

**COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL  
RIGHTS PRE-SESSIONAL WORKING GROUP 2007**

**LIST OF ISSUES BY THE KENYAN CIVIL  
SOCIETY COALITION ON ECONOMIC  
SOCIAL AND CULTURAL RIGHTS**

**Nairobi, Kenya  
November, 2007**

## **1.0 Introduction**

The Kenyan Civil Society Coalition on Economic, Social and Cultural Rights does welcome the submission of Kenya's State Report for the first substantial period as required by the International Covenant on Economic Social and Cultural Rights (ICESCR). The fact that Kenya is making a submission in itself illustrates that the State now realizes the importance of State Reporting as a means of international supervision and monitoring, and accountability for the enforcement and compliance with human rights obligations.

It is to be remarked that while writing the State Report, the State demonstrated a considerable level of openness,<sup>1</sup> inviting Non-Governmental Organizations (NGOs) to participate in the process. Be that as it may, the NGOs found significant limitations in the approach that the State adopted in writing its report. The approach, in our view, did not enable a bigger constituency of the population, through deliberate efforts to ensure public participation in the process of writing the Report. Second, on the content, the Report does not examine objectively the achievements vis-à-vis milestones; it rather seeks to merely offer a "good impression" and unbalanced account to the Committee on Economic Social and Cultural Rights (the Committee).

The third deficit in the State Report writing approach was the narrow interpretation of the ICESCR, with little or no attention paid to the jurisprudence and concluding observations that the Committee has made in the past, all of which provide the normative content of the rights prescribed in the Covenant. To this extent, therefore, the Report is formulaic.

It is within this background the NGOs submitting this report seek to respectfully offer an expanded representation of the situation on the protection, promotion and fulfillment of economic, social and cultural rights (ESCR) in Kenya. We have therefore suggested a list of issues which, if the Committee were to consider, would provide a comprehensive and detailed review of Kenya's State Report. Our aim, therefore, is to supplement the State Report, and ensure constructive dialogue during its examination of the State Report.

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<sup>1</sup> This was demonstrated by the invitation that several NGOs (some of which are enjoined here) received to attend the inaugural and subsequent session convened to write the official report.

## 2.0 Some Overarching Concerns: Poverty, Inequality and Corruption

While the Report is a substantive account of the state of economic, social and cultural rights in Kenya, we contend that it is not a complete offering. We also note that the Report is more descriptive, than analytical, leaving many questions unanswered. Even so, the Report has not addressed some critical issues which today challenge the equal enjoyment of economic, social, political and cultural rights by all Kenyans: Poverty, Inequality and Corruption. Each of these warrants some brief attention.

*Poverty:* That poverty is one of the greatest challenges facing Kenya can hardly be gainsaid. Although combating poverty, hunger and disease was a political credo at independence, majority of Kenyans remains beset by poverty today than at independence. The number of people living in absolute poverty is now 56%, with a likelihood that it will rise to 66% by 2015 if current trends are not addressed.<sup>2</sup> Moreover, although the economy has registered some growth attributable to Government reforms over the last four years, increasing inequality in the distribution of income and wealth has led to a rise in poverty, and over half the Kenyan population currently lives below the poverty line. It has also been contended that the increase in percentages in growth (and decrease in poverty) does not correlate with the number of people now living in poverty. What are the implications of this?

Poverty is a phenomenon with far reaching ramifications on individuals and social groups. Poverty engenders inequality, discrimination and exclusion, violating individual rights and freedoms. It attacks the very foundation of human rights: the right to dignity and autonomy of the person. The assertion that “necessitous men are not free men” is perhaps the best explanation of this connection. In Kenya, whereas poverty eradication has been on the agenda since independence, there is reason to worry that the problem persists four decades later. The problem, in part, is due to lack of consistent and targeted interventions to combat poverty in Kenya.

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<sup>2</sup> Republic of Kenya, Millennium Development Goals Kenya Progress Report 2005, (Nairobi, 2005). The major indicators of poverty in Kenya are unemployment; low coverage in water supply services; a general decline in access to health services; increased pressure on the environment; and increased numbers of people receiving below minimum level of dietary energy consumption.

