of the Child has noted the high number of children engaged in economic activities owing to poverty levels and the effects of HIV/AIDS.⁶⁷

The impact of HIV/AIDS

The challenges faced by Kenya's poor children are exacerbated by the impact of HIV/AIDS. Many children who lose their parents to AIDS are at risk of losing their inheritance – modest as this might be – either because family members deny them their rightful property, or because they are unable to substantiate their inheritance claim due to lack of birth registration.

Children affected by HIV/AIDS live with stigma and discrimination that can manifest itself in violence. This same stigma may result in their being banned from school or dropping out due to lack of parental care and, in many cases, the need to provide for siblings. Discrimination against girls can be particularly severe – loss of parents or neglect by caregivers, together with school drop-out contribute to their vulnerability to sexual violence and exploitation.⁶⁸ It is worth noting that school drop-out may not only contribute to vulnerability to sexual violence and exploitation, it may also result from it.⁶⁹

In order to meet their daily needs, children affected by HIV/AIDS and AIDS orphans may engage in theft, prostitution, forms of hazardous labour and street activities such

as begging. This in turn makes them vulnerable to violence and ill-treatment at the hands of the police.

Government of Kenya: positive steps for child protection

The Government has implemented several programmes to provide children living on the street with shelters and assistance. The Government has also supported NGOs in providing education, skills training, counselling, legal advice and shelter for girls abused by their employers. Within the context of the Government's programme to remove children from the street, in November 2005, 231 out of a group of 300 street children graduated from vocational courses in the National Youth Service. The Government also provided shelter and medical care to street children exploited in the commercial sex industry.⁷⁰

The State Report on Children

§83. The Children's Act prohibits child labour. Although reliable data on the exact number of children is lacking, child labour is a challenge that the Government is committed to eradicate. The Ministry of Home Affairs has made great contributions in this through various programmes some in collaboration with the Ministry of Local Government on programmes relating to street children who were formerly working on the streets. Street children and families have been rehabilitated in homes run by the Local Government. The Ministry of Home Affairs also contributed in finding placement for former street children who attend the National Youth Service for vocational training and graduate successfully.

§84. The Employment Act, however, allows children who are at least 16 years to work with limitations relating to working hours, type of work and subject to regular inspection of the premises where they are working by labour officers. Children are also protected from all work that might be harmful to their physical or moral well-being. The Government is encountering challenges in eradication of child labour a major one being poverty so that Children are made to contribute to the family income. HIV/AIDS orphans are also forced to work to eke out a living.

6. Recommendations

In the context of the Economic Recovery Strategy for Wealth and Employment Creation:

- pursue the commitment to combat corruption and provide training and awareness raising for police and military regarding the vulnerability of the poor and most marginalised members of society to violence and ill-treatment;*
- pursue the fourth pillar of the strategy – namely investment in the human capital of the poor – as a means both to promote Kenyan citizens’ enjoyment of their economic, social and cultural rights, and to reduce ethnic tensions, competition over scarce resources and the incidence of violence in society.*

Regarding evictions:

- include a provision in the Kenyan Constitution to ensure that evictions are used as a last resort, and that they are carried out according to international human rights standards;*
- establish and implement guidelines to ensure that eviction processes respect human rights and human dignity;*
- introduce a moratorium on evictions until clear and transparent policies and guidelines on evictions are established;*
- use forced evictions only as a last resort, when alternative remedies have been exhausted;*
- ensure that communities affected are not only informed, but also given the chance to engage in meaningful consultation;*
- promote coordination among government administrations in resettlement processes;*
- establish a land tribunal, as recommended by the Ndungu Commission.*

Regarding legal reforms:

- introduce just and fair legislation to govern the informal economy and protect those who work in this sector*
- take steps to ensure that customary laws are consistent with both national laws and international standards and fully respect the rights and dignity of women and children.*
 - implement effective training for judges on the application of national law with regard to non-discrimination and the enjoyment of economic, social and cultural rights.*

Regarding the situation of women:

- OMCT echoes the call of the Committee on Elimination of Discrimination Against Women that the State should promote without delay the passage of the Domestic Violence (Family Protection) Bill, the Matrimonial Property Bill and the Equal Opportunity Bill, which have been under preparation in different forms since 1999.⁷¹*

7. Additional Elements of Concern Raised by the State Report

1. Workers' rights

Export Processing Zones (EPZs)

§62. The Government is concerned about the categories of workers who are not covered by the above framework, such as domestic workers, workers in the Export Processing Zones (EPZs) and workers in the informal sector, and is exploring ways of including such groups within the provisions of the Country's labour laws.

