Accounting For Human Rights Protection Under The UPR:

The Difference Kenya's Stakeholders Made

Kenya National Commission on Human Rights

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ACRONYMS

CAT: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CEDAW: Convention on Elimination of all Forms of Discrimination Against Women

CEMIRIDE: Centre for Minority Rights Development

CLARION: Centre for Law and Research International

CRC: Convention on the Rights of the Child

CRPD: Convention on the Rights of Persons with Disabilities

ECOSOC: Economic and Social Council

FIDA-Kenya: International Federation of Women Lawyers-Kenya

GALCK: Gay and Lesbian Coalition of Kenya

HRC: Human Rights Council

ICC: International Criminal Court

ICCPR: International Covenant on Civil and Political Rights

ICERD: International Convention on Elimination of All Forms of Racial Discrimination

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICPPED: International Convention for the Protection of All Persons from Enforced Disappearance

ICJ (Kenya): Kenya Section of the International Commission of Jurists

ICTJ: International Centre for Transitional Justice

IDPs: Internally Displaced Persons

ILO: International Labour Organisation

IMLU: Independent Medico Legal Unit

KAACR: Kenya Alliance for the Advancement of Children's Rights

KANU: Kenya African National Union

KHRC: Kenya Human Rights Commission

KNCHR: Kenya National Commission on Human Rights

KSC-UPR: Kenya Stakeholder Coalition on the Universal Periodic Review

LGBTI: lesbian, gay, bisexual, transgender and intersex

MOJNCCA: Ministry of Justice, National Cohesion and Constitutional Affairs

NARC: National Rainbow Coalition

NGO: Non-Governmental Organisation

NHRI: National Human Rights Institution

OHCHR: Office of the High Commissioner for Human Rights

OP-CAT: Optional Protocol on Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

UN: United Nations

UPR: Universal Periodic Review

Working Group: the Working Group of the Human Rights Council on the Universal Periodic Review

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Antonina Okuta and Lawrence Mute, Kenya National Commission on Human Rights, on behalf of Kenya Stakeholders Coalition on the Universal Periodic Review (KSC-UPR).

PREFACE

Kenya's UPR process, and particularly the role played by the country's UPR stakeholders, has been cited internationally as good practice which other countries undergoing review may borrow from. Kenya's stakeholders have received numerous plaudits for the way they prepared their reports, the ways they engaged with the Government of Kenya and the manner in which they advocated for their recommendations to be accepted by the Government of Kenya.

Following the conclusion of Kenya's review, individuals from the Kenya process have been invited to inform the review processes of other countries. This has taken the form of trainings in various topics including: Effective Advocacy strategies for the UPR (Rwanda, Tanzania and Uganda); Strategies for implementation and monitoring the UPR (Uganda, Rwanda, and Tanzania); The role of various stakeholders in the build up to the UPR- (Uganda, Rwanda and Tanzania); Mapping and Identifying allies (Uganda and Tanzania). The stakeholders have also been invited to participate in various conferences and workshops on the UPR (Denmark, South Africa, Belgium, Zimbabwe and Brazil) where they have shared the experience of Kenya Stakeholders in the UPR.

This publication gives an account of Kenya's stakeholders experience in the UPR process. National Human Rights Institutions and Civil Society organizations can learn from the experience of Kenya's stakeholders, particularly the advocacy strategies which the stakeholders employed to get their concerns addressed during the review of Kenya.

Acknowledging that the UPR is about progressing, promoting and protecting human rights on the ground, the stakeholders are currently involved in the follow-up stage to ensure the actual implementation of the recommendations accepted by the state. It is our hope that the UPR process will result in meaningful change and help the country to strengthen its system of human rights protection.

Lawrence Mute
Commissioner-Kenya National Commission on Human Rights

SECTION I: INTRODUCTION

Kenya was reviewed by its peer states in the Universal Periodic Review Working Group (the Working Group) on 6 May 2010, following which the Working Group adopted the country's report on 10 May 2010. Later that year on 22 September, Kenya's Outcomes Report was adopted by the United Nations Human Rights Council (HRC).

This is an account of the engagement and advocacy which Kenya's stakeholders, including human rights organisations and the country's national human rights institution (NHRI), played to encourage, facilitate and ultimately ensure that the various pieces in the state and non-state jig-saw which the Universal Periodic Review (UPR) constitutes fell in place to successfully ignite the UPR cycle for Kenya. It identifies lessons which may inform future review processes both nationally and internationally.

