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

**Initial reports submitted by States parties under  
articles 16 and 17 of the Covenant**

**KENYA\***

[7 September 2006]

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

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### List of abbreviations

AU	African Union
ASAL	Arid and Semi-Arid Areas
BRP	Budget Review Strategy
CBF	Constituency Bursary Fund
CDF	Constituency Development Fund
CIDA	Canadian International Development Authority
COTU	Central Organisation of Trade Unions
CRC	Convention on the Rights of the Child
DFID	Department for International Development
DRC	Democratic Republic of Congo
EFA	Education for All
EPZ	Export Processing Zones
ERS	Economic Recovery Strategy
EU	European Union
FGM	Female Genital Mutilation
FKE	Federation of Kenyan Employers
GDP	Gross Domestic Products
GER	Gross Enrolment Rate
GMO	Genetically Modified Organisms
GNP	Gross National Product
ICCPR	International Covenant on Civil and Political Rights
ICTFTU	International Confederation of Trade Unions
IMF	International Monetary Fund
IOE	International Organisation of Employers
JICA	Japan International Cooperation Agency
KACC	Kenya Anti Corruption Commission
KANU	Kenya African National Union
KARI	Kenya Agricultural Research Institute
KDHS	Kenya Demographic and Health Services
KEMRI	Kenya Medical Research Institute
KEMSA	Kenya Medical Supplies Agency
Kshs	Kenya Shillings
KIPI	Kenya Industrial Property Institute
KISE	Kenya Institute for Special Education
KIRDI	Kenya Industrial Research and Development Institute
KNCHR	Kenya National Commission on Human Rights
KRB	Kenya Road Board
LATF	Local Authorities Transfer Fund
LVEMP	Lake Victoria Environmental Management Plan
MDG	Millennium Development Goals
MTEF	Medium Term Expenditure Fund
MPET	Master Plan on Education and Training
NARC	National Rainbow Coalition
NEC	National Environmental Commission
NEMA	National Environmental Management Authority

NER	Net Enrolment Rate
NHIF	National Health Insurance Fund
NGO	Non Governmental Organisation
NPEP	National Poverty Eradication Plan
NSSF	National Social Security Fund
NWSS	National Water Services Strategy
OAU	Organisation of African Unity
PER	Public Expenditure Review
PHC	Primary Health Care
PIP	Public Investment Programme
PRSP	Poverty Reduction Strategy Paper
RBA	Retirement Benefits Authority
SAP	Structural Adjustment Programmes
SWG	Sector Working Groups
UNHCR	United Nations High Commission for Refugees
WRMA	Water Resources Management Authority
WSB	Water Services Board
WSRB	Water Services Regulatory Board
WSTR	Water Services Trust Fund

## **Introduction**

1. The Government of the Republic of Kenya has the honour to submit to the Committee on Economic, Social and Cultural Rights, in conformity with article 16 of the International Covenant on Economic, Social and Cultural Rights, its initial report under the Covenant. This report has been compiled in accordance with the guidelines available on preparation of a report under ICESCR.

### **I. CORE DOCUMENT**

#### **A. The land and people**

2. Kenya is an East African country that lies astride the Equator, covering a total area of 582,646 km square. The country has approximately 1000 km of the Indian Ocean coastline to the East. It is bordered to the North East by Somalia, to the North by Ethiopia, to the North West by the Republic of Sudan, to the West by Uganda and to the South by Tanzania. Kenya is a gateway to its landlocked neighbours of Uganda, Rwanda, Burundi and the Democratic Republic of Congo (DRC). The DRC is not a landlocked country but some parts are not accessible from their Atlantic Coast ports, and for this reason they use Mombassa port in Kenya.

3. The total population is estimated at 32 million people.<sup>1</sup> Of these, approximately 75 per cent live in sparsely populated rural areas while the remaining 25 per cent constitute the urban population. Life Expectancy is 46.4 years while Adult Literacy Rate is (83 per cent). Infant mortality rate is 72 (per 1000). Maternal Mortality rate is 590 (per 1000) and the Fertility Rate is 4.7. Nearly 50 per cent of population is under 15 years of age, 5 per cent of the population is over 65 years of age but reliable data on the percentage of households headed by women is lacking. According to the World Health Organisation (WHO) standards, the number of disabled persons can be estimated at 10 per cent of the population, which numerically amounts to 3.2 million people.

4. The national language is Kiswahili, the official language is English, though numerous other local are spoken. Generally there are 42 ethnic groups, although recent studies have shown that there could be up to 70 ethnic identities. The main religious groups include Christianity, Islam, and Hinduism, but there are other minority religions. The occupational distribution of the population includes pastoralists, agriculturalists, and workers in the urban formal and informal sector.

5. Gross National Product (GNP) in 2004 was US \$ 13 million, Gross Domestic Product (GDP) per capita was US \$ 320 and the growth rate of the economy was 4.3 per cent. The

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<sup>1</sup> 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.

inflation rate was 11.6 per cent and the unemployment rate remains high at approximately (40 per cent). External debt stands at approximately Kenya Shillings 50.4 Billion (US\$ 700 million at an exchange rate of KES. 72 to the US Dollar). Poverty remains a major impediment to both the fulfilment of basic needs and the realization of the potential of many Kenyans, particularly women and children. As of 2004, 50 per cent of Kenyans lived on less than (US \$1) per day.

6. Kenya has faced numerous challenges in its efforts to implement social, economic and cultural rights. Some of these include the Country's history of political, social and economic challenges, corruption, and misallocation of resources all which have constituted significant barriers to the achievement of national targets of poverty reduction. HIV/AIDS remains a major health and development concern. Malaria is another major concern, as 70 per cent of the total population is at risk of infection. Poor infrastructure in epidemic prone areas has hindered timely intervention and access to healthcare facilities for affected individuals. Neo liberal economic policies promoted and supported by International Finance Institutions have also had a bearing on the Government's ability to provide for economic social and cultural rights; a clear example being the Structural Adjustment Programme and retrenchment of public servants. Another challenge is the economic decline and instability prevalent in the 1990s.

### **B. General political structure**

7. Kenya gained independence from Great Britain in 1963 and has evolved into a multi-party democracy. After 28 years under a single-party state system, the Constitution was amended in 1991 and the first multi-party elections were held in 1992. Kenya African National Union (KANU) was the party that won the initial elections in 1964 and managed to retain power for 39 years through 8 general elections. Only in 2002 did KANU lose a general election for the first time, to the National Rainbow Coalition (NARC), a grouping of 14 political parties. The change to a multi-party system represented a political transition involving fundamental constitutional re-engineering, aimed at transforming the state apparatus from instruments of repression and exploitation to agents of African development and self-actualization. There is renewed hope in the changing political process that good governance will be restored, and that the relationships with bilateral and multi-lateral donors will improve, increasing the chances of progressive realization of economic, social, and cultural rights. This captures a summary of political and constitutional developments from colonization to *de facto* multi party to *de jure* multi party.

8. There are three arms of Government as established under the current Constitution of Kenya: the Legislature, the Executive, and the Judiciary.

9. Chapter III of the Constitution establishes the Parliament. Section 30 provides that the legislative power of the Republic shall vest in the Parliament of Kenya, which shall consist of the President and the National Assembly. This National Assembly represents 210 constituencies spread throughout the 8 provinces, and consists of members elected in national elections, nominated members and *ex officio* members. The Presiding Officer in Parliament is the Speaker, and is elected by the members of Parliament. There are 210 elected members, 12 nominated

members, and 2 *ex officio* members, namely the Attorney General and the Speaker. The persons to be appointed for nomination as Members of Parliament are drawn from parliamentary parties according to the proportional representation of every parliamentary party by the elected members in the National Assembly taking into account the principle of gender equality. This is provided for in Section 33 of the Constitution.

10. The President heads the Executive arm of the Government, as per Chapter II of the Constitution. The President is mandated to appoint a Vice President and ministers from among the elected members of Parliament. This is provided for in section 16 of the Constitution. The Executive acts through a Cabinet that consists of the President, the Vice President and other ministers. The function of the Cabinet is to assist and advise the President in the Government of Republic.

11. As a check against excesses of Government, section 17(3) of the Constitution provides that the Cabinet shall be collectively responsible to Parliament for all things done by or under the authority of the President or the Vice President or any other minister in the execution of their office.

12. Chapter IV of the Constitution provides for the third arm of Government, the Judiciary. Section 60 of the constitution thereof establishes the High Court as a superior court of record and with unlimited original jurisdiction in civil and criminal matters. Section 64 of the constitution establishes the Court of Appeal as the highest court in the country. It only hears matters on appeal from the High Court only as is provided by law. It has no original jurisdiction to hear any matter except contempt of court proceedings.

13. The head of the Judiciary is the Chief Justice, assisted by judges and magistrates. Section 65 of the Constitution provides that Parliament may establish courts subordinate to the High Court. Such courts shall have jurisdiction and powers as may be conferred on them by law. As a result of this, the Magistrates Courts and the *Kadhi's* Courts were established through Acts of Parliament. *Kadhi's* courts cater for matters of personal law for persons who profess the Muslim faith.

### **C. General legal framework within which human rights are protected**

14. The High Court of Kenya has inherent jurisdiction to hear and determine cases of violation of fundamental rights and freedoms. Any complaint concerning economic, social or cultural rights would be dealt with as a violation of fundamental rights, and would be heard by the High Court. If any person alleges that any of their fundamental rights has been, is being or is likely to be contravened in relation to them, then that person may apply to the High Court for redress. The High Court has original jurisdiction to hear and determine such an application, and may issue *any appropriate orders or remedy* (under section 84 of the Constitution, emphasis added). 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 per cent of Kenyans who voted at the constitutional Referendum held on 21<sup>st</sup> November 2005. It is hoped that in a future constitutional review process, the Economic Social and Cultural Rights will be part of the

Kenyan Bill of Rights. These rights were not contentious save for the question of availability of resources. The Constitutional review process is on going. Certain economic and social rights are found in other legislations e.g. the Children's Act, The Environmental Management and Co-ordination Act.

#### **D. Legislative authorities**

15. Parliament of Kenya is vested with the power to enact legislation to promote and protect economic, social and cultural rights. Administrative institutions relevant to the protection and promotion of human rights include:

- The Kenya National Commission on Human Rights (established by an Act of Parliament). KNHCR is an independent government agency established as such by an Act of Parliament to promote and protect human rights, to enforce human rights policies and provide leadership in the human rights field;
- The National Commission on Gender and Development (established under an Act of Parliament) to promote and protect gender responsive policies and programmes for sustainable development. The Commission assists in engendering all programmes and policies, in a bid to enhance efficiency in utilization of resources for sustainable development;
- The Department of Governance and Ethics headed by a Permanent Secretary that also handles cases of corruption. The Department of Governance and Ethics under the office of the president was set up to investigate and advice government on cases of maladministration/bad governance. Since the first holder, Mr. John Githongo resigned, a replacement has not been appointed but this office is still in existence as per the presidential circular establishing it. Noteworthy are the efforts of that office in stamping out grand corruption;
- The Kenya Anti-Corruption Commission (KACC) (established under an Act of Parliament). The fight against corruption is relevant as far as fulfilment of economic social and cultural rights is concerned. Diversion of resources by corruption as opposed to fulfilment of rights and service delivery is an area of concern. KACC plays an important role in tackling corruption in Kenya;
- The Kenya Law Reform Commission established under an Act of Parliament with the mandate to keep all laws of Kenya under review with a view to eliminating all the anomalies, obsolete and unnecessary enactments and generally their simplification and modernization;
- The National Council for People with Disabilities has the statutory mandate to enhance advancement of the rights of persons with disabilities and promoting equalization of opportunities.