While all workers are entitled to the benefits accruing from the Employment Act, the enforcement of the Act has been ineffective in so far as domestic workers in the informal sector are concerned. Workers in the Export Processing Zones (EPZs) are another category of workers who though covered under the relevant employment and wages legislations, inspection has been difficult. It is worth noting though that the EPZs are exempted from the Occupational Health and Safety Standards.

§63. Ensuring that EPZs comply with labour standards has been a major challenge. While the Government is committed to maintaining the highest possible standards of employment for all workers in the Country, the concessions that have been given to EPZ companies so as to attract and retain the equally important Foreign Direct Investment (FDI) negate some of the gains made in protecting the rights of workers by the Occupational Health and Safety Standards. The government is however working on amending the exemption which came through a Finance Bill.

Freedom of association

§67. There are currently certain legal technicalities as well as national circumstances that militate against the ratification of ILO Convention No. 87 on the Freedom of Association and protection of the right to organize. Certain sections of the Kenyan law consist of general restrictions in the exercise of trade union rights, which contravene this convention.

Right to Strike

§69. The right to strike is not enshrined in the Constitution, although the Trade Unions Act provides for lawful strikes and the procedure to be followed in calling a strike. The Act prohibits certain categories of worker (such as those engaged in essential services) from striking.

2. Education

§145. The current Constitution of Kenya makes no provision for the right to education. The

Draft Constitution would have corrected this position as Section 62

§154. The *National Poverty Eradication Plan 1999- 2015*, gives significant focus to the goal of basic education for all, acknowledging declining enrolment and completion rates of the poor, the failure of the cost-sharing strategy, declining social indicators and restates the importance of paying for the basic open cycle of education through public funds, thus using a key human development service to help alleviate inequity.

§163. Some of the challenges to the education system in Kenya include overcrowding in primary schools and overstretched infrastructure (classrooms, toilets etc.), especially since the introduction of free primary education;

§165. Affordability still is a great hindrance to access to education for many, especially after the introduction of cost sharing in secondary schools and universities.

3. Customary law

§170. In Kenya, African customary law has the force of law, so long as it is “not repugnant to justice or inconsistent with any written law”. This is provided for in the Judicature Act, Chapter 8 of the Laws of Kenya. The current Constitution of Kenya is silent on the status of culture/ customs.

¹ See OMCT, *Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An Interdisciplinary Study*, Geneva, 2006, www.omct.org. In his role as UN Special Rapporteur on the Question of Torture, Sir Nigel Rodley noted, “As long as national societies and indeed the international community fail to address the problems of the poor, the marginalized and the vulnerable, they are indirectly and, as far as the risk of torture is concerned, directly contributing to the vicious circle of brutalisation that is a blot on and a threat to our aspirations for a life of dignity and respect for all”, UN Doc.A/55/290, Report of the Secretary-General transmitting the Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, 11 August 2000, §37.

² Of course, many other measures must be taken to eliminate torture in addition to addressing its economic, social and cultural root causes. These are dealt with in OMCT-sponsored alternative reports to the Human Rights Committee, the Committee Against Torture, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women.

³ p.9, OMCT, *Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An Interdisciplinary Study*, Geneva, 2006, www.omct.org

⁴ United Nations Development Assistance Framework (UNDAF), KENYA, 2004-2008 <http://www.ke.undp.org/UNDAF.pdf>

⁵ United Nations Development Assistance Framework (UNDAF), KENYA, 2004-2008 <http://www.ke.undp.org/UNDAF.pdf>

⁶ United Nations Development Assistance Framework (UNDAF), KENYA, 2004-2008 <http://www.ke.undp.org/UNDAF.pdf>

⁷ United Nations Development Assistance Framework (UNDAF), KENYA, 2004-2008 <http://www.ke.undp.org/UNDAF.pdf>

⁸ Country Reports on Human Rights Practices , Kenya 2006 <http://www.state.gov/g/drl/rls/hrrpt/2006/78740.htm>

⁹ United Nations Development Assistance Framework (UNDAF), KENYA, 2004-2008 <http://www.ke.undp.org/UNDAF.pdf>

¹⁰ United Nations Development Assistance Framework (UNDAF), KENYA, 2004-2008

<http://www.ke.undp.org/UNDAF.pdf>

¹¹ The population of 32 million is estimated from the last census held in 1999 though the results were not officially published. This information is also contained in the statistical abstract.