*Inequality:* Although poverty and inequality are distinct issues, they are quite related.<sup>3</sup> In a seminal report by Society for International Development, *Pulling Apart: Fact and Figures on Inequality in Kenya*,<sup>4</sup> there is now a gulf between the poor and the rich, a gap that makes Kenya the third most unequal State in Africa. For us, however, the issue of inequality is not just about the statistics on the income gap between the rich and poor, but rather the effects of this on the wellbeing, autonomy and dignity of individuals and groups. Moreover, this divide entails differences in access to basic social goods and service such as education, health, access and enjoyment of political rights and freedoms.

Inequality in Kenya is also not confined to income and wealth, but also between groups. In this respect, gender inequality remains a key challenge, with serious implications on equal well being, autonomy and dignity of men and women. More specifically, gender inequality is manifest in differential treatment and outcomes that deny women the full enjoyment of the social, political, economic and cultural rights and development. This runs afoul the principle of non-discrimination which is a fundamental tenet of the ICESR.

*Corruption:* Corruption is undoubtedly one of the most pressing challenges confronting the world today. With recognition that corruption is a threat to the rule of law, democracy, and human rights, there is now an almost omnipresent debate on combating corruption. In Kenya, however, whereas there has been a growing talk on legal, institutional, structural and policy measures to combat the vice, there has been little or no progress in the fight against grand political corruption. Four years after the establishment of the Kenya Anti-Corruption Commission, no prosecutions, convictions, return of assets, or closure of loopholes on further corruption. The upshot is that public funds continue to be diverted by corrupt individuals with impunity, which would have otherwise been used in the provision of public goods and services. This has had far reaching implications on the enjoyment of economic, social and cultural rights in Kenya. Moreover, this has also affected equality, development, accountability, participation and empowerment, all of which are complementary to human rights.

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<sup>3</sup>According to the Society for International Development, while poverty is about the level of well being, inequality refers to the differences in wellbeing. Also see Andrew McKay, Defining and measuring inequality. Inequality Briefing paper No.1 (1of3) overseas Development Institute, march 2002.

<sup>4</sup> See a copy available at [www.sidint.org](http://www.sidint.org).

The Kenyan State Report has not addressed these issues which we consider core to vindicating economic, social and cultural rights. Moreover, Kenya should also domesticate the provisions of the ICESCR, as part of the process of conscientizing the public and State organs on these rights. In this regard, participating civil society organizations consider that the failed constitutional review process in 2005 is not an alibi, since Kenya acceded to the ICESCR in 1972.

**On the basis of these observations, we request that the Pre-Sessional Working Group should put the following questions to the Kenyan State:**

1. What is the State doing to close the ever increasing gap between the rich and the poor in Kenya?
2. What is the State doing to curb the increase in poverty in some of the regions (for instance, North Eastern Province) and sections of the Kenyan community (like those living the slums areas, women and the minority)?
3. What is the State doing to ensure that that economic growth translates into improved or better livelihoods and adequate standards of living for all Kenyans? What social protection measures have been put in place to cushion the poor against economic, social and cultural “unfreedoms” brought about by poverty? Has the Government considered policy options to deal with the increasing levels of inequality in Kenya?
4. How does the State intend to address increasing corruption which threatens to deny Kenyans access to basic economic, social and cultural goods and services? What measures has the Government of Kenya put in place to deal with the economic crimes which have fleeced and impoverished Kenyans over the years?
5. What steps has the State taken to domesticate the provisions of the ICESCR before and following the stalled constitutional review process?

### 3.0 Some More Questions on the Implementation of the ICESCR

**Article I: Right to self determination:** All peoples have a right to be given an opportunity to determine their political destiny as well as manage their own resources and wealth. This is a specific obligation states owe to not only their own nationals but also other peoples who have not yet realized their right to self determination.<sup>5</sup> We will confine our observations to *internal self-determination*.