16. International treaties are not considered as part of the law of Kenya and cannot be directly applied by the courts, tribunals or administrative authorities if domestic laws are insufficient. Once a treaty is ratified by Kenya it does not automatically become part of Kenyan law otherwise the law could be altered without the consent of Parliament, which would be contrary to the basic principle of Constitutional law that Parliament has monopoly of legislative power. Kenya follows the dualist approach to treaty implementation and denies any direct internal effect of international treaties without legislative enactment of an enabling statute. However, the courts interpret the laws of Kenya so that they do not conflict with treaties that Kenya is a party to and the practice is that after ratification, legal and administrative structures are set up to support such instruments. Implementation of treaties/conventions in Kenya is not easy due to the dualist approach which requires that parliament has to domesticate treaties and conventions before they are recognized and implemented in Kenya even though they are ratified. Ratification of treaties is done by the executive. However there are administrative and institutional practises that give effect to some of the treaty/conventions e.g. establishment of the Gender Department and commission etc. The problem of dualism would have been solved by the Draft constitution as it provided for direct application of International law in Kenya. The proposals remain and will be included in the ongoing constitutional review process.

#### **E. Information and publicity**

17. The Kenya National Commission on Human Rights was established by the Government via an Act of Parliament in 2002 as the national focal point for all human rights activities. The Commission is by statute independent and autonomous with a broad mandate to protect and promote human rights. KNCHR is a semi-autonomous body; the Government does not interfere with its operations. It has operational independence but not financial independence. The Commission has undertaken the training of civil servants and sensitization of the general public on human rights. In order to realise its mandate, the Commission focuses on five strategic objectives key among them being to increase opportunities for the realisation of economic, social and cultural rights. The Commission has been increasing opportunities for economic, social and cultural rights through:

- Programmes enhancing the freedom from want and exploitation;
- Monitoring and implementation of poverty reduction strategies (PRSP) and Economic recovery strategy (ERS);
- Making of policy proposals on improving livelihoods for poor people;
- Monitoring budget variance including from a gender perspective;
- Monitoring provision of basic needs and basic rights for example the rights to education, health and access to HIV/AIDS drugs;
- Monitoring corruption levels and practices;
- Monitoring adherence to labour law standards by government and corporate entities; and

- Holding debates, inquiries, and targeted campaigns on social economic rights and gender issues.

Suffice to note that all other administrative and statutory institutions discussed in paragraph 16 perform publicity and public awareness activities as relates to their mandates.

18. Kenya has not submitted an adequate, complete report since it became a party to the covenant in 1976. The reasons for the absence of a report are numerous and include various forms of political, social, and economic challenges experienced over the last 30 years. In the past, the political system was not conducive to a culture of human rights with major difficulties being faced during transition from one-party rule to a multi-party democracy.

## II. GENERAL PROVISIONS OF THE COVENANT

### Article 1

19. Kenya recognizes the right of all peoples to self-determination, and the respect for this right forms one of the pillars of the Country's foreign policy. Kenya is party to the United Nations (UN) Charter and other international treaties and conventions and fully subscribes to the principles of independence of nations, primacy of human rights and equality among states. Throughout its history as an independent country, Kenya has been a staunch champion of compliance with the principles of self-determination of peoples. Thus, both in its relations with other states and within international organizations, it has condemned all foreign interference in the internal affairs of any country. It is upon this premise that Kenya plays an active role in the process of promoting peace and democracy in Eastern and Central Africa. It has been and continues to be Kenya's foreign policy to recognize the self determination of all people's. This is codified in the foreign policy now being developed by the Ministry of Foreign Affairs. Notably, Kenya has helped in giving the people of Sudan internal self determination by active involvement in the peace process and has also been active in helping Somalia form a transitional government through the Inter-Governmental Authority on Development (IGAD).

20. Within the UN, Kenya has shown sincere and keen attachment to the principle of self-determination, consistently supporting the resolutions of the General Assembly and the resolutions and decisions of the Security Council condemning, and providing for measures to combat interference, invasions by foreign countries, occupation and colonialism and demanding respect of the right of the peoples to elect their own governments and to sovereignty. In the same spirit Kenya has supported the Secretary General in his endeavours to settle these problems through the use of peaceful means in the settlement of international disputes. In recognition of the right to self determination of all peoples, Kenya recognised Western Sahara as a Republic in line with the African Union (AU) principles and voted favourably in the African Union in recognition of Western Sahara. Western Sahara has diplomatic relations with Kenya, and has an embassy in Kenya. Kenya, in principle, votes favourably on the issue of self determination in the UN including on the question of Palestine.

21. With regard to *internal* self-determination, Kenya is run by a Central Government, but many decisions relating to the political, social and economic welfare of communities are made at the local government level. The local government authorities in Kenya comprise of a City

Council for the Nairobi City; Municipal Councils for the major towns, County Councils for the rural districts and outlying areas (the countryside) and Town Councils for the smaller towns. Although the Country has a unitary centralised system of government, the Government has presence even at the local levels and funds are sent to the grassroots. The local government is meant to represent local people and it should reflect their will/wishes in development matters. The framework for local governance is provided for under the Local Government Act. The institutions under the Act are city councils, urban councils/municipal council and county councils. They are constituted and comprise of elected representatives of the people from smaller political/administrative areas known as wards. Through these structures decision making is decentralised. There is also the Local Authority Transfer Funds (LATF), which are funds allocated to the local authorities by the central government and which is apportioned and managed by each local authority for the benefit and welfare of residents. Other government programmes that enhance the people's right to self determination and enjoyment of economic social and cultural rights include: Constituency Development Fund (CDF) (under the Constituency Development Fund Act), HIV/AIDs fund managed by the National Aids Control Council (NACC), Constituency Bursary Fund, Kenya Roads Board (KRB) Fund among others.

## Article 2

22. The Constitution of Kenya guarantees that the Bill of Rights applies to all, without any discrimination, whether based on creed, colour, sex, religion, place of origin or other similar grounds (section 82). Any person who deems that their rights under the Constitution have been infringed may apply for redress. However, the political right to vote and to contest Presidential, Parliamentary and local authority elections is reserved for citizens. Section 82(4) of the Kenyan constitution provides for exceptions to the non-discrimination law as follows:

- With respect to persons who are not citizens;
- With respect to adoption, marriage, divorce, burial, devolution of property on death or matters of personal law;
- For the application in case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other person; or
- Whereby person of a description mentioned may be subjected to a disability or restriction or may be accorded a privilege or advantage, which, having regard to its nature and special circumstances...is reasonably justifiable in a democratic society.

There have been efforts to review the Constitution of Kenya for a long time, which efforts culminated in a draft constitution. The draft constitution contained extensive provisions on the issue of discrimination and all other rights. The Draft Constitution had a very comprehensive Bill of Rights. The Draft constitution was rejected by 57 per cent of the people who voted at the constitutional referendum held on 21<sup>st</sup> November 2005. It is worth noting that the process of constitution making is still ongoing.

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. Despite the fact that the rights don't feature expressly in the Constitution the Economic social and cultural rights find expression in our legislative framework in various Acts of Parliament as will be discussed under each right. Due to economic hardships, it has not been possible for Kenya to ensure the realisation of these rights by Kenyans and non-Kenyans alike, on an equal footing. For instance, the Immigration Act (Chapter 172) and the Aliens Restriction Act (Chapter 173) of the laws of Kenya limits the extent to which non-Kenyan nationals may exercise the some of the rights recognized in the Covenant, like the right to work. Corruption deserves mention as a challenge and hindrance to the realisation of rights, corruption is an impediment to economic growth and poverty eradication the Government has however put in place administrative and legal measures to curb corruption. One such measure is establishment of the Kenya Anti Corruption Commission discussed above.

24. The socio-economic rights of the over 240,000 refugees hosted in Kenya are limited only to the extent consistent with the provisions of the 1951 Geneva Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, and the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. A Refugees Bill is currently pending before Parliament for enactment. The Bill, when it becomes law, will provide the legal and institutional framework that will facilitate the enjoyment of social, economic and cultural rights of refugees in accordance with Kenya's obligations under international law.

Though the process of enacting a Refugee Bill in Kenya has been long and winding, Kenya is committed to having a Refugee Law. Since 1994, there have been efforts to make refugee law in Kenya. In dealing with refugees there are various challenges encountered such as the difficulty in balancing national interests with international interests especially on the issue of asylum and insecurity caused by presence of refugees and the porous nature of international boundaries. The Government is making efforts to have refugees registered so that they can work and conduct business in urban centres.

25. Kenya has an encampment policy that requires refugees to live in designated areas due to security, environmental and resource concerns, except for special cases where refugees may be permitted to live in urban areas, outside the camps. Refugees in Kenya live in two camps - in Kakuma and Dadaab. The refugees through the humanitarian assistance of the United Nations High Commissioner for Refugees (UNHCR) and Non Governmental Organisations, (NGOs) are able to realize their basic rights of food, shelter, and clothing. However, due to limited resources coupled with the aforementioned number of refugees, these services are not adequately provided for. The government plays a facilitative role more than provision of services. The refugee population enjoys certain services like physical security and infrastructure by government of Kenya. There is a department in the Ministry of Immigration in charge of refugees.

26. As part of the ongoing constitutional review process in Kenya, a draft constitution had been produced. Economic, social and cultural rights were enshrined in the Bill of Rights of the Draft Constitution of Kenya, 2004. All such rights are ensured on a non-discriminatory basis, except for the following, which are ensured only to national citizens: The right to access information held by the state and/or information held by another person required for the exercise

or protection of any right or freedom (Section 51.1.a & b). even though the draft was rejected by Kenyan voters at the referendum process, the Bill of rights was not a contentious chapter and the extensive Bill of Rights is likely to be adopted in the future constitution of this country.

27. Further, the Draft Constitution provided for progressive realization of rights in line with available resources. Section 29(5) of the Draft Constitution provided that where there is a question as to the interpretation and application of a particular right or freedom and if the state claims that it does not have the resources to implement the right or freedom, a State organ, court, tribunal or forum shall be guided by the following principles:

- It is the responsibility of the State to show that the resources are not available;
- In allocating resources the state has an obligation to give priority to ensuring the widest possible enjoyment of the right having regard to the prevailing circumstances, including the vulnerability of the groups or individuals claiming the violation of their right; and
- A court, tribunal or a commission on human rights and administrative justice may not interfere with a decision by a state organ concerning the allocation of available resources, solely on the basis that the court, tribunal or forum or the commission would have reached a different contribution.

This remains a draft proposition until adoption of a New Constitution, which is expected to incorporate these rights, in Kenya.

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. However one can move the court for enforcement on any of the rights under the existing legislative framework.

29. Additionally, as part of the ongoing constitutional review process in the country, it is worth mentioning that in the Draft constitution, 2004 the Bill of Rights had entrenched specific articles that address the needs of some vulnerable groups; including the older members of society, the youth, the children, the family, as well as minorities and marginalized groups. As earlier stated, even though the draft was rejected at the referendum stage, the Bill of rights was not among the contentious issues and is likely to be incorporated as it is in a constitution. Further, the draft was prepared after collection of views from a cross section of the country's population, the majority of which felt that the Bill of Rights should be strengthened to cover these rights.