¹² “In the Rift Valley, where many Kikuyu had been resettled in the 1950s and 1960s, the 1992 clashes broke out after Kalenjin peasants were incited to assert a traditional claim to land occupied by Kikuyu and other farmers.” Human Rights Watch . Kenya: Unfinished Democracy

<http://www.hrw.org/reports/2002/kenya2/Kenya1202.htm>

¹³ Human Rights Watch. Kenya: Unfinished Democracy

<http://www.hrw.org/reports/2002/kenya2/Kenya1202.htm>

¹⁴ Human Rights Watch. Kenya: Unfinished Democracy

<http://www.hrw.org/reports/2002/kenya2/Kenya1202.htm>

¹⁵ Immigration and Refugee Board of Canada: Kenya the state of the country: “Sources report certain tribal conflicts over the control of natural resources, particularly land, pastures and water sources (*Libération* 8 Feb. 2005; IPS 12 Apr. 2005; Project Ploughshares Jan. 2006; Oxfam 6 Feb. 2006). The conflicts have sometimes escalated as a result of drought (*ibid.*; IPS 12 Apr. 2005; *Esprit et Vie* n.d.), foreign interference (*ibid.*; Project Ploughshares Jan. 2006) and an increasing number of firearms circulating in Kenya (Oxfam 6 Feb. 2006). Clashes between Masai and Kikuyu farmers in the Rift Valley have killed dozens (*Libération* 8 Feb. 2005; US Mar. 2005, Sec. 5) and displaced thousands of others (*Libération* 8 Feb. 2005). Other ethnic fighting has been reported in the far northeast region of the country between the Murule and Garre (IPS 12 Feb. 2005; Project Ploughshares Jan. 2006) and between the Borana and Gabra (*ibid.*). In the western part of the country, there are land disputes between the Pokot and other ethnic groups, particularly the Luhya (*Libération* 8 Feb. 2005; see also US 8 Mar. 2006, Sec. 5). One source indicated that, [translation] “little has changed” since Mwai Kibaki came into power and established his government, despite promises to resolve land disputes with a redistribution of land (*Libération* 8 Feb. 2005).”

<http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=450496>

¹⁶ Including, furthermore, the absence of political leadership at the local level, diminished economic prospects for groups affected by a severe regional drought, and the inability of security forces to adequately control the violence.

¹⁷ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen Addendum - MISSION TO KENYA - A/HRC/4/32/Add.3, 26 February 2007, § 83

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/110/43/PDF/G0711043.pdf?OpenElement>

¹⁸ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen Addendum - MISSION TO KENYA - A/HRC/4/32/Add.3, 26 February 2007, § 55: “Communities claim that the Government’s response to these situations has been inadequate, and that in many instances it has led to human rights abuses by security forces. In most cases, these abuses have not been seriously investigated and the victims have found no redress, leading to a widespread sense that impunity prevails ”

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/110/43/PDF/G0711043.pdf?OpenElement>

¹⁹ Country Reports on Human Rights Practices , Kenya 2006

<http://www.state.gov/g/drl/rls/hrrpt/2006/78740.htm>

²⁰ Minority Right Groups International and Cemiride: “Kenya: Minorities, Indigenous Peoples and Ethnic Diversity” <http://www.minorityrights.org/?lid=645>

²¹ “Kenya: Insecurity, conflict affect education in northern region”, IRIN, August 2007,

www.irinnews.org/printresport.aspx?reportid=73834

²² Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen Addendum - MISSION TO KENYA - A/HRC/4/32/Add.3, 26 February 2007, § 83

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/110/43/PDF/G0711043.pdf?OpenElement>

²³ “In Laikipia, in 2004, Maasai protesters marking the expiration of leases under the 1904 treaty with the British were severely repressed, resulting in the killing of an elder and serious injury to four people. Rape of women and looting in local villages were reported as a result of the security operation that ensued.” Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen Addendum - MISSION TO KENYA - A/HRC/4/32/Add.3, 26 February 2007, § 60