At the domestic level, the performance of the Government has been dismal. Although a number of decentralization schemes are available such as the *Local Government Act*, the *Local Authorities Transfer Fund Act*, the *Roads Maintenance Levy Fund (RMLF)*, the *Constituency HIV/AIDS Fund*, and the *Constituencies Development Fund Act*, and so on, these are fairly weak in formulation and do not fully represent the desired efficient and effective decentralization system.

**In this regard, we would like the following question to be posed to Kenya:**

1. **What plan does the Government have to ensure that the decentralization of services and power enhances social protection and ensures the protection and fulfillment of economic, social and cultural rights in local communities?**
2. **How does the State ensure that local natural resources benefit communities around where such resources are found?**

**Article 2: Non Discrimination:** The Kenyan Constitution provides for a Bill of Rights which applies to all, *prima facie*, without discrimination.<sup>6</sup> However, social, economic and cultural rights are not expressly protected under the Kenya Constitution. Moreover, the vulnerable groups have continually faced discrimination in Kenya. Women, children, persons with disabilities and minority groups have been left out in participation, access to information, sharing of resources and in decision making processes.

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<sup>5</sup> Para 6, General Comment No 12: The right to self-determination of peoples. Human Rights Committee.

<sup>6</sup> Chapter V, Constitution of Kenya.

Traditional African customary laws as well as Sharia laws have practices that are discriminatory in nature, especially to women and girl children, and yet these continue to be sanctioned by the current laws.<sup>7</sup>

**We, therefore, suggest that the Committee invites the State to explain:**

- 1. What steps it has taken to identify and develop indicators to measure the extent to which the different groups are not discriminated upon in the enjoyment of economic, social and cultural rights?**
- 2. What efforts it has made to amend the Constitution and the other laws that are oppressive to women?**

**Article 3: Equal rights of men and women:** The Kenya State has over the years made efforts to address the needs and concerns of women by putting in place structures such as the National Commission on Gender and Development and the Department of Gender in the Ministry of Gender, Culture and Social Services with the supposed aim of promoting gender equality and equity. The Government has also established the Women's Fund aimed at enabling women to participate in income generating activities for their own benefit. However, there is still discrimination against women in terms of access to decision making structures and processes. For instance, the number of women in elective positions is relatively low compared to their male counterparts and the same applies to senior Government positions.

Although section 82(1) of the Constitution proscribes sex based discrimination, some discriminatory laws remain in force in Kenya. Section 82 (4 (b) and (c)) of the Constitution of Kenya, for example, provides that the Constitution's guarantee of non-discrimination does not apply with respect to personal laws, in particular in the areas of marriage, divorce, adoption, burial and succession. Further, section 91 of the Constitution stipulates that a Kenyan woman married to a foreigner does not pass on her citizenship to her husband automatically, yet a foreign woman married to a citizen of Kenya is entitled to be registered as a citizen of Kenya.

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<sup>7</sup> Judicature Act, Chapter 8 Laws of Kenya provides at section 3 African customary law as well as Islamic law are sources of law in Kenya. Besides, the Constitution itself at section 74 permits that women may be discriminated upon in matters of adoption, marriage, death, birth and other personal law items.

Third, a Kenyan woman married to a foreign man does not automatically pass on her citizenship to the children of such marriage if they are born outside Kenya, unless an application to be registered as a citizen of Kenya is made under section 92(2) of the Constitution of Kenya and the Citizenship Act (Cap 170 Laws of Kenya) by the mother or other guardian. These and other laws have been reinforced by judicial decisions such as on property rights,<sup>8</sup> rendering equal enjoyment of economic, social and cultural rights elusive for many women.

**In this regard, we invite the Committee to enquire from the State:**

- 1. What efforts it has put in place to ensure equal treatment and provision of services to all Kenyans without discrimination?**
- 2. What measures it has put in place to ensure the enactment of Affirmative Action laws as well as other equality legislations?**
- 3. What efforts have been taken to enact legislations on domestic violence?**

**Article 6: Right to work:** The Current Government of Kenya promised that it would, upon election, create 500,000 jobs each year. Yet, between 2001 and 2005, the number of wage employees increased only marginally from 1,677,100 to 1,807,700.<sup>9</sup> During the same season, the number of self-employed and unpaid family workers increased from 65,400 to 66,800.<sup>10</sup> The ‘default’ informal sector also grew tremendously from 4,668,700 individuals to 6,407,200.<sup>11</sup> The same five year period witnessed private employment sector grow only marginally by 4.3% while the public sector shrunk by 0.6%. In a population of over 14 million adults, unemployment and dependency rates must, therefore, be seen to be very high where wage employee’s amount only to 1.8 million people.