30. Though much remains to be done, Kenya has taken significant steps towards the progressive realization of the rights protected in the Covenant, despite the fact that the current Bill of Rights is without express provisions on justiciable economic, social and cultural rights. These steps include:

- The introduction of free and compulsory primary education since January 2003. Other than free primary education, schools were given Ksh.2000 (approx \$ 25 for each child and Ksh.10000 (\$ 140) to make schools more disability friendly;

- The reduction of the National HIV prevalence rate from 13.6 per cent in 2002 to about 7 per cent 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;
- 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. Under Section 4(1) of the CDF Act, 2.5 per cent of the Government ordinary revenue collected in every financial year and any moneys accruing to or received by the National Committee from any other source is committed to this Fund and it increases as the revenue increases. The value of this is that there is equal distribution of resources available to the CDF Programme, since each Constituency gets an equal amount. There is also the Poverty Reduction Fund that is never reduced because of any economic downslide. There are core poverty programmes in our budget process that are cushioned against budget cuts;
- Enactment of legislation to facilitate the progressive realisation of socio-economic rights to all without distinction. The enacted or pending legislation include the Draft Constitution of Kenya (2004), which is founded on socio-economic justice; the Persons with Disability Act; the Refugees Bill (in Draft); the Matrimonial Property Bill which lapsed but will be reintroduced to Parliament; the Employment Bill; and the Gender Equality Bill which was rejected in parliament but will seek to be reintroduced among a host of others.

31. Kenya participates in development cooperation under which the Government and its development partners (including multilateral donors like the World Bank, and the International Monetary Fund (IMF); as well as the European Union (EU), United Nations, USAID and other bilateral donors) jointly pool resources for the promotion of education, health, legal reforms, poverty reduction and housing. Examples in this connection include the funding of free primary education and the urban slum upgrading projects. Examples of programmes that arise as a result of such cooperation include the fight against HIV/AIDS, water and sanitation, nutrition, Governance Justice Legal Sector Reforms (GJLOS), Upgrading of Urban Informal Settlements (Slum upgrading) and the prison reform programme.

### **Article 3**

32. The Government of Kenya has demonstrated concern for the welfare and special needs of women. Kenya's participation in the first UN Conference on Women in 1975 in Mexico set in motion the process which led to the establishment of the Women's Bureau in the Ministry of Culture and Social Services in 1976. This was an acknowledgement of women as a population category with special needs that require particular attention. The Women's Bureau as a national

machinery was mandated with the advancement of women issues including policy formulation, implementation monitoring and evaluation coordination of government initiatives and programs for women, collection and analysis for gender disaggregated data and information and support to and liaison with NGO's women's organizations and other stakeholders. The role of the civil society in realisation of the rights of women cannot be overlooked. The civil society through various active NGOs has ensured the realisation of these rights through active lobbying and advocacy. Through a lot of lobbying and advocacy by the civil society, the Government has made initiatives in gender mainstreaming.

33. 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. These structures support gender mainstreaming throughout Government ministries. Additionally, they formulate programmes and advise on the establishment and strengthening of institutional mechanisms which promote gender equity in all spheres of life and in particular in education, employment and access to national institutions. The problem is that the Gender Commission faces various challenges, resource limitation being the most profound.

34. The Government has a draft national policy on gender and development which arose from the understanding that without a coherent and comprehensive overall framework for guiding the various sectors and agencies involved in development, tremendous resources may continue to be lost unless the thrust of mainstream development directly addresses gender concerns. The overall object of the gender and development policy is to facilitate the mainstreaming of the needs and concerns of men and women in all areas in the development process in the country. The policy's concerns cover the following critical areas; the economy, poverty and sustainable livelihoods, law, political participation and decision-making, education and training, health and population, the media, Policy implementation framework and resource mobilization. The gender policy developed to help the Government gender mainstream has not been debated by Parliament and has thus not been effectuated.

35. The Government has formulated Sessional paper No. 5 of 2005 that provides a framework for gender mainstreaming in policy, planning and implementation of programmes. The Sessional Paper has been adopted in recognition of the fact that development initiatives impact differently on men and women in the development process. The National Commission on Gender and Development, as stated in paragraph 33 above, has been set up and is in the process of being made operational. The object and purpose for which the Commission is established is to coordinate and facilitate gender mainstreaming in national development and to advise Government on all aspects thereof.

36. There are numerous non governmental organisations that are active in the field of promoting gender equity in the country. NGOs complement the work by government in the realisation of this right. The government supports and encourages the work of NGOs working in the field of development, poverty reduction, HIV/AIDs and infrastructure.

37. The number of females in gainful employment rose from 503,400 in 2002 to 511,100 in 2003, against a national total of 1,727,600. In practice however, female participation in

activities traditionally dominated by males has remained low. In 2001, there were 495,200 females in employment against 1,176,300 males. This is a 29.5 per cent share of modern sector employment.

38. The majority of females employed in the modern sector (58.2 per cent) were working in the community, social and personal services in 2003.

39. Enforcement of gender equality issues is a challenge. Out of 222 members of Parliament, only 18 are women. Kenya's electoral laws do not discriminate on the basis of sex and allow both men and women of majority age to vote and contest for public offices. It is noteworthy that about 52 per cent of the electorate are women. However, the prevalent values and attitudes among the people foster a tendency for women to generally shy away from elective positions. Other reasons for the relatively low numbers of women in elective positions include poverty, culture, and gender based violence. Various efforts have gone into trying to level the ground to bring men and women at par, for instance the Equality Bill mentioned above. The Government has taken steps to address inequalities in education and training institutions as appears under the Right to Information. Further on the part of the Government noteworthy are the 1997 Constitutional Changes providing that when political parties are nominating 12 special members to the Parliament in proportion to their elected members of parliament, due regard must be had to women. All parties are enjoined to nominate women. The Government and the ruling party led in this direction after the 2002 elections by allocating most of its slots for nominated members' parliament to women.

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. The Government is working to eliminate these prejudices through various interventions including law review by the Kenya Law Reform Commission and the continuous training of judiciary officers. This is done in collaboration with Civil Society Organisations.

41. The Children's Act, 2001 at section 5 stipulates that no child shall be subjected to discrimination on the ground of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or local connection. However, the Act does not cater adequately for children born out of wedlock.

42. As part of the ongoing constitutional review process, the Draft Constitution provided that women and men will have the right to equal treatment under Section 37. This right includes the right to equal opportunities in political, economic, cultural and social activities. Women and men

have an equal right to inherit, have access to and manage property. The Draft prohibited any law, custom or tradition that undermines the dignity, welfare, interest or status of women or men. The Draft further specifically provided for the protection women and their rights, taking into account their unique status and natural maternal role in society. Additionally it provided that the state shall provide reasonable facilities and opportunities to enhance the welfare of women to enable them to realize their full potential and advancement. However, with the rejection of the draft at the referendum, extra effort will need to be put to ensure that these gains are included in a future constitution.

43. Further, the Draft Constitution under Section 38 provided for the protection of the older members of the society. It required the state to take legislative and policy measures to ensure the rights of older persons to:

- Participate fully in the affairs of society;
- Pursue their personal development;
- Free from all forms of discrimination and abuse;
- Live in dignity and respect;
- Retain their social and political autonomy; and
- Receive reasonable assistance of their family under the state.

44. The Government also recognizes that persons with disabilities are vulnerable and are sometimes treated as genderless. To that extent the Persons with Disabilities Act that was enacted in 2003, provides at Section 11 that the Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of the persons with disabilities. Additionally, Section 42 of the Draft Constitution provides the persons with disabilities with the entitlement to enjoy all the rights and freedoms set out in the Bill of Rights, and to be full participants in society.

45. Furthermore, it provides that legislative and policy measures shall make special provisions for women with disabilities. The Government has set up the National Council for People with Disabilities to oversee implementation of the Persons with Disabilities Act. The Council was set up with an objective of coordinating and facilitating equalization of opportunities for Persons with Disabilities and to advise the government on integration of disability issues in all sectors of social economic development.

46. The Government works closely with disabled person's organizations to promote equalization of opportunities. A policy on disability has been drafted, a national steering committee comprising representatives of the Government and Civil Society is in place to monitor integration of disability issues in various sectors.

### III. THE NATIONAL IMPLEMENTATION OF SPECIFIC RIGHTS

#### Article 6

47. The current Government policy is to create 500,000 jobs a year in both the formal and informal sector. The Government has also pledged the promotion of an enabling environment for business and industrial development. On this basis, the Kenya Investment Authority Act and the Public Procurement and Disposal Act (Act No. 3 of 2005) have been enacted as one of the pillars for the realization of the objectives of Government as set out in the Economic Recovery Strategy Paper. Data collected by the Ministry of Labour and Ministry of Planning indicate that approximately, 470 000 jobs were created in 2004.

48. To ensure that work is as productive as possible, the Government has embarked on the signing of performance contracts for public servants and the development of sector/Ministry-specific strategic plans and annual work plans for the public sector. A productivity Centre of Kenya was recently formed under the Ministry of Labour, coming into operation late 2005.

49. Sections 73(i) & (ii), 75 and 81 of the Constitution provide for the protection from slavery, forced labour, deprivation of property and freedom of movement all of which are relevant to the right to work. Freedom of movement guarantees the right to work in any part of the Country. Under the Constitution, no person is to be held in slavery or servitude, and the Country ratified No. 29, Forced Labour Convention and No.105, Abolition of Forced Labour Convention) on 13 January 1964. The Government has since taken measures aimed at ensuring that the national law and practice are in conformity with these Conventions. In this connection, sections of the Chiefs Authority Act that gave Chiefs the authority to impose forced labour in villages (ostensibly for purposes of undertaking communal projects like the maintenance of rural access roads) were repealed in 1997.

50. The Government is committed to reforming certain provisions of the Penal Code (Chapter 63 Laws of Kenya) which require that a person under imprisonment may be under an obligation to perform work imposed as a punishment. Also set for review are the Merchant Shipping Act (Chapter 389 of the Laws of Kenya) 1967 and the Trade Disputes Act (Chapter 234 of the Laws of Kenya) both which prohibit participation in strikes for certain categories of workers. Discussions are being held between the Office of the President, the Attorney-General's Office, the Kenya Law Reform Commission and the Ministry of Labour, regarding proposals aimed at bringing national legislation in full conformity with provisions of Convention 105.

51. A Government-appointed task force to review labour laws has submitted its recommendations. The task force has recommended an overhaul of the current Employment Act, with a view to specifically prohibit forced labour in line with Convention 105, with the exception of the categories of work exempted from the provisions of the Convention (such as work or service of a military nature, normal civil obligations etc.).

52. Career and vocational guidance are provided in schools and universities. To supplement the role of Universities in absorbing school leavers, the Government has also established village polytechnics, national polytechnics and middle-level tertiary institutions specializing in science

and technology. However, funding these institutions remains a major challenge due to fiscal constraints and the donor-imposed adjustments of cutting on public expenditure in public education. The Directorate of Industrial Training is also engaged in the promotion of technical skills in all sectors. Technical and vocational training programs are also provided by the National Youth Service, Borstal institutions, vocational rehabilitation centers for persons with disabilities and youth correction centers in prisons. Vocational training in Kenya is provided for under the Industrial Training Act (Chapter 237 of the Laws of Kenya).

53. Major challenges relating to the attainment of the objective of full, productive and freely chosen employment include the inability of the economy to support high levels of employment as well as the heavy investment required to adapt the education system to the changing needs of the economy. To address these challenges, the Economic Recovery Strategy for wealth and employment creation (2003 - 2007) has been adopted as a blueprint for setting the economy on a recovery path. Furthermore, the Government has adopted Sessional Paper on Education (see part of the Report on right to education), the crux of which is to realign our education system to market needs in a changing national and international social, economic and cultural landscape.

