



**Marist Foundation for
International Solidarity
(FMSI)**



Universal Periodic Review (UPR) for Kenya

**Joint NGO Submission by
The Kenyan Movement of Catholic Professional (KMCP)
Franciscans International,
Pax Romana
International Catholic Movement for Intellectual and Cultural Affairs and International
Movement of Catholic Students,
Edmund Rice International &
Marist Foundation for International Solidarity (FMSI)**

Introduction

1. This submission is a joint submission of the above-mentioned organizations. The focus of this submission are the *right to adequate housing, rights to food and safe drinking water, gender (which includes the situation of single mothers and domestic violence), right to education, right to health, Good Governance and Rule of Law to Achieving Lasting Peace which includes peace building, administration of justice and human rights, and conditions in prisons*. Each part is accompanied with recommendations to the Government of Kenya.

Right to Adequate Housing

2. While recognising the efforts done by the Kenyan Government to improve the right to adequate housing¹, an important part of the population continues to live in deplorable conditions, well below the minimum standards set by both international and domestic instruments. Half of Nairobi's population lives in informal settlements, but are crammed into only 5 per cent of the city's residential area and just 1 per cent of all land in the city². Many Kenyans are squatters in

¹ Kenyan Government's Slum Upgrading Programme in Kibera-Soweto (KENSUP), a joint project with UN Habitat, and the UN Habitat/World Bank *Cities without Slums* Project in Kisumu, which has become a milestone for housing improvement in Kenya, especially in the slums.

² Amnesty International, *The Unseen Majority: Nairobi's Two Million Slum Dwellers*, June 2009.

various parts of the country, while victims of various forms of internal displacement live in camps. Vulnerable and disadvantaged groups, including elderly, children, disabled, HIV-positive individuals, and victims of conflicts and natural disasters have no effective access to adequate housing and have not been ensured any degree of priority in the housing sphere. The Government of Kenya has the responsibility to guarantee an adequate standard of living to the Kenyan people and to attain its commitment under the Covenant on Economic, Social and Cultural Rights.

The UPR mechanism should urge the Kenyan government to:

- **3. Effectively implement the current National Housing policy of 2004 and ensure that the Ministry of Housing guarantees the effective participation of all stakeholders, including slum dwellers in the planning, implementation and evaluation-monitoring process of this policy.**
- **4. Continue to provide, as a matter of priority, affordable, full and sustainable access to adequate housing for the IDPs victims of December 2007 post electoral violence, and other vulnerable and disadvantaged groups;**
- **5. Ratify the Optional Protocol to the CESCRC in order to strengthen the implementation of Economic, Social and Cultural Rights in Kenya.**

Right to Food and Safe Drinking Water

6. Kenya is not on track to achieve its water supply Millennium Development Goal (MDG) of 74 percent of households using improved water sources or its sanitation goal of 69 percent of households using improved sanitation facilities.³ Overall, access to improved water sources is estimated to be 56.5 percent, with 82 percent coverage in urban areas and 50 percent in rural areas⁴. Out of the population with access to improved water sources, only 17 percent and 73 percent have access to piped water in rural and urban areas respectively⁵. Patterns in access to water show access to water is lower in rural areas and significantly lower among the poor. Estimates based on KIHBS (2005/06)⁶ dataset shows that in both rural and urban areas, those in the poorest quintiles have lower access to private piped water⁷. Furthermore, people in the poorest quintiles in urban areas have almost as good access of improved water sources as those in the richest quintile in rural areas. The problem of water scarcity has been compounded by the current prolonged drought, destruction of water catchment areas and it is hitting most rural and arid and semi-arid communities.

7. Many Kenyans are absolute food poor. In the arid and semi-arid areas, an average of 2 million people are permanently on famine relief⁸. The population has almost doubled in the past 20 years from 21 906 500 in 1988 to 38 530 000 in 2008⁹, yet the food production has been declining. For the last three decades, agricultural performance in Kenya has been declining although the sector