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<sup>8</sup> For example, in *Echaria vs. Echaria*, Civil Appeal No. 75 of 2001, the Court of Appeal of Kenya held that the wife was only entitled to one quarter of the property, upon divorce.

<sup>9</sup> Total recorded employment, June 2001 – 2005, Ministry of Labour. Obtainable at [www.cbs.go.ke](http://www.cbs.go.ke). Accessed on 12 September 2007.

<sup>10</sup> Total recorded employment, June 2001 – 2005, Ministry of Labour. Obtainable at [www.cbs.go.ke](http://www.cbs.go.ke). Accessed on 12 September 2007.

<sup>11</sup> Total recorded employment, June 2001 – 2005, Ministry of Labour. Obtainable at [www.cbs.go.ke](http://www.cbs.go.ke). Accessed on 12 September 2007.

Another area of concern relates to trade and investment regimes and their effects on human rights, particularly on the rights to work, right to life, right to adequate standards of living and the right to food. Over the last two decades, Kenya has pursued economic policies and reforms such as trade liberalization, export promotion and investment liberalization, agricultural reforms, all of which have adversely affected adversely. At present, Kenya is negotiating to enter into Economic Partnership Agreements (EPAs) with the European Union, yet it has not conducted a human rights impact assessment of the same. Even so, a state think-tank (Kenya Institute for Public Policy Research and Analysis - KIPPRA)<sup>12</sup> has documented potential negative impacts of the Agreements on revenue, and particular sectors such as agriculture, the dairy industry, none of which have been addressed by the State.

**In this regard, we request the Committee to put the following question to the Government:**

- 1. Why is Kenya plunging into trade, investment and economic agreements without examining, redressing or in any other way taking into account their negative implications on economic, social and cultural rights, and its international obligations in that respect?**
- 2. If Kenya considers that it must enter into such trade, investment and economic agreements and regimes, what measures has the State put in place to ensure that citizens and sectors most affected are compensated adequately and in a timely manner?**
- 3. What policy and administrative measures is the Government putting in place to ensure that the over 90% of adults who are willing to work and are outside wage employment are employed?**

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<sup>12</sup> KIPPRA and Ministry of Trade and Industry, *Assessment of the Potential Impact of Economic Partnership Agreements (EPAs) on the Kenyan Economy* (2005).

**Article 7: Right to enjoyment of just and favorable conditions of work:** Although the right to work is cardinal for both spiritual fulfillment and as a means to good living, it is its conditions which present a test between voluntary and coerced engagement. In this regard, the management of labour relations in Kenya has been a major issue of contention. It has been argued that most of the laws - mostly written during the colonial rule - do not give adequate consideration to what ought to be the voluntary nature of labor. Besides, the current labour regime has been punctuated with laxity and lethargy on the part of labour officials in enforcing the labour laws.

A critical concern for the Coalition is the working conditions in Export Processing Zones (EPZ), where there have been persistent allegations of poor working conditions and unfair labor practices such as non-recognition of unions, sexual harassment and exploitation and workers being forced to work long hours with no breaks.<sup>13</sup>

**In this regard, we propose that the following questions be posed the State:**

- 1. What measures has the State put in place to ensure attitudinal changes in labor administration and full and effective implementation of the new labour legislations?**
- 2. What measures has the Government of Kenya taken to address the deplorable working conditions in EPZs?**

**Article 8: The Right of everyone to form and join trade Unions:** There has been a proliferation of trade unions in Kenya since the late 1960s. To date, there exist about 45 active trade unions representing various industries. As part of the outgoing labour regime, workers and trade union officials have complained of illegitimate interference by labor officials in union organizing and elections.