54. Achieving gender parity especially in the senior positions of both the public and private sector remains a significant challenge. For instance, out of 26 Permanent Secretaries currently serving in the Government only 6 are women. The establishment of the National Commission on Gender and Development, and the elevation of the Women's Bureau to a Department within the Ministry of Gender, Sports, Culture and Social Services are expected to go a long way in correcting gender imbalances in the Country. At the policy level, Sessional Paper Number 5 of 2005 on Gender Equality and Development provides for the establishment of gender divisions in the public service. Enactment of the Disabilities Act, the HIV (Control and Management) Bill (which has lapsed) and the Equality Bill (which too has lapsed), is meant to legislate against discrimination. These bills which have lapsed will be reintroduced in Parliament. Under the Children's Act, 2001 discrimination in the education of the girls and boys is penalized and this has a positive impact on the employment prospects for girls later in life. In addressing matters concerning the youth, there is a Draft Kenya National Youth Policy which highly addresses issues of the youth and employment. Also, Youth Councils have been established and decentralized throughout the country. With regard to persons with disabilities, the Government has improved access to rehabilitation, education, training and employment of persons with disabilities through:

- The establishment of policies to ensure that girls or boys with disabilities have access to relevant education;
- Paying particular attention to the requirements of children in rural areas; the training of youth, women and men with relevant marketable skills;
- The promotion of vocational rehabilitation, and where possible, retaining opportunities for people who acquire disability in the course of their working lives;
- The promotion of Para-professional and vocational education and training programmes; and

- The development of strategies to promote employment of people with disabilities, including tax rebates and incentives.

The country has submitted country reports on the Convention for the Elimination of Discrimination against Women (CEDAW), and reference can be made to them for further detail.

55. There are professional workers such as doctors, lawyers and University lecturers who have to do more than one job due to low incomes mainly in the public sector. The International Labour Organization (ILO) assists the Government in the national implementation of labour standards enshrined in the ILO Conventions and the relevant articles of the present Covenant. Information on unemployment and underemployment is rather hard to keep and collate.

### Article 7

56. Kenya has ratified Convention No. 111 on Discrimination (Employment and Occupation). The Country has also ratified seven out of the eight Fundamental Principles and Rights at work that the ILO adopted by declaration in June 1998.

57. The Regulation of Wages and Conditions of Employment Act (Chapter 229, Laws of Kenya) governs the setting of wages (and secures it from erosion) for all workers except for the Police, the Armed Forces and the National Youth Service. Minimum wages apply to all employees. The General Agricultural Wages Advisory Board, the Agricultural Wages Authorities, and the Protective Security Wages Council make proposals for the setting of wages and advice the Minister for Labour thereon. On the basis of this advice, the Minister sets the minimum wage, which is reviewed occasionally to reflect inflation and other economic factors. The minimum wage at the moment is Ksh. 5337.50 approximately US \$ 76.20 per month. The annual upward review of this figure was around 8 per cent, which was consistent with general inflationary trends. The minimum wage so established has the force of law as subsidiary legislation.

58. The Wage Boards supervise the minimum wage system. All the Boards draw representation from the most representative workers and employers organizations and are chaired by independent persons from the private sector. The Minister for Labour appoints the Boards. There are labour inspectors who inspect premises to ascertain compliance with labour standards. Apart from the above framework, there are voluntary negotiated Collective Bargaining Agreements between workers and employers.

59. In Kenya, rates of remuneration are based on trade, professional qualifications, job experience and on various schemes of services for public and civil servants. All employees regardless of sex are remunerated in accordance with qualifications and are paid the same for equal work done. However there are provisions that bar women from working at night (from 6.30 pm to 6.30 am) in industrial settings. These are the targets for review as they may be seen as *prima facie* discriminatory and partly contribute to both unemployment and underemployment. The Equality Bill (yet to be passed legislation) had proposed the establishment of the Equality Board and the Equality Tribunal to give an institutional framework for combating discrimination. Supervision of compliance with the minimum wage has not been effective due to inadequate staffing levels, financial constraints and poorly motivated labour inspectorate. The Government is in the process of ratifying Convention 150 on labour inspection.

60. Job evaluations and annual performance based appraisals form the basis for fixing remuneration and promotion of employees. This enhances the principle of equal opportunity for promotion.

61. In November 2004, the Government issued regulations on occupational health and safety rules in industries and places of work that have to be filed every year. The Employment Act requires employers not only to provide water and housing but also to provide medical care. There are also provisions in the Act for annual leave (21 days in every 12 consecutive months of work), maternity leave amounting to two months) and weekly rest days (one day a week). While these are the prescriptions of the law, many employees are remain engaged in employment contracts that do not provide for these amenities due to the high levels of unemployment and competition for the available job opportunities.

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.

### **Article 8**

64. Since Kenya has ratified the International Covenant on Civil and Political Rights (ICCPR) and has submitted a periodic report thereon in 2004, the Committee may wish to refer to it as far as it relates to trade union rights. Nevertheless, it is noteworthy that the Constitution allows the freedom of association including the right to form or join trade unions (section 79). The Trade Unions Act (Chapter 233) and the Trade Disputes Act (Chapter 234) supplement this Constitutional provision.

65. In the past, there have been delays in the registration of trade unions. In other instances, certain trade unions were denied registration and others deregistered. Since January 2003, the trade unions that had been denied registration or deregistered, notably the Civil Servants Union and the Universities Academic Staff Union have been registered.

66. The procedure of forming a trade union begins with the lodging of an application in the prescribed form to the Registrar of Trade Unions. To be registered, a trade union should have at

least six members. The names, occupations and addresses of the proposed members as well as the name of the union, the address of the registered office, names, title and occupation of the officers of the union should be provided.

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. However, most of the principles find expression in the national laws and practices. The Task Force on Labour Laws has recommended the removal of these inconsistencies, and the Government has initiated the process of ratifying Convention No. 87. The Government has initiated discussions with the tripartite partners through the Ministry of Labour towards the ratification of this convention.

68. Trade unions require the permission of the Registrar to associate with other trade unions. However, workers and employer's organizations are free to establish and join national federations or confederations and these bodies are free to affiliate with international workers' or employers' organizations. Most of the registered trade unions have international affiliations. The Umbrella body for registered trade unions is the Central Organization of Trade Unions (COTU), which is affiliated to the International Confederation of Free Trade Unions (ICFTU). With respect to employers' organizations, their umbrella body is the Federation of Kenya Employers (FKE), which is affiliated to the International Organization of Employers (IOE). The Minister of Labour & Human Resources Development under the Trade Unions Act is involved in the holding of election in trade unions and so trade unions are not entirely free to conduct their business. In the past the Minister's power has provided an opportunity for interference with trade unions operations. Employers, labour inspectors and unscrupulous Ministry officials have sometimes colluded so that deducted union dues are not remitted to the union. They are therefore unable to effectively function and adequately represent their members. The current Government is keen to deal with these issues and in particular to explore the best ways of ensuring that trade unions operate with utmost freedom. In a nutshell trade Unions in Kenya are governed by the Trade unions Act and they fall under the Registrar of Trade Unions. The trade unions are free to conduct their business and elections in accordance with their constitutions. The ministry of labour supervises the elections mainly because the office of the Registrar of Trade Unions has no capacity to supervise. There have been instances when employers fail to remit the trade union dues to the Registrar of Trade Unions.

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. Unionisable employees acting through their union may proceed on strike if they have served the Minister with a twenty one day strike notice and if the Minister has failed to resolve the issue within that period. The Police, the Armed Forces and all disciplined forces are prohibited from forming or joining trade unions. Consequently, these groups cannot go on a strike.

## Article 9

70. The following branches of Social Security exist in Kenya. A system of medical care known as the National Hospital Insurance Fund (NHIF) which is a compulsory contributory scheme for all employed in the formal sector, and voluntary cover for those in the informal sector, it covers a small percentage of medical bills (bed only) in case of hospitalization or maternity admission. There is also the National Social Security Fund (NSSF), a compulsory, contributory social security fund set up to pay pension benefits to employees after retirement. The Workmen's Compensation Act covers benefits to be given to workers injured on their jobs. In the Public Service, deductions are made from male civil servants and are in turn is paid to their widows and children in the event of their demise. Tax relief is given to married public servants in order to assist the family. NHIF/NSSF are also in the informal sector. Most categories of social security are covered but a few may not be depending on the particular scheme i.e. cash sickness benefits, maternity benefits, old-age benefits, invalidity benefits, survivors benefits, employment injury benefits, unemployment benefits and family benefits are covered as required by the reporting guidelines.

71. The Government has since 1997 taken measures to ensure the realisation of the right to social security. The Retirement Benefits Act (Act No. 3 of 1997) is an Act of parliament that was enacted for the establishment of a Retirement Benefits Authority (RBA), for the regulation, supervision and promotion of retirement benefits schemes, the development of a retirement benefits sector and for connected purposes. The Act also established a tribunal under it for resolution of disputes in the sector. Various regulations have been made under the Act. The Retirement Benefits (Occupational Retirement Benefits Regulations) 2000 and the Retirement Benefits (Individual Retirement Benefits Regulations) 2000 provide for schemes formed by the employers for their employees and for those formed by individuals respectively. The various private retirement schemes formed by both the private and public sector fall under these regulations. At present, the NSSF is not regulated by the RBA but plans are underway to have it fall under the regulatory body. Also, retirement Benefits (Minimum funding and winding up regulations) 2002, provide for the minimum funding levels and circumstances and the manner under which a scheme may be wound up so as to protect the members rights and benefits. Prior to the coming into force of this Act and the regulations there under, the sector was unregulated and there were many instances of failure to remit contributions deducted from the employees and the employer to the scheme. As a result, some schemes are highly under funded and members are not assured of getting their accrued benefits and any accrued interests upon retirement or in a timely manner. A case in point is the Kenya Railways workers Pension scheme and provident fund, the Pension scheme formed under the Nairobi City council and the Teleposta Pension scheme and Provident Fund. In these schemes, the employer owes the members Billions of Shillings in unremitted contributions and the government is in the process of sourcing for funding to guarantee the workers rights to social security.

72. For a long time, retirement benefits were accessible to employees upon retrenchment, redundancy or even early retirement. As a result, by the time a person reached the retirement age of 55, they had no social security. Amendments made to the Retirement Benefits regulations in 2005, bar an employee from accessing the employers' contributions before reaching the age of retirement in case of any of the aforementioned events. This move is a positive move towards the realisation of social security.

73. A significant inadequacy of Kenya's public social security system relates to limited number of people accessing social security in the informal sector and the self-employed. However, the NHIF and the NSSF Acts have recently been reviewed so as to include these groups in these schemes. A Bill, National Social Health Insurance Bill was introduced for enactment in parliament to provide for a phased out programme of a compulsory health insurance scheme for all citizens. The Bill has not been passed into law as it did not get presidential assent but the proposals are still being considered.

#### **Article 10**

74. Kenya is a party to the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child. The Kenyan society defines family as consisting of a man and a woman (parents) and their biological children or other extended relations, dependant children, or child headed households. The Children Act defines a child as any person below the age of 18 years. The employment Act however considers a child to be a person below the age of 16 years old for the purposes of work. Kenya has recently submitted the second country report on the CRC and the same can be referred to for further details on the rights of the child.