3 WHO/UNICEF Joint Monitoring Programme 2008

4 World Bank, 2009a. Kenya Poverty and Inequality Assessment. Executive Summary and Synthesis Report.

5 Ibid .

6 Kenya Integrated Household Budget Survey (KIHBS),

7 World Bank, 2009a. Kenya Poverty and Inequality Assessment Executive Summary and Synthesis Report..

8 FAO Country Profiles and Mapping Information System, Kenya, 2006

9 World Bank Population Profile Kenya.

has accelerated in the past three years¹⁰. The agricultural sector in Kenya faces challenges related to productivity, land use, markets and value addition. In real terms, public spending on agriculture in Kenya fell dramatically—by about half—from its peak in the late 1980s to the late 1990s. Since 2000, total public spending on agriculture has not exceeded 5 percent of the national budget, and based on government projections, it will remain around 5 percent. These projections are in contrast with the 10 percent expenditure target to which Kenya committed under the Maputo Declaration. The laws and regulations under which the agricultural sector operates are administered by different departments and ministries creating an unfavourable institutional framework for growth. The country also lacks a proper framework for the purchase of food produce, its storage and redistribution during the time of famine.

The UPR mechanism should urge the Kenyan Government to:

- **8. Develop a comprehensive policy on environmental conservation, which should include among others, the protection of forests and wetlands;**
- **9. Develop strategies of managing water sources such as construction of new dams and boreholes for both commercial and domestic usage;**
- **10. The development of a strategic biofuel energy policy, should not replace the use of food production areas with biofuel plants. For this, the Government of Kenya should invest in research and development to prevent the negative impact of biofuel production on food production areas;**
- **11. Increase expenditure on agriculture and undertake Public Financial Management reforms to enhance the value of public investment in the sector.**

Gender

- *Single Mothers*

12. As a result of a lack of education and support to families, the situation of single mothers is a issue of concern in Kenyan society where an increased number of young mothers are single mothers living with their children on their own or with their families. Seen as obstacles, they are often mistreated by their relatives and encounter precarious living conditions that prevent them from enjoying their rights as women and enabling them to provide education for their children. In some cultures, if they give birth to twins or triplets, they can be seen as taboos and chased away from their homes. Consequently, they become sex workers in order to survive, with the associated risk of becoming infected by HIV.

The UPR mechanism should call upon the Kenyan Government to:

- **13. Develop a policy addressing the specific challenges faced by single mothers, including impoverishment, isolation, stigmatisation, lack of resources for their children's education and the lack of protection in their vulnerable situations.**

¹⁰ World Bank, 2009a. Kenya: Agricultural Policy Review: Current Trends and Future Options for Pro-Poor Agricultural Growth. World Bank Nairobi

- ***Domestic Violence***

14. Within family circles, women are often subjected to physical, verbal and sexual abuse. Despite the enactment of the 2000 Domestic Violence (Family Protection) Bill, domestic violence is on the rise. Violence and abuse of women is further supported by Kenyan patriarchal-oriented customs and traditions in certain communities.

15. The impunity of perpetrators is reinforced by traditional beliefs and practices and discriminatory Constitutional provisions¹¹ impeding equal enjoyment of rights by both men and women. Reduced to silence in a society that strongly believes that family problems should be dealt with within the family, victims are left vulnerable and without protection. This leads to the low number of complaints filed by the victims of domestic violence.

The UPR mechanism should call upon the Kenyan Government to:

- **16. Launch a national campaign to raise awareness on and implement the 2000 Domestic Violence Bill and the 2006 Sex Offences Act, with the involvement of local and community leaders as well as other stakeholders. This campaign should also include the international provisions criminalising domestic violence.**
- **17. Prosecute the perpetrators of domestic violence according to the existing laws and provide adequate protection to the victims.**

Right to Education

18. The Government of Kenya introduced free primary education (FPE) in 2003. The FPE policy consists of a government commitment to abolish tuition fees for primary school and to meet the costs of teaching and learning materials, wages for teachers and key non-teaching staff, and co-curricular activities. The policy has attracted increased public spending by the government and development partners to the education sector. Currently the government spends about 6 percent of its GDP in the sector, much of which goes to FPE¹². As a result, pupil attendance and retention have improved. For instance, at the national level, enrolment in primary schools increased from 5.9 million in 2002 to 8.5 million in 2008. Gross Enrolment Rate¹³ rose from 92 percent in 2004 to 109.8 percent in 2008 while Net Enrolment Rates (NER) increased from 85.3 percent to 92.5 percent during the same period¹⁴.