**In this regard, we propose that the Committee raises the following issues:**

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<sup>13</sup> KHRC, *The Manufacture of Poverty: The Untold Story of EPZs in Kenya* (2005).

1. What is the State doing to make sure that all those who are willing and desire to organize are allowed to form and join trade unions?
2. What efforts has the State put in place to insulate trade unions from illegitimate interference by labour officers and other State authorities?

**Article 9: Right to social security:** In Kenya, the achievement of universal and affordable access to social security, reduction of income insecurity, reduction of the unequal access to opportunities, and removal of discrimination has been slow due to a number of factors. These include high poverty levels, changes in the country's demography represented by an increase in the population of older people, spread of diseases such as HIV/AIDS and the resultant burden on existing social security arrangements,<sup>14</sup> global migration patterns resulting in a high non-national labour force, refugee crisis, changing family structures and values *et cetera*. In the words of the ILO, it requires the adoption of a "comprehensive policy response".<sup>15</sup>

Despite this glaring need, Kenya does not have a conducive constitutional, legislative, policy and institutional environment for the realisation of social security for all. First, the Constitution of Kenya, which is the State's supreme law does not recognise the right to social security. The State has not domesticated the provisions of international human rights instruments on the right to social security, a pre-requisite before such provisions can be invoked in domestic court. This has a number of negative implications:

- a) Persons who have no access, or have inadequate access, to social security cannot make any claim or demand for social security as a matter of right and the State and other actors have no enforceable legal duty to provide that right;
- b) Persons whose right to social security has been violated cannot avail themselves of the substantive and procedural protections afforded by the Constitution such as having an automatic right of audience before the High Court or even obtaining relevant orders *et cetera*.

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<sup>14</sup> By the end of 2005, according to HelpAge International, between 990,000 and 1.3 million Kenyans above the age of 15 were infected with HIV. In that year, 140,000 people, most of them young, died from AIDS leaving behind more than 1.1 million AIDS orphans in the country.

<sup>15</sup> ILO, 'Social Security for All' (n. 1 above) pp. 27, 32.

Second, Kenya does not have an official policy on social security, social insurance or other forms of social protection. This means that whatever legislative or institutional interventions exist or are made from time to time do not flow, emanate or derive from a clear, central, co-ordinated policy locus.

Third, the available social security in Kenya is regulated and provided for under a plethora of legislations - the *Retirement Benefits Act*, 1997<sup>16</sup>, the *National Social Security Fund Act*<sup>17</sup>, the *National Health Insurance Fund Act*<sup>18</sup>, the *Pensions Act*<sup>19</sup> and the *Pensions (Increase) Act*<sup>20</sup>.

It is, therefore, important to note that the social security system under Kenyan laws is 'employment-centred'. Almost all the benefits that are derivable from the various social security schemes - healthcare, unemployment, sickness - can only be accessed by persons or dependants of persons who were or are in employment.

Clearly, the system of social security in Kenya privileges employees and employers who can make periodic contributions to the social security schemes. In the process, it discriminates against certain categories of employees such as casual workers and others in the 'informal sector' where the majority of Kenyans work.

**The Committee, in this respect, is requested to discover from the State:**

- 1. What measures it is taking to ensure social protection of all and the right to social security?**
- 2. What measures are in place that would ensure that all the laws on social security and protection are coherent and consistent?**

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<sup>16</sup>Act 9 of 1997.

<sup>17</sup> Chapter 258, Laws of Kenya.

<sup>18</sup> Act No 9 of 1998.

<sup>19</sup> Chapter 189, Laws of Kenya.

<sup>20</sup> Chapter 190, Laws of Kenya.

**Article 11: Right to adequate standards of living (water and housing)***Right to Water*

In 2002, the water sector reforms in Kenya culminated into the passing of the *Water Act*.<sup>21</sup> The Act which was gazetted in October 2002 gained legislative force in 2003. The *Water Act* introduced new water management institutions to govern water and sanitation. While water resources remained vested in the State, the water reforms saw the introduction of the privatization of water services.