75. The Marriage Act (Chapter 150 of the Laws of Kenya) governs marriage in Kenya. Marriage is open to consenting parties (a man and a woman) of 18 years and above. In practice, early marriages still occur in some parts of the country although they have been criminalized under the Children Act. Other pieces of legislation relating to marriage include the African Christian Marriage and Divorce Act (Chapter 151 of the Laws of Kenya), the Hindu Marriage and Divorce Act (Chapter 157 of the Laws of Kenya), and the Mohammedan Marriage and Divorce Registration Act and Mohammedan Marriage, Divorce and Succession Act (Chapters 155 and 156 of the laws of Kenya respectively) and African Customary law.

76. The Government allows the fostering and adoption of children under the Children's Act. Abortion is illegal in Kenya. Unfortunately, whereas campaigns by Government and civil society in the 1980s led to significant success with regard to family planning, recent studies show a reversal in these gains in the 1990s and 2000s. This reversal in family planning gains has also been attributed to application of more resources and efforts to the fight against HIV/AIDS. Family planning measures however remain a core function of the Ministry of Health.

77. The Government of Kenya is committed to protecting and assisting the family as the core unit of society. It is in this regard that the Children Act, the Equality Bill and other legislation have been prepared. However, the Government accepts that it must continue to combat practices that negate the stability of the family; including drug abuse, early child marriages, Female Genital Mutilation (FGM), school dropout and other practices especially those harmful to the girls and women.

78. Under the Children Act, both the State and parents share the responsibility of ensuring that every child enjoys free and compulsory education. There is a national policy on orphans and vulnerable children that envisages the enjoyment of fundamental rights and freedoms by orphans and disadvantaged children. For in-depth analysis of Governmental policies on Children we make reference to the Second Country Report on the CRC.

79. Although there are no funds specifically for families, the family benefits from the Constituency Development Funds (CDFs) and the Constituency Bursary Fund (CBF). These funds are meant to alleviate poverty and to lift standards of living for the rural and urban poor.

80. The CDF was established by an Act of parliament in 2003 to finance development projects in the country's 210 constituencies countrywide. The fund draws 2.5 per cent of the total revenue collected by the government. The CBF is a bursary assistance scheme designed to enable needy students' access education opportunities which they would otherwise not be able to access. The stated objective of the bursary is to cushion households from the rising impact of poverty and the rising levels of HIV/AIDS pandemic. The two are ways of ensuring that development funds are devolved to the grassroots and thus to the family unit.

81. Maternity leave of 60 days is provided for under the Employment Act. Medical services for those on maternity leave are provided either through contributory schemes like the NHIF or other private schemes. Of particular concern is the situation of expectant mothers with physical disabilities. Although the Persons with Disabilities Act now requires premises to be designed so as to be accessible to persons with disabilities, not all hospitals have complied with this requirement yet. As a result, there have been reports of mothers with disabilities being unable to access hospital beds.

82. Kenya has submitted a country report on CEDAW; reference can be made to the report with regard to the issue of medical services maternity.

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. There are many more measures the Government has taken to curb child labour as appears in the Second Country Report on CRC including criminalisation of Child Labour and integration of the fight against child labour in the education system where head-teachers are called upon to report any such cases with their pupils.

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.

### **Article 11**

85. The proportion of Kenyans living below the poverty line is on the increase. The 2002 national estimate of those below the poverty line (living on less than US \$ 1 a day) stood at 56 per cent of the population. The Government has taken many initiatives in order to reserve this situation. These include the adoption of the National Poverty Eradication Plan (NPEP); the

Poverty Reduction Strategy Paper (PRSP) and the Medium Term Expenditure Framework (MTEF). The Government is also currently implementing the Economic Recovery Strategy aimed at poverty reduction. The current economic growth indicator is 4.6 per cent, when there is economic development and growth inversely there is reduced poverty. In contribution to the fight against poverty is the fact that the Government is also implementing the Millennium Development Goals.

86. Even before ICESCR came into force on 3 January 1976, Kenya had shown commitment to enhancing the standards of living for its nationals. This commitment was the basis for the Sessional Paper number 10 of 1965 entitled “African socialism and its application to planning/Development”. In the paper, the Government outlines its commitment to eradicating poverty, ignorance and diseases.

87. The Government has over the years implemented several policy changes aimed at improving service delivery. These changes include reducing the role of the Government from direct involvement in economic activities to that of a facilitator; promoting public-private partnerships in the delivery of public goods and services; and reforming public enterprises and the civil service.

88. The reasons for the abovementioned changes were the downturn in economic development; constrained resources available to the Government as a result of a small tax base; mismanagement of resources; poor performance of public enterprises and a bloated civil service.

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.

90. The Government adopted the Structural Adjustment Programme (SAPs) in the context of wide ranging reforms through the publication of Sessional paper number 1 of 1986 on Economic Management for renewed Growth under the aegis of the World Bank and the IMF. Although the SAPs were presented as the panacea to underdevelopment and poverty in the country, the cut in public expenditure in key social sectors have had a devastating effect on the enjoyment of socio-economic rights in general and the right to adequate standard of living in particular.

91. The Budget Rationalization Programme (BRP) was launched by the Government in 1986 in order to bring about changes in the composition of public expenditure. The programme sought, together with other initiatives, to improve the allocation of the available budgetary resources and ensure adequate resource allocation to core activities while at the same time facilitating the private sector to play a prominent role in economic development. The Public Investment Programme (PIP) of 1992; the Public Expenditure Review (PER) of 1997 and the Medium Term Expenditure Frameworks are other interventions that the Government has undertaken to ensure that public resources are efficiently utilized. These policy changes have impacted on the Government, challenging it to embrace strategic approaches and improve its capacity and competence to respond effectively.

92. The MTEF links policy planning with the budgeting process. Under the MTEF, Government Ministries bid for resources from the Sector Working Groups (SWGs) that they fall under. There are eight SWGs. Ministry programmes should be linked to the sectoral policy priorities to justify resource application. Strategic planning has the potential to help ministries identify their core functions, policy priorities and strategic objectives. MTEF is important in realisation of the rights under the covenant as it provides a framework within which resources are applied.

93. In the recent past, the Government's strategies on development have focused on poverty reduction and improvement of standards of living of the people. The policy documents which form this framework are: the 8<sup>th</sup> National development Plan; the Poverty Reduction Strategy Paper (PRSP); and the Economic recovery Strategy for Wealth and Employment Creation (2003).

94. The 8<sup>th</sup> National Development Plan set out the National Poverty eradication Plan (NPEP) whose objective is to reduce poverty by 50 per cent by 2015 and to strengthen the capacity of the poor and vulnerable groups to earn income. The Poverty Reduction Strategy Paper articulates Kenya's commitment and approach to the war against poverty and improving the living standards of citizens. The rationale behind it is that the war against poverty cannot be won without the participation of the poor themselves. The Economic Recovery Strategy for Wealth and Employment Creation (2003 - 2007) identifies key policy measures and programmes that the Government is committed to pursue in order to improve the living standards of the people. The Government launched the Millennium Development Goals (MDG) - based planning and policy formulation process in May 2004 with the objective of halving poverty, halving the proportion of people without access to safe drinking water and improving the lives of slum dwellers by 2015.

95. Kenya with a population of 33 million faces enormous challenge of providing water and sewerage services to the increasing population. Most of the population lives in rural areas (24 million), while 9 million live in urban areas out of which more than half live in informal settlements. Currently, access to safe water is estimated at 68 per cent in urban areas and only 49 per cent in rural areas. Sanitation access in urban areas is estimated at 65 per cent as compared to 40 per cent in rural areas. However, overall coverage has been declining in terms of quality and quantity, reliability and nature of access.

96. Only 31 per cent of households in Kenya had access to piped water in 1999 compared to 32 per cent in 1989. This reduction is attributed to unsatisfactory performance of the piped water scheme in some areas. Less than 45 per cent of rural households had access to piped water systems, boreholes and wells in 1999 compared to 80 per cent in urban areas. About 28 per cent of rural population depended on rivers and lakes for their water requirements. This water is regarded as unclean mainly because they are not subjected to any form of treatment and are more exposed to pollutant materials. (Refer to the State of Human Rights Report, KNCHR 2004 page 121).<sup>2</sup>

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<sup>2</sup> The KNCHR State of Human Rights Report.

97. In 2001 nearly 70 per cent of the urban population had access to safe drinking water. This percentage rose to 75 per cent in 2003. About 50 per cent of the rural population had access to portable water. However these proportions declined due to increasing population coupled with inadequate resources for expansion and maintenance of water supply programmes.

98. Water in Kenya is regulated under the Ministry of Water and Irrigation. For +2004/05 the ministry was allocated Kshs. 6.41 billion while in 2005/06 the allocation increased to Kshs. 9.96 billion. Prior to 2002 the water sector institutional and legal framework was prescribed by cap 372, Laws of Kenya that placed the responsibility of provision of water services wholly in the hands of the Government Under this framework management and provision of water services were centralized, in terms of policy, regulation, and provision of water supply services. Water resource management responsibilities were fragmented amongst several agencies, resulting in a web of institutions managing the same resource, a situation that was a major impediment to integrated water resources management.

99. The definitive policy for the sector was promulgated as Sessional Paper No. 1 of 1999 on *Water Resources Management and Development* that called for de-centralisation of operational activities from the central government to other actors, including local authorities, the private sector and increased involvement of communities to improve efficiency in service delivery. The government was unable to ensure an enabling environment through appropriate policies and regulation.

100. The government adopted the Water Act 2002 in March 2003 and initiated a reform process in the water sector. The Water Act encompasses the commercialisation of the urban water programmes and community participation in rural water supply. The Act also provides mechanisms for financing water resources protection and management and thus enables the government to implement the National Water Policy. The main thrust of the reforms is to separate water resources management and development from water services delivery. The key elements of the reforms include among others:

- Establishment of *Water Resources Management Authority (WRMA)* to be responsible for the management of the water resources in the country;
- Establishment of *Water Services Regulatory Board (WSRB)* to be responsible for overseeing provision and licensing of water services;
- *Water Service Boards (WSB)* to be responsible for water and sanitation services provision and asset development;
- Establishment of *Water Services Trust Fund (WSTF)* to facilitate financing of water development in rural and low-income areas of the country;
- Transfer of government water and sanitation services schemes to services boards, communities and other lower level actors;
- Implementation of private sector participation in financing and management of water and sanitation services;

- Development of models of distribution of water and sanitation services; and
- Reform and re-designation of the National Water Conservation and Pipeline Corporation from water services provision to development of water conservation structures and drilling.

101. The Water Resources Management Authority (WRMA), The Water Services Regulatory Board (WSRB) and seven regional water services board have been established and are operational. The transfer plan that sets out the principles and procedures for transfer of assets and service provision responsibilities has also been effected to fully operationalize the reforms. Similarly, the Water Services Trust Fund has been established and has received both Govt and Donor funding. It has also begun to extend assistance to communities in response to project proposals that they have so far received.

102. In accordance with the Water Act 2002 a draft National Resources Management Strategy has been developed which prescribes the principles, objectives, procedures and institutional arrangements for determining the user requirements for water resources, classifying water resources and identifying areas which should be designated protected areas and ground water conservation areas. Similarly, a draft National Water Services strategy has been developed with the objective of ensuring that every citizen has access to water supply and a program for progressive extension of sewerage services to every centre of population in Kenya.

103. So as to provide clean water to all households within a reasonable walking distance, the government in conjunction with other stakeholders continue with the rehabilitation of rural area water supply schemes, the drilling of boreholes & construction of dams and water purification points across the country.