19. Although primary education is free, significant barriers that prevent children from schooling still exist. These include direct costs such as those associated with uniforms, instructional

¹¹ “Article 82 (4 (b) and (c)) 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” (CEDAW/C/KEN/CO/6, § 11). “Article 90 of the Constitution stipulates that the father’s citizenship determines acquisition of citizenship by birth in marriage (CEDAW/C/KEN/CO/6, § 11)”. In addition, “CEDAW requests the State party to amend without delay articles 90 and 91 of the Kenyan Constitution as well as the Kenya Citizenship Act (Chap. 70 of the Laws of Kenya) in order to bring them fully into compliance with article 9 of the Convention (CEDAW/C/KEN/CO/6, § 32)”.

¹² Government of Kenya. 2009. *Public Expenditure Review*. Nairobi: Government Printer.

¹³ The “gross enrolment ratio” is the ratio of the number of all pupils enrolled (regardless of age) to the number of school-aged children eligible to attend school. The “net enrolment ratio” is the ratio of children attending school who are of primary school age to the number of school-aged children eligible to attend school. Gross enrolment ratios can exceed 100 % because many students are above the standard age for primary school. For us Researchers, NER has more policy implications than GER.

¹⁴ Government of Kenya. 2009. *Economic Survey*. Nairobi: Government Printer.

materials, tuition, feeding programs and hire of non-school teaching staff. Apart from schools being few in some areas, they are also unevenly distributed thus increasing accessibility difficulties in some regions. For instance, in some parts of Kenya, like the Northern part of the country, schools are 20-45 kilometres apart¹⁵. The provision of grants under the FPE policy has enabled schools to procure learning and teaching materials. However, with the increasing upsurge in enrolments, primary education is experiencing a number of challenges such as overstretched facilities, overcrowding in schools - especially those in urban slums, high pupil-teacher ratios (PTRs) in densely populated areas, and high pupil to textbook ratios¹⁶. Teachers have defaulted to out-dated teaching methodologies that encourage rote and passive learning because of large classroom sizes and the resulting challenges of classroom management. Learning environments are particularly insensitive to children with special needs and girls due to poor sanitation. Moreover, the disparities and the gaps between rural and urban zones and between boys and girls have not been narrowed. For instance, the current NER for girls is 90.5 percent compared to 94.6 percent for boys¹⁷. Many children displaced due to the 2007 post election violence have also been declined schooling.

The UPR mechanism should call upon the Kenya Government to:

- **20. Take further steps to address persistent challenges to the provision of FPE for all children by allocating sufficient financial resources to match increased enrolment levels. These resources should be directed at providing adequate infrastructure and more trained teachers;**
- **21. Address the lack of access for vulnerable categories of children to education and the gap between urban and rural areas and other zones and between boys and girls.**

Right to Health

22. The Government of Kenya through various international mechanisms, including the Declaration of 2001 United Nations General Assembly Special Session, has committed itself to programmes involving prevention, treatment, care and support of the HIV positive citizens and securing their right to health. Specifically through the 2001 Abuja Declaration on HIV and AIDS, Tuberculosis and other related infectious diseases; the Government has committed itself to the allocation of 15% of its budget to the provision of quality healthcare to all.

23. Through its concerted efforts, the Government has done a lot to address HIV and AIDS challenges, including reaching out to people with Voluntary Counseling Testing (VCT) centers that allow the majority of people to know their HIV status, and to advocating for the ABC approach (Abstinence, Be-faithful and Condom) strategy. In addition, the Government has made the Antiretroviral (ARV)'s easily accessible, available and affordable (free) to the public on a larger scale that hitherto.

¹⁵ Princeton University, 2006, 'Free to Learn: A Rights Based Approach to Universal Primary Education in Kenya', A paper presented at the Woodrow Wilson School of Public and International Affairs Princeton University (February, 2006).

¹⁶ UNESCO, 2005, 'Challenges of Implementing Free Primary Education in Kenya; Experiences from the districts' UNESCO Nairobi Office [<http://www.education.nairobi-unesco.org/PDFs/FPE/FPEREPORT1.pdf>] (Accessed on 03.06.07).

¹⁷ Government of Kenya. 2009. Economic Survey. Nairobi: Government Printer.

24. However, Kenya has not achieved its promise of putting at least 24,000 People Living With AIDS (PLWH) on ARV every year. The uptake of Anti-Retroviral Treatment (ART), specifically for children and Prevention from Mother-To-Child-Transmission (PMTCT) services are still low in the villages and rural areas due to long distance travel to health centres that provide ART.