The account comprises the following six sections: Section I introduces the account. Section II provides a context on Kenya's human rights situation. Section III offers a background to the UPR. Section IV describes the approach which stakeholders used to engage with the UPR process. Section V assesses the extent to which proposals made by the stakeholders were taken up by peer states and subsequently by Kenya. Section VI finally provides conclusions, lessons and good practices which future UPR processes may borrow from.

The account identifies the following eight lessons which stakeholders in other countries may learn from:

1. Stakeholders should engage with the state in the UPR process with candour so as to influence the national report, discussions at the interactive dialogue, and in due course the commitments the state makes.

2. NHRIs can provide leadership to stakeholders. They should offer facilitation; but they should not be domineering. They should take advantage of their particular niche, including the greater access which they have with other national and international agencies.

3. Stakeholders must ensure they build their capacities to implement the UPR process. This process calls for resources, but these can be leveraged and harnessed from their network as well as from other backers.

4. Joint Stakeholder Reports are far more valuable than individual reports. Stakeholders though should not assume that individual reports will not be prepared by some organisations. Furthermore, stakeholders should not reinvent the wheel. Information to be fed into the UPR process need not be generated from scratch. It is readily available to organisations which have been working on human rights in their particular settings.

5. Effective advocacy causes states to ask the right questions and make valuable recommendations. The assumption that African states do not make valuable recommendations is not true. Finally, it is not disloyal for a NHRI to lobby States to ask the right questions.

6. Stakeholders should realise that the detailed nuts and bolts work is crucial to the success of a process like this one. They should have personnel with technical competencies to make innovative suggestions for the state's consideration on how to deal with UPR recommendations.

7. Though stakeholders address the HRC at the very end of the UPR process, their overall influence is significant. Seeking to change the rules so that stakeholders speak earlier may actually undermine the delicate balance which the UPR seeks: of encouraging a state under review to listen to its peer states, thereby benefiting the exercise of human rights.

8. The UPR does not happen in Geneva during one event; it happens in the subject State in a long drawn-out process. The state should be prevailed upon to prepare a timelined implementation plan and stakeholders should monitor its implementation throughout the UPR cycle.

SECTION II: CHARACTER OF KENYA'S HUMAN RIGHTS SITUATION

Chequered human rights record

Kenya's human rights record in the last three decades is replete with instances of systemic and individual human rights violations. In the 1980s, Kenya was a closed one-party near-dictatorship masquerading as a democracy under which citizens' civil liberties were curtailed whenever and wherever they did not coincide with the interests of the ruling Kenya African National Union (KANU) elite. Freedom of expression was limited, elections were rigged, and the judiciary's independence was undermined. Even the reversion to multiparty status in the 1990s did not ensure protection of the fundamental human rights of Kenyans: the state continued to contest its citizens' right to freedom of association; inter-communal conflicts were encouraged or abetted to return preferred electoral results; and the rights of groups like women and persons with disabilities remained largely unheeded. Public institutions were weak and ill-suited to effectively respond to and enforce human rights.

The new millennium heralded possibilities of a seachange in Kenya's circumstances following the electoral replacement of KANU by the National Rainbow Coalition (NARC) in 2003. The excitement and hopes engendered by the regime change was however short lived: corruption did not cease, and extra-judicial killings, torture and ill-treatment remained national realities. The post election violence following the 2007 general elections included the commission of egregious human rights violations whose total magnitude has still not been understood or resolved.

Redeeming Kenya's human rights record

The Kenyan state has over the years sought to present itself as an upright global citizen which upholds the human rights of its people. This would mean that the country respects and adheres to its obligations in terms of the international human rights instruments to which it is a party. Kenya has signed and ratified most of the core human rights treaties: it acceded to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and

Cultural Rights (ICESCR) in 1972; and, most recently, it ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2008. (Annex I shows the list of core international and regional human rights instruments to which Kenya is a party).

One of the things the NARC government set out to do was to comply with the reporting provisions of these treaties. Under KANU, reporting to treaty body committees had lagged far behind legal requirements. Between 2003 and 2007, the extent of reporting by the state under the various human rights treaties improved dramatically (see Annex I). Kenya was then able to argue that its reporting record was emblematic of its good standing as a respecter and protector of human rights.