104. In the 2003/04 financial year, the government rehabilitated 45 hydrological and quality water monitoring stations, collected and analysed 6000 water samples, rehabilitated and augmented water and sanitation schemes in 32 urban water supply systems and for sanitation schemes to curb water wastage.

105. The Government has recognized the need to accelerate development of the ASAL areas for faster economic growth. A major input to development of these areas is availing water for livestock, domestic and irrigation development. Thus the Government's target of integrating Arid and Semi Arid Areas, (ASALs) in the overall development strategy primarily implies putting in place mechanisms that would harness the limited water resources in these areas as a basis for pursuing development endeavours in other sectors.

106. Rehabilitation of 83 rural water supply schemes and 150 small dams and water pans in 44 districts of the ASAL region were completed and handed over to the communities. A total of 39 boreholes were drilled and the water-pounding capacity in ASAL was increased by 2.5 million cubic metres.

107. The current water storage in the country stands at 124 million cubic metres. Approximately 3.4 billion cubic metres of storage is required by the year 2010 to ensure reliable water supply to the country, about 30 times greater than what currently exists. There has been no

major investment in water storage in the last fifteen years. If the current rate of degradation of water catchment's areas and deforestation continues, the amount of storage required by the country by the year 2010 will be much higher.

108. During the implementation of the Economic Recovery Strategy (ERS) more than Kshs13 billion will be required to improve access to clean and reliable water supply, improve water retention capacity and protect life and property in rural areas. Over Kshs 10 billion will be required to mitigate the vagaries of weather by storing water during the rainy seasons for use during the dry spell especially in the ASALs.

109. During the plan period, Kshs 5.5 billion will be required to rehabilitate about 35 urban water supplies, develop 7 sewerage schemes and institutionalize the reforms as outlined in the Water Act 2002. To provide water as an ingredient, both social and economic in the development of urban areas, a total of Kshs3.2 billion will be used. Major water supplies for big towns and smaller water supplies for small towns and urban centres will be developed. All the institutions envisaged in the Water Act 2002 will be in place and operational by the end of the plan period. Already 10 out of the 11 institutions earmarked for creation in the Act have been established and are operational. The rehabilitation of water control dykes in Nyando, Budalangi and Nzoia rivers is being undertaken to protect lives and livelihood in the surrounding communities.

110. Sustainability of irrigation development has been an issue of concern arising from diverse problems. In the national irrigation schemes, farmers are not well prepared and at times unwilling to take over responsibilities consequential to the liberalization of crop marketing. In the smallholder schemes, the major challenge is in the improvement in productivity of land and water resources. A cross cutting challenge in national and smallholder schemes includes financing and implementing the operation and maintenance of irrigation and drainage infrastructure. In the private sector, the challenge is mainly on cost reduction through improved water management and attaining the required standards for their produce. The national average irrigation efficiency stands at 45 per cent, which is a major constraint in water resource management.

111. To meet the costs of water resources management, the National Water Services Strategy (NWSS) will develop an appropriate levy and fee structure that ensures cost recovery to enable sustainable management of water resources. Financial management systems will be rationalized to increase efficiency, transparency and accountability. Ultimately it is planned that the established WRMA will achieve financial autonomy. This would help attract foreign capital and technical investment into the sector.

112. Most existing water supply and sewerage collection, treatment and disposal systems were constructed 20-40 years ago. With inadequate maintenance, non-replacement of obsolete equipment and failure to establish new assets coupled with declining allocations from the exchequer, these existing water and sewerage facilities have been deteriorating rapidly. Currently they are unable to meet water demand in terms of both quantity and quality. These results in extremely high levels of water unaccounted for, reaching as high as 70 per cent. This means that of every 100 cubic metre of water produced only 30 cubic metres may be delivered to the beneficiaries. Losses include both technical losses due to leaks and inefficiencies in the physical

system of pipes, pumps, treatment plants, valves and meters as well as social losses. Social losses include theft of water, “informal”, unauthorised and unpaid for connections as well as other mechanisms for obtaining water without paying for it.

113. Currently water demands in all sectors are not being met. Until recently the emphasis has been on the provision of water supplies and water resource management has been neglected. The levels of storage for urban and rural requirements are very low with poor operation and maintenance. Assets are increasingly being depleted due to siltation as a result of catchment’s degradation. Shortage of resources and lack of control of water use is resulting in conflicts between users. In order to meet the present and the future demands for water and to promote the country’s development, Systematic Integrated Water Resources Management is being implemented. This entails protection of all water resources in a co-ordinated manner.

114. At the international level, the Lake Victoria Tripartite Agreement under the East Africa Community (EAC) set the stage for the Lake Victoria Environmental Management Program (LVEMP) and the Nile Basin Initiative which provides the basis for cooperation of all riparian countries in the development of the water resources of the Nile Basin. The emphasis is towards the need for equitable sharing of water resources and benefits that accrue from the development of shared water resources, the sustainability of resources, the need to build trust and co-operation between riparian countries and the need for protection of resources. As a result of these initiatives, there are great opportunities to significantly improve the management of shared water resources. It is essential for Kenya to strengthen its capacity to negotiate and manage international waters in sharing and management issues.

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. Using Lake Naivasha as an example, access to this public resource for the common Kenyan is curtailed since the lake is engulfed by private property. The regulatory authorities explained above are looking into these conflicts as mandated. There is also in existence the Tana and Ardhi River Development Authority whose role is to harness and oversee utilization, conservation and management of waters of Kenya’s biggest rivers, Tana and Ardhi in a developmental sense.

116. The right to food has been addressed in a number of Government initiatives. These include the National Poverty Eradication Plan; the Poverty Reduction Strategy Paper (PRSP) & and the Medium Term Expenditure Framework (MTEF). There is also the National Food Policy aimed at improving food security at household and national levels. School feeding programs in ASALs supplement dietary needs and improve school enrolment and performance.

117. The Government has budgeted Kshs. 1.5 billion for water development in ASAL areas. Increased funding is provided for in the development vote from Kshs 4 billion 2004/05 to Kshs 7.76 billion 2005/06. Of this amount Kshs. 3.9 billion is from the Government of Kenya. This is 12 per cent of the National budget.

118. Only 20 per cent of Kenya is suitable for rain dependant agriculture. The remaining area can only be harnessed through irrigation. Irrigation potential is about 540,000 hectares. Only 85,000 hectares have been irrigated. In the ten years irrigation strategic plan, more 90,000 hectares will be developed and put under irrigation. This irrigation will be targeting food crops.

119. There are various sectoral achievements in the first fiscal year of implementing the ERS to date set out in the Medium Strategy Paper:

- The Govt has taken over the Kenya Co-operative Creameries to increase farmers' access to production facilities;
- Kenya fish quality standards having been improved allowing the country's exports to move from List II to List 1 leading to unrestricted fish exports to the European Union (EU) states;
- A new cooperative Societies (Amendment) Act 2004 has been enacted and is operational;
- 1,759 ha of degraded forest have been rehabilitated by the forestry department and another 3273 ha established by stakeholders;
- Institutions responsible for environmental management such as the National Environmental Management Authority (NEMA), The National Environmental Council (NEC) and the National Environmental tribunal (NET) have been operationalized; and
- A sessional paper on the Kenya Housing Policy has been produced; there is also in circulation and consideration by stakeholders the Draft Housing Bill. Other measures as relates to the housing include, NSSF housing scheme, police and prison housing, informal housing upgrading (slum upgrading projects in Mathare 4A, Kibera e.t.c) reduced interest rates for mortgage, sale of houses to civil servants e.t.c.

120. Kenya is in the process of constitutional review, and though the draft constitution was rejected by voters in a referendum late 2005, there are still hopes that the country will get a new constitution that will be more elaborate on economic, social and cultural rights. The draft constitution recognized the right of every person to accessible and adequate housing, the right to be free from hunger and to adequate food of acceptable quality and every person's right to water in adequate quantities and quality as well as every person's right to a reasonable standard of sanitation. The provisions on housing were not contentious and are likely to find life in the future constitution.<sup>3</sup>

121. Kenya's ultimate goal with regard to food security is to ensure food-sufficiency for the entire population. The approach is to enhance access to food. Every effort is being made towards reducing the number of malnourished persons. Kenya, however, is far from reaching its goal of

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<sup>3</sup> A more comprehensive report on the right to housing appears in subsequent paragraphs.

food sufficiency. It is being estimated that 17 per cent of rural and 29 per cent of urban Kenyans were food poor according to 1997 food surveys. The percentage of children under five who are severely malnourished rose from 5 per cent in 1993 to 7 per cent in 2000, while the percentage of the severely starved was at 13 per cent in 2000. These trends indicate that food security is still a major challenge. There are the various effects of availability of water on food security.

### **The right to adequate food**

122. Agriculture contributes 26 per cent of Kenya's GDP and 60 per cent of the export earnings. It is therefore an important vehicle for realization of employment creation and poverty eradication. About 80 per cent of the Kenyan population live in the rural area and derive their livelihood from agriculture. 56 per cent of the population live below the poverty line 80 per cent of which are in the rural area. About 50-60 per cent of Kenya's population lack access to adequate and nutritionally balanced food. The incidence and prevalence of food insecurity is more severe in the Arid and Semi Arid Areas (ASALs). Subsistence farmers and pastoralist account for over 50 per cent of the total poor in Kenya.

123. Kenya's Agriculture is rain dependant and an estimated two million people in drought prone areas suffer from transitory food insecurity and are constant recipients of food relief at any one given time. During severe droughts the number may rise to 5 million people. The first food policy was developed in 1981 with the major objective of maintaining broad self-sufficiency in the main foodstuffs to ensure equitable distribution of food of nutritional value to all citizens. The review of policy was done in 1994 to take into account the changed world economic order particularly the structural adjustment programmes. It was however noted that earlier policies did not succeed because they were inappropriate, outdated, conflicting unharmonised and poorly coordinated. A new food and nutrition policy is being drafted to take into account the country's food security situation.

124. Sources of information on food security are working groups namely Agriculture and Livestock, Emergency education, Health and nutrition, Data and information, Disaster management, Food aid estimate and the District Steering Working Groups. These working groups form the Kenya Food Security Steering Group (KFSSG) which report to National Food Security Coordinating Committee. Apart from the steering group, there are other independent or quasi-government institutions that also provide relevant information on food security issues.

125. Since July 2004, there has been five consecutive failed or poor seasons. Currently nearly 3.5 million rural pastoral and farming communities, including 500,000 school children in 25 districts are affected and are in need of emergency assistance to sustain lives and protect livelihoods. Thousands of head of livestock have already died and many thousands more may succumb as effects of drought intensify. Rates of global acute malnutrition (GAM) have risen steeply in the North-eastern parts of the country to between 18 per cent and 30 per cent which is significantly higher than the WHO threshold of 15 per cent indicating a critical situation. Climate forecasts from International authorities and local/regional metrological departments all indicate that the long rains will be poorly distributed and therefore a worse scenario is expected in 2006. An estimated 396,525 MT of food aid is required between March 2006 and February 2007.

126. To guarantee access of food to the affected population, the government has approached development partners and relief organizations to contribute in cash or food aid. Community Based Targeting and Distribution (CBTD) approach is being emphasized to ensure ownership of the process at the community level. 25 districts are targeted for general food distribution for 6 months, while food for work will continue where there are ongoing programmes.

Supplementary feeding for pregnant (381,000) and lactating mothers and children less than 5 years of age is targeted for population in pastoralist areas. An estimated 500,000 children are also targeted for expanded school feeding program (ESFP) in drought hit areas to encourage their stay in schools.