25. More than 200,000 Kenyans now have access to free ARV drugs, but in a country that experiences frequent food shortages, drugs alone are rarely enough to keep HIV-positive patients healthy. With regard to nutrition and food security for HIV positive under antiretroviral treatment, poor diets cause a serious damage since the government does not integrate a nutrition component in its HIV and AIDS Plan.

26. According to UNAIDS, by the end of 2007, there were about 1.5 to 2.0 million people infected by HIV/AIDS and the trend was increasing¹⁸. HIV and AIDS interventions including capacity building initiatives within Kenya are not consistent and they are only funded in the short term. Citizen awareness has not improved. The targets for people to be placed on ARV support have not been met. Many people living with the virus especially in the villages do not have access to the drugs as the health centers are far from their places of living. In addition, the December 2007 post-election violence has had a negative impact on treatment. Hence, hundreds of patients failed to collect their antiretroviral medication from their regular clinics due to their displacement. There has been fear that due to this displacement, the patients develop resistance, or fall ill and even die.

27. Furthermore, the support systems for widows and orphans with HIV and AIDS are limited. Many women have been left helpless after their husbands succumb to the virus. Older women have the onerous burden of taking care of their frail aging bodies and also of the children of their sons and daughters who have been claimed by the virus. In some situations, children having no relative to take care of them, end up being destitute. There are insufficient concerted Government efforts in this area to support these vulnerable people.

The UPR mechanism should call upon Kenyan Government to:

- **28. Provide in all public health centres and hospitals accessible and free ART and counseling services, better care and balanced meals to reach the growing number of Kenyans infected with HIV;**
- **29. Strengthen the fight against stigmatization and discrimination, and revise prevention, sensitization and education programmes directed at behavior change since previous prevention approaches have not significantly slowed down the infection rate, according to UNAIDS statistics¹⁹;**
- **30. Ensure equal access to HIV prevention, treatment, care and support for most-at-risk sections of the population and promote economic empowerment of women, young people and older people through initiatives such as sustainable microfinance and employment;**
- **31. Ensure strategic involvement of PLWH in all aspects of the response leading to universal access to prevention, treatment, palliative care, and support;**

¹⁸ UNAIDS, Kenya Epidemiological Fact Sheet on HIV and AIDS, Core data on epidemiology and response, 2008 Kenya Update.

¹⁹ Ibid,

- **32. Live up to its commitment to put at least 24,000 new persons every year who are living with the virus under treatment and strengthen the nutrition and food security aspects along with free ART and counselling services in order to enhance the effectiveness of the drugs;**
- **33. Tackle the impact of 2007 post electoral violence by addressing the high risk of drug resistance by IDPs due to their displacement and the impossibility of their gaining access to their regular clinics.**

Good Governance and Rule of Law to Achieving Lasting Peace

- *Peace Building*

34. There is a need for a healing of the country. The process of national healing and reconciliation is unlikely to proceed as long as society is still polarized and issues of past crimes, corruption, marginalization and poverty are not addressed. Due to the 2007 post-election violence, more than 350,000²⁰ persons were internally displaced and some sought refuge in the neighbouring countries particularly in Uganda.

35. The Government took steps towards peace-building by forming the Commission of Inquiry into Post-Election Violence (CIPEV) and the agreement of March 4, 2008, known as Agenda Item 4, called for the establishment of a number of bodies of inquiry to address justice and accountability and longer-term issues of governance and the Rule of Law. In addition, the Kenyan Truth, Justice and Reconciliation Commission (TJRC) was established in 2008 and is mandated to enquire into human rights violations, including community displacements, settlements, evictions, historical land injustices, and the illegal or irregular acquisition of land, especially as these relate to conflict or violence. Moreover, in December 2006 Kenya signed the Security, Stability and Development Pact for the Great Lakes Region. Under the Protocol on the Protection and Assistance to IDPs arising from Article 13 of the Pact, Kenya is expected to incorporate into domestic legislation the Guiding Principles²¹. Along with those commitments, a Department of Mitigation and Resettlement was established in the Ministry of State for Special Programmes (MoSSP). A Ksh 29 billion appeal was launched to help fulfill the needs of the displaced.

- *Administration of Justice and Human Rights*

36. The lack of accountability and “crony opaque appointments, and extraordinary levels of corruption”²² of the judiciary system have increased the distrust of Kenyan people in the judicial system. Power, money and influence have guaranteed impunity to perpetrators of human rights violations due to the corruption of the judicial apparatus. In addition, the independence of the judiciary is questionable. Thus, the vulnerability to executive influence in the process for nomination and appointments of judges remains a serious issue of concern. Investigations,

²⁰ Kenya Commission National Commission on Human Rights: On the Brink of the Precipice: A Human Rights Account of Kenya’s 2007 Post Election Violence, 2008.