The poor especially within the informal settlements remain largely underserved with minimal changes in water and sanitation coverage. This has been primarily due to the underlying market structures that result in poor people paying far more for their water. Additionally, the historical and contemporary failure to involve residents of informal settlements in the development of the water sector reforms process, and inaccess to information about the reforms and opportunities available to residents of informal settlements in its implementation have resulted into the heightening of the problem.

**The Committee is, therefore, invited to raise the following issues with the State:**

- 1. What steps has the State taken ensure that the poor and marginalized, and persons living in informal settlements have access to affordable, safe and clean water?**
- 2. Does the State promote and facilitate participation by the communities in the making of decisions in the water sector as stated General Comment No. 15 which provides *inter alia*, that: “The right of individuals and groups to participate in**

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<sup>21</sup> Despite these initiatives, Kenya still faces an acute water shortage. The national water storage capacity currently stands at 124 cubic meters, far below the required threshold of 3.4 billion cubic meters of storage, implying that the nation’s storage capacity requires to be expanded almost 30 times (See, Initial Report of the Republic of Kenya, submitted to the Committee on Economic, Social and Cultural Rights. Paragraph 104. E/C.12/KEN/1. 7 September 2007). Available statistics indicate that the Government has performed dismally in the delivery of the water commodity. Only about 32 % of households in Kenya, mainly in urban areas, are connected to piped water. The rural areas experience an even more critical situation, with about 54 % of households lacking potable water. Less than 45% of the rural households had access to piped water systems, boreholes and wells in 1999 compared to 80% who have access to these in urban areas. Most people rely on springs, rivers, streams, ponds, and lakes or dams to meet their water needs: yet these sources are temporary and they are prone to drying up during draught.

**decision making processes that may affect the exercise of their right to water must be an integral part of any policy, programme or strategy concerning water”?**

*Right to Housing*

The majority of urban Kenyans live in informal settlements in slum-like conditions. It was estimated in 1983 that 35% of all urban households lived under slum conditions in informal settlements. In 1993, the figure went up to 55% of a proportionally larger population. The high levels of people living in the informal settlements not only denies them their economic, social and cultural rights but also their precarious legal, social and economic position makes them vulnerable to violations of civil and political rights. A number of informal settlements also exist in forest and rural areas.

The Committee has in the past noted, with great concern, that the practice of forced evictions without consultation, compensation or adequate resettlement has been widespread in Kenya.<sup>22</sup> Cases have been reported where helpless citizens have been evicted from the lands they occupy without prior arrangements for their resettlement or alternative residence.<sup>23</sup>

**We, therefore, recommend that the following issues be raised with the State**

- 1. Whether the State shall observe a moratorium with regard to forced evictions, as originally declared by the Nairobi Informal Settlements Coordination Committee in 1997, until such proper guidelines on evictions are put in place?**
- 2. Does the State have a comprehensive national policy as well as programme of action for improving and upgrading informal settlements?**
- 3. Does the State intent to ensure people’s participation in the development of eviction policies and programmes?**

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<sup>22</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights: Kenya. 03/06/93. E/C.12/1993/6 Para 10.

<sup>23</sup> See, for instance, *Mau evictions continue* 2 January 2006 East African Standard; *Mau forest eviction squad now in Narok* 2 January 2007 East African Standard; *State kicks out 500 squatter families from Eburu forest* 27 January 2006 Daily Nation.

4. **Has the State any policy providing for progressive realisation of the right to adequate housing? Have sufficient resources been allocated for this purpose?**

**Article 12: Rights to health:** Reproductive health and rights receive broad protection under the ICESCR. In Kenya, medical statistics show that numerous women are compelled to procure illegal abortions even when they have valid reasons to want to terminate such pregnancies.

**In this regard, we recommend that the State answers the following questions:**

1. **What measures are there to protect women from pregnancy-related deaths and morbidity due to unsafe abortion and to expand access to safe and affordable abortion services?**
2. **What measures, if any, is Kenya taking to prohibit discrimination against individuals and groups on the basis of age in access to health insurance?**

**Article 13: Right to education:** The Government of Kenya has been implementing the free primary education policy. These efforts fulfill the requirements of articles 13 and 14 of the ICESCR and are, therefore, commendable.