127. The non-food aid intervention programmes include seeds for drought affected farmers to cost US\$1,300,000 livestock off-take to reduce herd numbers and provide cash resource transfer before their animals die at US\$ 8,000,000 and the provision of feed to sustain core-breeding herds at 200,000. Emergency livestock health support is also to be provided at cost of US\$330,000. In health and nutrition the planned activities are supplementary feeding of malnourished children, improved access to basic health and increased nutrition and disease surveillance to prioritize interventions and act as early warning. Support is also targeting education and water access by the affected population.

128. Significant groups within the pastoralist and small-scale farmers lack knowledge or principles of nutrition. The Ministry of health requires fund to deploy enough staff and to purchase specialized nutritional products as well as technical support for monitoring adherence to proper protocol.

129. The growth of rural economy has been faced by a number of constraints among them land tenure and access to land by women in local communities, inconsistencies in the policies and poor implementation of the existing ones and inappropriate land use and environmental management. To promote food security, measures on agrarian reform are being addressed through National Land Policies which are in the last stages of formulation and intended to enhance and regulate land rights for all citizens. Land productivity is being addressed through reforms in agricultural extension to make it more effective and efficient.

### **The right to housing**

130. 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 groups include:

- Women;
- Children;
- Physically handicapped and 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 per cent, 35 per cent and 30 per cent 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.

### **Measures taken to fulfil the right to housing**

132. The first step in fulfilling the right to housing was the creation of the Ministry of Housing, carved out of the Ministry of Lands and Housing. As a separate ministry, the minister and his staff are better able to concentrate on the problem of housing in Kenya. Further the Housing Policy and the National Housing Bill have been drafted by the Government and are out for circulation. Key elements of Kenya's housing policy include:

– Encouraging enabling strategies:

- Review and adoption of housing plan in June 2004, which promotes partnerships in housing delivery;
- Preparation of a National Housing Bill to operationalize the Housing Act which facilitates housing provision by other stakeholders.

Such organizations are free to operate and don't necessarily receive Government funding except for National Housing Corporation.

– The State taking measures 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, and residents being given adequate notice. In recent times, there has been minimal if not a halt to forced evictions.

- Facing challenges, which include:
  - Limited information/data - lack of credible data exists as to the status of housing in Kenya;
  - Inadequate funding to facilitate collection, update and a database on information on the right to adequate housing and evictions;
  - Inaccurate data due to collection of information by different institutions.

### **Role of international assistance**

133. The international community and development partners have dedicated resources to facilitate achievement and full realization of the right to adequate housing. The Government is however committed to facilitating a “progressive realization to the right to adequate housing” but the unavailability of finance is a major handicap. Suffice to note that the right to adequate housing had found expression in the Draft Constitution and since it was not one of the controversial issues, it is hoped that should there be a new constitution the same will be included.

### **Article 12**

134. The population of Kenya is estimated at 32 million, of which 5 per cent are under one year, 20 per cent under five years and 50 per cent under 15 years. The morbidity pattern features malaria as a priority disease followed by acute respiratory infections, skin conditions and intestinal worms. Of course the HIV/AIDS pandemic remains the most monumental health challenge in Kenya. Efforts to fight malaria have been intensified especially for pregnant mothers and children below the age of five. The recent measure includes distribution of mosquito nets to malaria prone areas. The health status of the Kenyan population has deteriorated over the past few years. The results of the 2003 Kenya Demographic and Health Survey (KDHS) shows regress in some of the health service outcomes. For instance, maternity care, which is an indicator of the health system’s ability to reduce maternal mortality, has deteriorated.

135. Kenya has, however, put in place a health policy framework. While the framework adopts the World Health Organization (WHO) recommended Primary Health Care (PHC) elements, it adds two other elements, namely, pre-natal and dental health. The policy addresses healthcare service delivery including curative services, preventive and promotive services, health personnel and drugs and pharmaceutical supplies among other issues. On PHC the Government has pledged to improve maternal and child health services including antenatal, prenatal and child welfare services; to provide immunization against preventable diseases; to tend to the nutritional needs of the vulnerable including children, pregnant mothers, the poor, the elderly, and persons with disabilities; to provide treatment of minor ailments particularly those common at the primary and community levels of the health system; and to ensure safe water supply and sanitation, aimed at preventing and controlling communicable diseases particularly those associated with poor hygiene and poor excreta disposal.

136. According to the Public Expenditure Review (PER), health expenditure as a share of the total budget has been rising gradually, although it remains at about half of the intended target of 15 per cent as agreed in the Abuja Declaration. The increase is partly due to donor funding in the

development budget. For the year 2002/2003 the total budget for the Ministry of Health averaged 1.5 per cent of GDP and represented about 8 per cent of the total GOK spending. Overall this represents an increase of 1 per cent over the last 5 years. The Government projects to increase the allocation to 12 per cent of the total Government budget by 2008. Children under five access free healthcare in public hospitals.

137. The Government plans to improve maternal health services through the promotion of safe motherhood and has a target of progressively reducing maternal mortality rate to 560/100.000 by 006/2008. Population proportion having access to trained personnel during deliveries is 42 per cent.

138. Measures considered necessary to improve the physical and mental health situations in Kenya include the enactment and implementation of the National Social Health Insurance Scheme Bill; an increase in budgetary allocations to the Ministry of Health with specific focus on programmes targeting vulnerable groups; and the design and implementation of specific poverty reduction programmes to enhance and support livelihoods for the low-income groups in society.

139. The policy measures undertaken by the Government aimed at improving the healthcare system include increases in the budgetary allocation to the Ministry of Health; improving the availability of medical supplies through reforms that have led to the establishment of the Kenya Medical Supplies Agency (KMSA); and the creation of an enabling environment for private sector and other stakeholders' participation in provision of health care.

140. With regard to environmental and industrial hygiene, the Government has formulated the Environmental Sanitation and Hygiene Policy. In addition, there has been increased collaboration between the Ministry of Health and the Ministry of Labour of the Republic of Kenya on the one hand, and the ILO, WHO and other international agencies in the area of occupational health and industrial hygiene. Capacity building targeting personnel in areas of occupational health and safety as well as the enforcement of legislation such as the Public Health Act, Chapter 242 of the Laws of Kenya, the Factories Act, Chapter 514 of the Laws of Kenya, the Food, Drugs and Chemical Substances Act, Chapter 254 of the Laws of Kenya and the Environmental Management and Coordination Act have also been prioritised.

141. The measures that Kenya has taken to prevent, treat and control endemic, occupational and other diseases include:

- Collaboration between Government Departments and development partners such as NGOs, civil society and the private sector;
- The gradual shift of Ministry of Health resources to preventive, promotive and other PHC services and particularly intensifying disease surveillance and response systems at the District level;
- Also the Government has concentrated on the enforcement of all laws and regulations relating to public health;

- The improvement of drug procurement and distribution systems particularly to primary level facilities;
- Capacity building and training of health personnel.

142. In order to assure medical service and medical attention in the event of sickness to all Kenyans, the Government has increased the coverage of medical services particularly to rural areas and to other vulnerable groups and under served areas. In addition, the Government has continued to strengthen referral systems both within Government facilities and between Government and private facilities.

It is expected that the above measures will have a positive effect on the vulnerable by affording them better access to health care. Further more, law enforcement will lead to the safeguarding of environmental health and hence better living conditions.

Of particular concern has been the cost of healthcare for the elderly. Although the country cannot afford to waive user fees for the elderly, they do benefit from the general waiver in all public hospitals, which covers all people who are unable to meet their medical costs due to poverty. Waiver of fees is also made available to persons with disability, this provision being legislated in the Persons with Disability Act.

143. The following measures have been undertaken to maximize community participation:

- Currently, Districts hold District Health Forums whose membership includes representation by all stakeholders including the community;
- Districts then prepare District Health Plans with their priorities clearly spelt out. These plans are funded on an annual basis. Communities participate in the planning, organisation, operation and control of primary health care through their representation in all health management boards and facility-based committees. Community members are also particularly encouraged to participate in all community based PHC approaches and to take ownership of the same.

144. Measures taken to provide education concerning prevailing health problems and measures of preventing and controlling them include:

- Community based public health education through informal gatherings (“barazas”) usually convened by local leaders and public health workers;
- Education through the print and electronic media, posters etc.;
- Holding of health education sessions within all public health facilities for those attending outpatient services;
- Intensification of school health programmes.

### Articles 13 and 14

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 provided that every person has the right to education and obligated the state to implement the right of every child to free and compulsory education. It is hoped that this provision will be retained in the on-going constitution review process. There are fourteen (14) Acts of Parliament that in one way or other touch on different aspects of education. These include the Education Act, Chapter 211 of the Laws of Kenya, the Children Act, Chapter 586 of the Laws of Kenya 2001, the Board of Adult Act, Chapter 223 of the Laws of Kenya and others creating the various universities. Most of these laws create institutions of education and education-related administrative institutions.

146. The Education Act obliges the Minister for Education to advance the education of Kenyans and to promote the progressive development of institutions devoted to the promotion of education in carrying out the national education policy. It also allows the Minister to, from time to time; formulate a development plan for education that is consistent with any national plan for education and social development of Kenya. The Act creates core institutions of education such as the Kenya Institute of Education whose function is to coordinate institutions devoted to the training of teachers, examinations, educational research, educational materials and related matters.

147. The Children Act, (2001) domesticates the UN Convention on the Rights of the Child. Among its key social rights provisions is the guarantee to free and compulsory basic education and the right to health care. Section 7 of the Act provides that 'every child shall be entitled to education the provision of which shall be the responsibility of the Government and parents. Further 'every child shall be entitled to free basic education which shall be compulsory in accordance with Article 28 of the Convention on the Rights of the Child.' Besides guaranteeing the right, the Act imposes a sanction upon any person who wilfully violates this right, with a term of imprisonment not exceeding 12 months or a fine not exceeding fifty thousand Kenya shillings or both such fine and imprisonment.

148. The system of education involves eight (8) years at primary school, (4) years at secondary school and (4) years at university. The school schedule entails three (3) terms per year each term being 13 learning weeks. The school is in session between the hours of 8 am - 4 pm. Those who do not progress to university can join Government run national polytechnics, youth polytechnics, technical colleges or privately run colleges.

149. In 1998, the Government, responding to public disquiet with the current 8-4-4 system of education, and in keeping with its election promise of education reform, appointed the *Commission of Enquiry into the Education System on Kenya*. It recommended a manageable curriculum at all levels, as well as the expansion of basic education to twelve (12) years to include secondary education. The resultant report of the Commission proposed the enactment of a new all inclusive legal framework to include aspects of education not addressed in the current Education Act such as early childhood education, and technical and special education, and called for consolidation of all laws that deal with education under one comprehensive law. Most of these reforms are yet to be implemented. However, the Government has constituted the Taskforce for the Review and Harmonization of Education, Training and Research sector legal

framework, which taskforce is mandated with the role of harmonizing all laws that relate to education. The government has also enacted Sessional Paper No. 1 of 2005 on policy framework for education, training and research.

150. The Government, in liaison with other stakeholders has developed a *Master Plan on Education and Training (MPET) (1997-2010)* with the purpose of providing policy direction in preparing the Country for the goal of industrialization by 2020. The report covered aspects such as: development of curricula geared to high quality and relevance to economic needs; efficient teacher development and deployment, resource mobilization and allocation, governance and management, improving efficiency and effectiveness, increasing equity in participation and reduction of cost to parents without necessarily increasing budgetary allocations from the exchequer. All these recommendations are expected to enhance different aspects of the right to education in Kenya. The Sessional Paper number 1 of 2005, to be operationalized through the Kenya Education Sector Support Programme also advances similar issues.