Distinguishing the phantom of process from the substance of reality: the hard questions

Treaty-body committees have engaged with the state variously on the need to take active steps to ensure the effective protection and promotion of the rights of Kenyans. The story has been familiarly repetitive: Kenya prepares its state report, for example in terms of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), detailing the measures taken to give effect to its obligations; the state report is validated by stakeholders; it is submitted to the Committee Against Torture; the state makes its presentation before the Committee; and the Committee makes its concluding observations to Kenya; and four years later, the cycle is repeated all over again. This cycle over time can become mechanistic and devoid of substance particularly if the state does not consciously deploy mechanisms to ensure that it implements the recommendations made by treaty-body committees: a process Professor Philip Alston has referred to as a 'self-fertilizing hermaphrodite'.[1] Annex II to this report uses one theme to illustrate the extent to which recommendations made by treaty-body committees have been implemented by Kenya.

Various mandate holders under the special procedures framework of the United Nations (UN) have also engaged with and made recommendations to the state. Most famously (or infamously depending on perspective), Professor Alston visited the country in 2009 in his capacity as Special Rapporteur on Extrajudicial, Summary

1 At a lecture at a side event during negotiations for the CRPD, in the UN Building, New York, in 2005

or Arbitrary Executions; and made recommendations which greatly upset the Government of Kenya.[2] Other more amicable visitations by special mandate holders include the 2006 visit of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, who made multiple recommendations covering the rights of indigenous peoples in Kenya and who was hosted by the Ministry of Justice and Constitutional Affairs.[3]

The alternative human rights view: no longer voices in the wilderness

Kenya's civil society grew in leaps and bounds during the 1990s when it rallied around topical endeavours to cause legal and institutional reforms in the country. The push for a new constitutional dispensation, championed by civil society networks like the Citizens' Coalition for Constitutional Change and the National Convention Executive Council, flourished alongside other critical initiatives which undertook civic, human rights or voter education or which monitored elections.

Particularly from 2003, many of these networks and organisations focused their work on ensuring that the state adhered to its international human rights obligations. Different organisations became thematic focal points advocating for specific treaty mandates: for example, the Independent Medical Legal Unit (IMLU) anchored advocacy in respect of CAT; Kenya Human Rights Commission (KHRC) similarly acted in respect of ICESCR; and the International Federation of Women Lawyers - Kenya (FIDA - Kenya) became the focal-point for CEDAW.

In the meantime, the state had in 2003 established the Kenya National Commission on Human Rights (KNCHR) as the country's NHRI. The KNCHR was established pursuant to the KNCHR Act (No. 9 of 2002) (itself negotiated with significant inputs from civil society) as an independent and non-partisan institution to facilitate the protection and promotion of human rights in the country. One of its specific functions

2 See United Nations, Press Release, Nairobi, 25 February 2009, Press Centre, UN Headquarters, Independent expert on extrajudicial executions says police killings in Kenya are 'systematic, widespread and carefully planned'", available at: http://www.unhchr.ch/huricane/huricane.nsf/view01/EAFBE45849510C0EC125756800534815?opendocument (accessed on 17 April 2011)

3 A/HRC/4/32/Add.3, 15 February 2007, Mission to Kenya

was: "To act as the chief agent of the government in ensuring the government's compliance with its obligations under the international treaties and the conventions on human rights" (Section 16(1) (f) of The KNCHR Act). The KNCHR interpretation of this function was that while it would itself not author state reports, it would offer technical advice including capacity building and undertake advocacy to ensure that the state prepared and submitted its reports.

The state involved KNCHR and other human rights organisations in preparing Kenya's reports to treaty-bodies and participating in validation meetings of these reports. The KNCHR offered technical support such as capacity building for officials preparing the reports: for example KNCHR facilitated several meetings when the initial report on CAT was being prepared in 2005 and 2006. In 2007 and 2008, KNCHR undertook similar interventions in respect of the initial state report under the International Convention on Elimination of All Forms of Racial Discrimination (ICERD). In 2010, the KNCHR introduced report writing guidelines to officials preparing the state report under the CRPD. Human rights organisations also prepared shadow or alternative reports to treaty-bodies while the KNCHR too variously made pre-sessional presentations to some treaty-body committees: for example the Committee on the Rights of the Child in 2006 and the Committee Against Torture in 2008. The state also sought support from human rights organisations and the KNCHR in effecting recommendations from concluding observations. Finally, the NARC Government established the Inter-Ministerial Advisory Committee on International Obligations incorporating representation from government departments, human rights organisations and KNCHR; with the mandates of advising the state on its international human rights obligations.