However, the marked increase in the number of school going children has resulted in the lack of adequate learning space in terms of classrooms and other educational facilities. The marked increase has also resulted in low quality education standards as a result of the increase of the student to teacher ratio.

**Informed by this background, we pray the Committee to put the following questions to the State:**

1. **What efforts has the State made to build more classrooms and expand educational facilities across the country?**

**2. Are there any budgetary allocations towards the building of classrooms and if so how much is the allocation?**

**3. What is the State doing to address the problem of shortage of teachers?**

#### **4.0 Conclusion**

Human rights actors<sup>24</sup> in Kenya have articulated their vision and aspirations aimed at transforming Kenya into a human rights state. For this ideal human rights dispensation to be achieved there is need to have truly democratic institutions deriving their legitimacy and authority from the centrality of the citizenry and democratic constitutional and legal order. As part of this reconstruction agenda, Kenya needs to build a society that guarantees the conception of belonging of all people, in political, economic, social and cultural realms. Besides, such an inclusive regime must be guided by the principles of equality, equity and the enjoyment of all human rights and freedoms by all. Our priority areas for reform, thus, include:

**Constitutional Reform:** It is our thesis that the enactment of a democratic constitution safeguarding all human rights is the beginning point for the realization of a dispensation that upholds economic, social and cultural rights. Such a constitution ought to provide explicitly for these rights, capable of being enforced by the courts of law. Such reforms, it is our suggestion, ought to have the aim of domesticating Kenya's obligations under the ICESCR, as well as other international human rights instruments.

**Addressing the Dialectic of the Market and State:** It appears that the State is at crossroads on how to relate with the market. As evidenced through the Multilateral Trade and Investment negotiations, Kenya has not done very well in balancing between its liberalization in compliance with economic laws and the obligation to promote good livelihood for all its citizens. This clash of regimes has led to State policies and interventions being inclined more towards market support than social programmes for the population.

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<sup>24</sup> These include CSOs, the Kenya National Commission on Human Rights, and funding partners.

One particular area that stands out and needs to be addressed is the human rights impact of the trade and investment. Having ratified international human rights treaties, including the ICESCR, Kenya is estopped from adopting trade and investment regimes that would undermine progressive realization of these rights.

**Building and harnessing inclusivity:** From the Kenya report and other reviews, Kenya is truly emerging as a country of extremes. The collective rights which aim to protect groups of people or complete societies continue to be eroded. This has been manifested through various extremes which pit men against women; the land owners against the landless; upper market residents against the slum dwellers and the homeless; formal traders against informal traders; permanent workers against casual workers and so on. Of further concern is the fact that in all these binaries the powerless are the majority and their number has been on the increase over the years. Recalling that the fundamental idea in human rights is the equality of all people, Kenya ought to deal with this situation of disparities in wellbeing.

**Sent as Endorsed by:**

**Economic and Social Rights Centre (Hakijamii)**

The Economic and Social Rights Centre was formed in 2005 specifically to strengthen the capacity of the marginalized communities themselves to define and claim their economic and social rights. It is registered under the Non Governmental Organizations Coordination Act as an NGO.

*Vision*

A society that ensures the protection, promotion and fulfilment of all rights for all people.

*Mission*

To strengthen peoples' capacity to participate in advocating and realizing their economic, social and cultural rights in Kenya.

**African Women's Development and Communications Network (FEMNET-[www.femnet.or.ke](http://www.femnet.or.ke))**

The African Women's Development and Communication Network (FEMNET) was set up in 1988 to share information, experiences, ideas and strategies among African women's non-governmental organisations (NGOs) through communications, networking, training and advocacy so as to advance women's development, equality and other women's human rights in Africa. FEMNET aims to strengthen the role and contribution of African NGOs focusing on women's development, equality and other human rights. It also aims to provide an infrastructure for and a channel through which these NGOs can reach one another and share information, experiences and strategies so as to improve their input into women's development, equality and other women's human rights in Africa.