151. Other policy interventions that have had an effect on the sector to date include the introduction of Admissions Quotas in 1985. In this policy the government committed secondary schools in each district to reserve 85 per cent of places in their schools to pupils from within the district and provincial primary schools and 15 per cent to pupils from the rest of the country. This has been reviewed to 60 per cent and 40 per cent respectively. The purpose of this policy was to address the issue of equity in education among the marginalized groups.

152. The *Bursary Scheme* implemented by the Ministry of Education is a policy to address the questions of accessibility and equity for poor children. The budget for the scheme has increased from Kshs 548 million in 2001/2002 to Kshs 770 million in 2002/2003. The Administration of this scheme has been decentralized further to reach the targeted beneficiaries country wide.

153. The Universal Primary Education (UPE) Policy 2003 is a progressive policy that has significantly increased enrolment rates in the country. Its goals are however threatened by the incidence of child labour with 1.9 million children being said to be engaged in such work, with 1.3 million of them being completely out of school and with the rest combining work with school.

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. Budgetary allocation for education is relatively large; it is 19 per cent of the national budget and 40.56 per cent of the recurrent budget. In the year 2005/06 the budgetary allocation is Kshs. 91.92 billion compared to Kshs. 84.70 billion in the year 2004/05.

155. The number of primary schools has more than tripled from 6,508 to 18617 while that of secondary schools has increased from 151 to 3207 in the last 37 years. The universities have grown in tandem with marked expansion of vocational and technical training institutions. These figures are an indication of the Government's consistent efforts to increase the availability of education to Kenyans over the last 40 years.

156. Enrolment in pre-primary education (early childhood) has increased by 33.3 per cent from 2000 to 2004. In the year 2000, 636,808 boys were enrolled in such education, along with 609,793 girls. In 2004 boys were 815,775 while girls were 788,764. About 267,000 more children were enrolled in primary schools in 2004 compared to the enrolment in 2003. Total enrolment in primary schools was 7.1 million in 2004 up from 6.1 in 2002. This increase may be attributed to the advent of free primary education. The current Net Enrolment Ratio (NER) is 84.5 per cent of the school going age population indicating that there are still many children between the ages of six (6) and thirteen (13) who are yet to access free primary education. In 2002 before free primary was introduced 3,143,100 boys and 2,988,000 girls were enrolled. Two years after the introduction of free primary education the enrolment rose up to 3,810,400 boys and 3,574,400 girls representing a total net enrolment increase of 20.45 per cent.

157. With regard to secondary education, the total enrolment in 2002 was 819,227 while in 2004 it was 912,624 consisting of 431,279 boys and 387,948 girls while total in 2004 was 481,620 boys and 413,004 girls. The number of students enrolled in secondary school increased by 93,391 (11.4 per cent). Gender differences still exist with the enrolment ratio of boys to girls having improved slightly from 53:47 in 2002 to 52:48 in 2004.

158. The number of students enrolled for university education has risen from 59,193 in 2000/01 to 91,541 in 2004/05 academic year. This is attributed to the introduction of a flexible learning programme at various public universities which target both public and private sector employees and school leavers who qualified but could not be absorbed through the regular degree programmes. In 2001/02 39,637 male to 23,040 females were enrolled and in 2004/05 53,394 male to 28,097 female were enrolled this shows an increase by 34 per cent of male students compared to 21 per cent female students.

159. The annual school drop out rate improved from 5.0 per cent in 1999 down to 2 per cent in 2004. To cater for those who have dropped out the Government has instituted the following measures;

- Readmission of girls who drop out due to pregnancy;
- Opening up of non-formal education centres to cater for older children;
- Making primary education free and compulsory;
- Purchase of school uniforms has been made optional;
- School feeding programmes have been intensified in marginalized areas;
- Existing secondary school facilities have been expanded to increase transition rates;
- Non-formal and post literacy education curricula have been developed to cater for school drop outs and adult learners. This is in recognition of the importance of imparting functional literacy skills after these learners acquire the basic literacy skills;

- Provision of adult education to mature learners has been enhanced to improve access as a way of attaining Education for All (EFA goal). The total enrolment went up by 1.4 per cent from 108,431 in 2003 to 109,923 adult learners in 2004. Female learners at 71.3 per cent constituted the majority of adult learners in 2004.

160. The transition rate from primary to secondary in 2002 was 47.3 per cent while in 2004 it was 52.6 per cent. The Government hopes to achieve 70 per cent transition rate through infrastructural support and enhanced bursaries. To reduce the primary school drop out rates to the targeted 20 per cent the education sector has increased provisions for the midday meal. The school-feeding programmes budget has increased from Kshs. 665 million in 2002/03 to Kshs. 1.356 billion in 2004/05. This programme mainly targets the ASAL regions and urban informal settlements where retention was lowest. A HIV/AIDS orphan support component has been proposed, with an annual allocation of Kshs 1.8 billion every year for the next 5 years to assist both at primary and secondary level education.

161. To enhance access to education for children with special needs, the government has given Ksh. 2000 per child with special needs or disabilities per year. In addition, the Government has given Ksh.10, 000 to every school to make them more disability friendly. To address the issue of drop out rates and access in the ASAL areas, the Government has increased support to primary boarding schools. During the ERS period, the sector will expand the capacities in these schools. In the last two years the government has spent over Kshs 191 million including the UPE capitation grants in these schools. There is however a problem of unequal distribution of teachers which has not been fully addressed.

162. However, there is a problem with the student teacher ratio. At primary school the ratio of teacher to pupil would have been 1:42 but because of regional disparities and unequal distribution the ratio ranges from 1:26 in ASAL to 1:68 in urban centers in 2004. At secondary school the teacher to student ratio in 2004 was 1:19. There is however a problem of unequal distribution of teachers which has not been fully addressed.

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; inability of children in marginal areas and slums to access schooling despite the introduction of free and compulsory education; low teacher: pupil ratio due to inadequate resources to employ teachers; and indiscipline in schools especially since corporal punishment was abolished.

164. There are regulations for the setting up of private schools. Private schools must be registered. There are stiffer penalties in relation to registration of schools so as to check the quality of education imparted. Some primary schools are started as community initiatives. For secondary schools the case is different. The Government easily closes private secondary schools which do not adhere to the regulations as fewer parents and teachers are affected. Such schools are sometimes surrendered to the Government for management and teacher posting.

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. In 1999 the average education cost burden for the household was too high, amounting to four months income, and resulting in

poor households spending less on it and withdrawing their children from school. Even after UPE, the costs of uniforms, food, and fare in urban areas still inhibit attendance by pupils from very poor households. The launch of free primary education is a serious indication of the government's commitment to avail education to all Kenyan children, and to remove the inhibition of cost. By the end of 2003 over 1.3 million children had enrolled in school out of an estimated 3 million that had been estimated as being out of school, a trend that seems already to be stemming the decline of past years.

166. At secondary school level where the free education policy has not been implemented and parents still meet the costs of education, the average proportion of costs borne by households are high at 46 per cent for day schools; 63.8 per cent for boarding schools and an overall average of 56.6 per cent for day and boarding schools.

167. With regards to equity in affordability (income levels), overall, fewer than 9 per cent of secondary students are drawn from the poorest per capita expenditure quintile, while nearly 30 per cent are drawn from the richest quintile. As with primary education, there are serious disparities amongst districts in access to education. Whereas secondary Gross Enrolment Rate, (GER) for all of Kenya is 26 per cent, there are five districts with GER of less than 5 per cent with greater former South Nyanza having a GER of only 1.2 per cent. These regions also have some of the highest incidences of poverty, infant mortality, HIV/AIDs prevalence rates and mortality and widest gender disparities. In Kenya therefore schooling is less affordable for the poor than the non-poor. For the poor, basic survival necessitates that they spend their income on food first.

168. Children with Special Education needs have not accessed this right equally to other children. Even though the Ministry of Education has recognized the need to train teachers for children with special needs and even established the Kenya Institute for Special Education (KISE), this had not been met with adequate government support. The proportion of Government funding going to special education has declined from a meagre 0.46 per cent in 1980 to 0.09 per cent in 2000/2001, according to Economic Surveys for those years. According to the National Development Plan 2002-2008, out of the 1.8 million handicapped children of ages 1-19, only 100,000 have been assessed, and of these, only 22000 (22 per cent) have enrolled in either regular or special schools. Even for this small group who have access to education, the quality of education is less than perfect given the shortage of trained teachers. This low enrolment rate has been attributed to poor management and high costs of training teachers, with records showing that only 40 teachers a year complete the two year diploma course in special education at KISE.

169. In its endeavour to provide free primary education the Government has collaborated with development partners. The key partners supporting this program include: The World Bank, Department for International Development (DFID), USAID, the Swedish International Development Authority (SIDA), the Canadian International Development Authority (CIDA), the Japanese International Cooperation Agency (JICA), the United Nations Children's Fund (UNICEF) and the World Food Programme (WFP). Their assistance is geared mainly towards the provision of textbooks and institutional materials, infrastructure development and rehabilitation including classrooms and toilets, as well as the provision of food to pupils under the school feeding programme. Other than free primary education the various development partners support other areas of the education sector as well.

### **Article 15**

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. However, the draft Constitution of Kenya (2004) which was rejected by voters at the 21 November 2005 referendum contained an entire chapter on culture. It provided for the establishment of the National Commission on Culture, besides setting the 26 of December every year as Culture Day. The draft Constitution also had provisions obliging the State to recognize the diversity of the people of Kenya and promote and protect the cultures of its communities. It is likely that in this ongoing constitutional review process, the provisions on culture in the future constitution will borrow heavily from the 2004 draft constitution.

171. Cultural aspects are taught in schools from early childhood. The school curriculum also includes subjects like history and civics that teach about cultural aspects of different communities in Kenya. This coupled with drama and music festivals promote cultural identity as well as mutual appreciation and co-existence among different ethnic groups.

172. The Ministry of Gender, Sports Culture and Social Services has seen its development budget increase from Kshs 164 million in 2004/05 to Kshs 495 million in 2005/06. The recurrent expenditure has also increased from Kshs 1.59 billion 2004/05 to 1.62 billion for 2005/06.

173. The Government has taken measures to preserve the culture of the peoples of Kenya. These include the establishment of the Kenya National Theatre; the establishment of the National Museums of Kenya and the setting up of the Ministry of National heritage to supplement the work of the Department of Culture in the Ministry of Gender, Sports, Culture and Social Services. The Government has also put in place a legal, institutional and policy framework for the conservation and management of wildlife as part of Kenya’s national heritage. There are plans to put in place legislation intended to protect cultural property even where the property is in private hands. There is a draft National Museums and Heritage Bill. The Government is considering declaring some more sites as museums. It is worth mentioning that there is a steering committee facilitating the process of Policy on Traditional knowledge, Genetic resources and intellectual property rights issues in the WIPO context. The recent growth of the alternative medicine industry is one the efforts by government to promote culture and traditional medicine.

174. Scientific research is governed by the Science and Technology Act, and is conducted in universities as well as in public funded research institutes, such as the Kenya Agricultural Research Institute (KARI); the Kenya Medical Research Institute (KEMRI); Kenya Industrial Research and Development Institute (KIRDI) etc. Intellectual property and innovation are protected under the Industrial Property Act, which creates a regulatory body known as the Kenya Industrial Property Institute (KIPI). Kenya is also considering a Draft Bill on Genetically Modified Organisms (GMO’s).

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