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/110/43/PDF/G0711043.pdf?OpenElement>

²⁴ Including the Kenya Land Alliance, Osiligi in Laikipia and MPIDO. “In 2005, the director and two other staff members of MS Kenya, a branch of the Danish association for International Cooperation

that supports the promotion of land rights, were accused of ‘subversive activities’”. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen Addendum - MISSION TO KENYA - A/HRC/4/32/Add.3, 26 February 2007, § 61

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/110/43/PDF/G0711043.pdf?OpenElement>

²⁵ Minority at risk project. <http://www.cidcm.umd.edu/mar/data.asp>

²⁶ Minority at risk project: assessment for Maasai: “There has, however, been conflict between the Maasai and other ethnic groups (INTERCON2 = 1). Most of these conflicts have erupted when Maasai cattle stray onto agricultural land. Such a conflict between Maasai and Kipsigis in 1999 and 2000 left three dead, many wounded, and several houses burned. There was similar but less violent conflict between Akamba and Maasai in 1999 and between Kikuyu and Maasai in 2000. In 1999, there were also clashes between the Kisii and the Maasai over cattle thefts resulting in one death and several injuries. In 2001 and 2002 there were conflicts between the Maasai and Kisii over cattle, resulting in numerous deaths and injuries (COMCON01-02 = 3). There was also conflict in 2003, but no deaths (COMCON01 = 1). In 2001 there was conflict between the Maasai and Kipsigis over land which resulted in one death, and in 2003 conflict between the two communities over cattle led to another death.” <http://www.cidcm.umd.edu/mar/assessment.asp?groupId=50105>

²⁷ “In 1999, there were clashes between the Somalis and the Oromos, who were either from Kenya or neighbouring Ethiopia. Both groups are pastoralists who often cross state boundaries. In addition, during 1999 and 2000, disputes over land led to violence between the Somalis and the Boran in Central Kenya and also drew in the Meru community. More than 100 people were killed. Disagreements between Somali sub-clans also resulted in sporadic violence during the same time period. There was no intergroup conflict against other ethnic groups or intra-group conflicts within Somalis from 2001-2003.” Minority at risk project. Assessment for Somalis;

<http://www.cidcm.umd.edu/mar/assessment.asp?groupId=50106>

²⁸ Minority Right Groups International and Cemiride: “Micro Study: Kenya’s castaways: the Ogiek and National development Processes”: <http://www.minorityrights.org/?lid=738>

²⁹ Adequate housing as a component of the right to an adequate standard of living Report by the Special Rapporteur, Miloon Kothari Addendum - Mission to Kenya (9-22 February 2004)

³⁰ “Ancestral land of the Ogiek in the Mau forest was declared a protected forest area by colonial authorities in 1942, and communities living in the area were resettled to other lands. The Ogiek nevertheless remained or returned to their ancestral land from resettlement areas in Sururu, Likia and Teret. Under Kenya’s Forest Act, no cutting, grazing, removal of forest produce or disturbance of the flora is allowed, except with the permission of the director of forestry; permission shall only be given with the object of conserving natural flora and amenities of the reserve.” E/CN.4/2005/48/Add.2, § 60

³¹ Adequate housing as a component of the right to an adequate standard of living Report by the Special Rapporteur, Miloon Kothari Addendum - Mission to Kenya (9-22 February 2004)

E/CN.4/2005/48/Add.2, 17 December 2004, § 60

<http://daccessdds.un.org/doc/UNDOC/GEN/G04/168/86/PDF/G0416886.pdf?OpenElement>

³² Cohre. “Forest evictions : A way forward ?” August 2006

<http://www.cohre.org/store/attachments/Kenya%20Housing%20Rights%20Update%20August%202006.pdf>

³³ Cohre. “Forest evictions : A way forward ?” August 2006

<http://www.cohre.org/store/attachments/Kenya%20Housing%20Rights%20Update%20August%202006.pdf>