*Vision*

African women's collective leadership for equality, peace and sustainable development

*Mission*

FEMNET seeks to facilitate and coordinate the sharing of experiences, ideas, information, and strategies for human rights promotion among African women's organisations through networking, communication, capacity-building and advocacy at the regional and international levels.

**Eastern Africa Coalition on Economic, Social and Cultural Rights (EACOR-[www.eacor.org](http://www.eacor.org))**

Eastern Africa Coalition on Economic, Social and Cultural Rights (EACOR) is a coalition of ecumenical and other organizations in Eastern Africa in the area of Economic, Social and Cultural Rights. The coalition on ESC Rights was established in March 2003 by ecumenical and non-ecumenical actors as well as APRODEV agencies. The coalition is composed of

membership by association of like minded organizations from Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania, Uganda, Burundi, Congo and Somalia.

*Goal*

EACOR's goal is to empower the ecumenical and other organizations to effectively pursue ESCR within Eastern Africa through innovative interventions so that people living in poverty can realise their social, economic and cultural rights.

*Vision*

A world where communities and people realize human rights, live in justice and with dignity.

*Mission Statement*

To cooperate for realization of ESCR of people and communities in Eastern Africa through strengthening the existing organizations' capacities.

**Building Eastern Africa Community Network (BEACON- [www.beaconet.org](http://www.beaconet.org) )**

Building Eastern Africa Community Network (BEACON) is a fellowship of churches, church related organizations, NGOs, individuals and other faith communities established in 1996 to work for holistic development of civil society in Eastern and Horn of Africa. The purpose of BEACON is to build the capacity of churches, church related organizations, NGOs and CBOs on policy advocacy, good governance, social and economic justice and peace in East and Horn of Africa.

*Vision*

A just, peaceful, dignified, sustainable and God fearing society.

*Mission*

BEACON's mission is to facilitate the attainment of a just, peaceful and sustainable society in Eastern Africa through capacity development, policy research, analysis and advocacy.

**International Commission of Jurists - Kenya Section ([www.icj-kenya.org](http://www.icj-kenya.org) )**

ICJ Kenya is a membership, non-governmental, non-partisan and not-for-profit organisation registered as a society. It is an autonomous national section of the International Commission of Jurists. ICJ Kenya was founded in 1959 as an offshoot of *Justice*, the British section of the International Commission of Jurists. It was taken over by Kenyan Lawyers in the late sixties and seventies. It is the oldest human rights organisation in Kenya and was formally registered in 1974 under the Societies Act. It became a common forum for the expression of political dissent and voices against human rights violation in the eighties and was instrumental in the clamour for multi-party democracy and constitutional review. ICJ Kenya has observer status with the African Commission on Human and People's Rights.

*Organisation Vision*

To be the leader in securing observance of the rule of law, human rights and democracy, for a just, free and equitable society.

*Societal Vision*

A just, free and equitable society.

*Mission*

To influence the policy and legislative framework and create an informed citizenry to secure democratic governance, rule of law and human rights.

**Kenya Human Rights Commission ([www.khrc.or.ke](http://www.khrc.or.ke) )**

The Kenya Human Rights Commission (KHRC) is a national Non-Governmental Organization (NGO) founded in 1992. The KHRC has observer status with the African Commission on Human and People's Rights (ACHPR) and Economic and Social Council (ECOSOC) and is a member of the International Federation of Human Rights (*Fédération Internationale des Ligues des Droits de l'Homme*). The Commission is the 1998 winner of the MS International Award, 2003 winner of the Corporate Conscience Award (bestowed by the Social Accountability International), and the 2005 winner of the *Utetezi* ("Defender") Award (bestowed by the Kenya National Commission on Human Rights (KNCHR)).

*Mission*

The Mission of the KHRC is to promote, protect and enhance enjoyment of all human rights for all men and women.

**Mazingira Institute  
Reproductive Health and Rights Alliance  
Centre for Minority Rights and Development (CEMIRIDE)**