²¹ Alex Otieno, ‘Improving Kenya’s response to internal displacement’ Department of Sociology, Anthropology and Criminal Justice and MA Program in International Peace and Conflict Resolution at Arcadia University, US.

²² Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston – Mission to Kenya, A/HRC/11/2/Add.6 § 31.

prosecutions and judicial processes in the criminal justice system are particularly imprinted by an in-depth corruption and delays in proceedings.

37. In order to manage diversity in the national reconciliation process, and to fill the implementation gap between policy and action on the ground, the government must ensure that past injustices such as unequal development in the country are addressed. Key challenges remain untouched, including poverty and wealth distribution; land reform; action against corruption; constitutional reform; gender inequality and youth unemployment.

38. Recent Kenyan history does not allow the granting of amnesty for political crimes. While Kenya's TJRC Bill prohibits amnesty for gross violations of human rights, it does allow amnesty for crimes committed for personal gain. The Bill should not deny victims the right to justice and to reparation.

The UPR mechanism should call upon the Kenya Government to:

- **39. Amend the 2008 TJRC Bill which allows conditional amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with gross human rights violations and economic crimes, as it is against International Law;**
- **40. Take due reform measures to address corruption within the judicial system that seriously impedes the fight against impunity,;**
- **41. As a means of sustaining the reconciliation process, take all the necessary steps to tackle poverty and wealth distribution, land reform, actions against corruption, constitutional reform, gender inequality and youth unemployment;**
- **42. Create a safe and conducive environment for the return of IDPs and facilitate their re-integration, provide them with legal and personal documentation, livelihoods or income-generating activities, the return of their properties, including land, or grant them otherwise with appropriate compensation. The Government must ensure their protection from attacks, harassment, intimidation, persecution, or any other form of punitive action upon return to their home community or integration in a new community and guarantee the freedom of movement and right to choose the place of residence. The return must be voluntary and based upon an informed decision, without coercion of any kind;**
- **43. Reinforce the capacity of the Kenya National Human Rights Commission which is the watchdog in the protection of human rights by providing more financial and human resources and ensuring its independence in accordance with the Paris Principles on the way towards achieving good governance, justice and human rights respect for all;**
- **44. For a successful anti-corruption strategy, guarantee an independent judiciary, freedom of the press, freedom of expression, transparency in the political system and accountability; in the same vein, prosecutorial powers must be given to the Kenya Anticorruption Authority;**
- **45. Fast track the National Accord Agenda towards Police reforms based on the reports of the Kriegler and Waki Commissions and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions²³;**

²³ Philip Alston's mission to Kenya, A/HRC/11/2/Add.6.

- **46. Implement Constitutional reforms to, *inter alia*, remove discriminatory provisions against women and provide more stable balancing powers; as well as enhance the constitutional human rights bill, including the role of the judiciary, the ombudsmen and national human rights institutions to appropriately address corruption.**
- *Conditions in Prisons*

47. The challenges related to prisons are those of overcrowded prison populations as well as the limited access of prisoners to legal advice. Despite the adoption of the Community Service Orders Act in 1998 to improve the situation of overcrowded prisons, the well being of the detainees has not improved. In addition, detention without trial has been a common practice even though article 72, paragraph 5 of Kenyan Constitution states clearly that

“If a person arrested or detained is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall, unless he is charged with an offence punishable by death, be released either unconditionally or upon reasonable conditions”.

48. Contrary to Kenya’s obligations under international human rights treaties, including the Covenant on Civil and Political Rights, the country has denied justice to people under its jurisdiction. In some cases, people are detained without proper information regarding the charges against them and furthermore, they are denied legal representation.

The UPR mechanism should call upon the Kenya Government to:

- **49. Conduct an in-depth prison reform to address, *inter alia*, the delay in compiling committal cases, corruption within the judicial system, capacity building in investigations related to criminal cases, and coordination among prisons, police and administrators of the justice system;**
- **50. Address conditions of detention, in particular in overcrowded prisons, to ensure the provision of an adequate and humane treatment, including issues such as sanitation, access to health care and sufficient food.**