³⁴ Cohre. “Nowhere to go. Forced evictions in Mau forest, Kenya” 2007

<http://www.cohre.org/store/attachments/Mau%20Forest%20Evictions%20Report.pdf>

³⁵ Cohre. “Nowhere to go. Forced evictions in Mau forest, Kenya” 2007

<http://www.cohre.org/store/attachments/Mau%20Forest%20Evictions%20Report.pdf>

³⁶ “A direct consequence of the Mau forest eviction was the displacement of thousands of families. The fact-finding mission was able to confirm that the Government had made no effort to relocate people or ensure that the evictions did not result in homelessness. Local government officials insisted that affected communities have “somewhere to return to”¹⁹ but the fact-finding mission found evidence to refute this assertion.²⁰ In Sururu, a significant number of those who were forcibly evicted in 2004 were still living in the area, many in inadequate housing. In Massai Mau, many people moved back onto the land from which they were forcibly evicted and rebuilt their homes. They all claimed they had nowhere else to go.” <http://www.cohre.org/store/attachments/Mau%20Forest%20Evictions%20Report.pdf>

³⁷ Cohre. ‘Nowhere to go: Forced evictions in Mau forest, Kenya’, 2007 Report

“...This was cited as one of the main obstacles to putting in place proper resettlement plans as it is the Ministry of Lands that would generally have led in the identification and allocation of alternative land and allocate it for resettlement. In meetings to discuss forest evictions, the Ministry of Environment officials who were present indicated they believed they could not address the relocation issue. According to one person interviewed during the mission, there is almost no communication between the Ministry of Environment and Ministry of Lands. One government source felt that the Ministry of Environment officials believed the issue of resettlement was not within the mandate of their Ministry and therefore they did not cooperate with Ministry of Lands before the evictions. The absence of any communication with the Ministry of Lands in respect of the Mau Forest evictions was confirmed to the fact-finding mission by local government officers.”

<http://www.cohre.org/store/attachments/Mau%20Forest%20Evictions%20Report.pdf>

³⁸ Nowhere to go. Forced evictions in Mau forest, Kenya, 2007 report

<http://www.cohre.org/store/attachments/Mau%20Forest%20Evictions%20Report.pdf>

³⁹ Nowhere to go. Forced evictions in Mau forest, Kenya, 2007 report

<http://www.cohre.org/store/attachments/Mau%20Forest%20Evictions%20Report.pdf>

⁴⁰ Cohre: Slum upgrading initiatives in Kenya, 2006.

<http://www.cohre.org/store/attachments/Huchzermeyer%20-%20Slum%20upgrading%20initiatives%20in%20Kenya.pdf>

⁴¹ 50 m² each, two bedroom units to be privately owned

⁴² Kenya Housing Rights Updates, August 2007

<http://www.cohre.org/store/attachments/Kenya%20Housing%20Rights%20Update%20-%20August%202007%20I.pdf>

⁴³ Listening to the poor, update 2006: http://www.cohre.org/store/attachments/II_update-Kenya.pdf

⁴⁴ Cohre: Slum upgrading initiatives in Kenya, 2006.

<http://www.cohre.org/store/attachments/Huchzermeyer%20-%20Slum%20upgrading%20initiatives%20in%20Kenya.pdf>

⁴⁵ “c) **Affordability.** Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases.”

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?OpenDocument)

⁴⁶ Cohre: Slum upgrading initiatives in Kenya, 2006.

<http://www.cohre.org/store/attachments/Huchzermeyer%20-%20Slum%20upgrading%20initiatives%20in%20Kenya.pdf>

⁴⁷ Cohre: Slum upgrading initiatives in Kenya.

<http://www.cohre.org/store/attachments/Huchzermeyer%20-%20Slum%20upgrading%20initiatives%20in%20Kenya.pdf>

⁴⁸ Adequate housing as a component of the right to an adequate standard of living Report by the Special Rapporteur, Miloon Kothari Addendum - Mission to Kenya (9-22 February 2004) E/CN.4/2005/48/Add.2, 17 December 2004, § 77

<http://daccessdds.un.org/doc/UNDOC/GEN/G04/168/86/PDF/G0416886.pdf?OpenElement>

⁴⁹ BBC News “Profile: Kenya’s secretive Mungiki sect”, <http://news.bbc.co.uk/2/hi/africa/6685393.stm>

⁵⁰ Concluding comments of the Committee on the Elimination of Discrimination against Women: Kenya CEDAW/C/KEN/CO/6, § 21

<http://daccessdds.un.org/doc/UNDOC/GEN/N07/459/89/PDF/N0745989.pdf?OpenElement>

⁵¹ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen Addendum - MISSION TO KENYA - A/HRC/4/32/Add.3, 26 February 2007, § 80

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/110/43/PDF/G0711043.pdf?OpenElement>

⁵² Women’s land and property rights in situation of conflict reconstruction: http://www.unifem-easternafrica.org/global_inner.asp?pcat1=mediacentre&pcat=resources&cat=books&sid=

⁵³ Human Rights Watch. Double Standards: Women’s Property Rights Violations In Kenya

<http://hrw.org/reports/2003/kenya0303/kenya0303.pdf>

⁵⁴ Adequate housing as a component of the right to an adequate standard of living, Report by the Special Rapporteur, Miloon Kothari Addendum - Mission to Kenya (9-22 February 2004) E/CN.4/2005/48/Add.2, 17 December 2004, § 46.

<http://daccessdds.un.org/doc/UNDOC/GEN/G04/168/86/PDF/G0416886.pdf?OpenElement>

⁵⁵ Adequate housing as a component of the right to an adequate standard of living, Report by the Special Rapporteur, Miloon Kothari Addendum - Mission to Kenya (9-22 February 2004) E/CN.4/2005/48/Add.2, 17 December 2004, § 45

<http://daccessdds.un.org/doc/UNDOC/GEN/G04/168/86/PDF/G0416886.pdf?OpenElement>

⁵⁶ Adequate housing as a component of the right to an adequate standard of living, Report by the Special Rapporteur, Miloon Kothari Addendum - Mission to Kenya (9-22 February 2004) E/CN.4/2005/48/Add.2, 17 December 2004, § 45

<http://daccessdds.un.org/doc/UNDOC/GEN/G04/168/86/PDF/G0416886.pdf?OpenElement>

57 Country Reports on Human Rights Practices , Kenya 2006
<http://www.state.gov/g/drl/rls/hrrpt/2006/78740.htm>

⁵⁸ Kenya: Rape, the invisible crime. Amnesty International, 2002.
<http://web.amnesty.org/library/Index/ENGAFR320012002>

⁵⁹ Kenya: Rape, the invisible crime. Amnesty International, 2002.
<http://web.amnesty.org/library/Index/ENGAFR320012002>

⁶⁰ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen Addendum - MISSION TO KENYA - A/HRC/4/32/Add.3, 26 February 2007, § 79
<http://daccessdds.un.org/doc/UNDOC/GEN/G07/110/43/PDF/G0711043.pdf?OpenElement>

⁶¹ UNICEF, “Changing a Harmful Social Convention: Female Genital Mutilation/Cutting”, UNICEF Innocenti Research Centre, Innocenti Digest no. 12, Florence, 2005.

⁶² Concluding comments of the Committee on the Elimination of Discrimination against Women: Kenya CEDAW/C/KEN/CO/6, § 29
<http://daccessdds.un.org/doc/UNDOC/GEN/N07/459/89/PDF/N0745989.pdf?OpenElement>

⁶³ “During the year the children's rights NGO ANPPCANN estimated that approximately 750,000 children lived on the streets.” Country Reports on Human Rights Practices , Kenya 2006

⁶⁴ “For example, in January street children who had allegedly stabbed a bus driver were beaten by residents in Eldoret who argued that the children posed a security threat in the community.” Country Reports on Human Rights Practices , Kenya 2006
<http://www.state.gov/g/drl/rls/hrrpt/2006/78740.htm>

⁶⁵ Committee On The Rights Of The Child, Concluding observations: Kenya - CRC/C/KEN/CO/2, § 63
<http://daccessdds.un.org/doc/UNDOC/GEN/G07/425/08/PDF/G0742508.pdf?OpenElement>

66 Country Reports on Human Rights Practices , Kenya 2006
<http://www.state.gov/g/drl/rls/hrrpt/2006/78740.htm>

⁶⁷ Committee On The Rights Of The Child, Concluding observations: Kenya - CRC/C/KEN/CO/2
<http://daccessdds.un.org/doc/UNDOC/GEN/G07/425/08/PDF/G0742508.pdf?OpenElement>, § 61.

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69 Letting Them Fail, Government Neglect and the Right to Education for Children Affected by AIDS
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⁷¹ Concluding comments of the Committee on the Elimination of Discrimination against Women: Kenya CEDAW/C/KEN/CO/6, §17.
<http://daccessdds.un.org/doc/UNDOC/GEN/N07/459/89/PDF/N0745989.pdf?OpenElement>