It is beyond the scope of this account to make a comprehensive assessment of the effect of all these interactions between state and non-state actors for the actual enjoyment of human rights in Kenya. Suffice it to say that Kenya's human rights organisations and the KNCHR have remained overly critical of the obvious chasm between state rhetoric and state action or inaction in ensuring protection and promotion of human rights.

Conclusion

This, then, is the Kenyan context within which the instrumentality of the UPR was effected by the international community in 2006. While on one hand Kenya sought to present itself as an upright member of the international community adhering to its human rights obligations, the realities were not particularly enamouring. Actual human rights violations remained rampant; and as glaring was the largely patchy way in which the state responded to recommendations by the enforcement human rights mechanisms. Yet these years also laid the foundation for Kenya's engagement with the UPR mechanism by establishing a solid basis for economic, social and cultural rights. Over and above civil and political rights, Kenyans were for the first time also accessing universal free primary education from 2003. The state was also channelling more resources in relative terms to undertake development at the community level using instruments such as the Constituency Development Fund. These initiatives formed the bedrock upon which the Constitution of Kenya 2010 introduced social and economic rights as justiciable rights in Kenya.

SECTION III: BACKGROUND TO THE UPR

Introduction

The UPR mechanism was formulated by the UN in 2006 as one component of the overall reforms which were made to the UN with the aim of making it more effective and less likely to be hampered by the sort of narrow political considerations which were the norm during the heyday of the Human Rights Commission.[4] The Human Rights Commission was adjudged to have involved itself in too much confrontation and too little human rights substance, possessing what was referred to as "hallmarks of politicisation and selectivity" (cited in Sweeney and Saito: 2009). The UPR was formulated to restore credibility, professionalism, universality and fair scrutiny of state performance in protecting and promoting human rights to the main political human rights body of the UN.

The Human Rights Commission's successor, the HRC, is an inter-governmental body within the UN system made up of 47 states responsible for strengthening the promotion and protection of human rights around the globe. The HRC was created by the UN General Assembly on 15 March 2006 to address situations of human rights violations and make recommendations on them (Office of the High Commissioner on Human Rights, Human Rights Council).

The UPR is a mechanism under which the HRC examines the situation of human rights in each state after every four years by reviewing the fulfilment of human rights obligations and commitments made by all the UN member states. It is a state-driven process in which non-governmental organisations (NGOs) have a limited role and the states under review have the right to accept or reject the recommendations made by other states during the review (FIDH Delegation to the UN, The Universal Periodic Review - Handbook). UN General Assembly Res. 60/251 of 15 March 2006 mandated

4 The Human Rights Commission was established by Economic and Social Council resolution 5 (I) of 16 February 1946. The Commission met in annual and, when required, special sessions and reported to the Economic and Social Council. The Commission concluded its 62nd and final session on 27 March 2006
(United nations, Human Rights Documentation, United Nations Documentation: Research Guide).

the HRC to: "undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each state of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all states." The Resolution further stated that: "The review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies."

Over and above the history which informed the genesis of the UPR, as discussed above, the logic of the UPR mechanism is best understood in contradistinction with the treaty-body human rights monitoring mechanisms. UPR sceptics have contended that the UPR mechanism may be a ruse by states to undermine treaty-body mechanisms and that even if this were not the case, the effect of that mechanism is to duplicate treaty-body interventions. This section of the account outlines the objectives, guiding principles, aims and methods of the UPR mechanism to illustrate that indeed the UPR is a distinct process which increases the number of valuable tools in the human rights toolbox at the disposal of local and international human rights communities and advocates.

Objectives of the UPR

Res. 60/251 listed the following six objectives of the UPR:

- Improvement of the human rights situation on the ground;
- Fulfilment of the state's human rights obligations and commitments and assessment of positive developments and challenges faced by the state;
- Enhancement of the state's capacity and of technical assistance, in consultation with, and with the consent of, the state concerned;
- Sharing of best practice among states and other stakeholders;
- Support for cooperation in the promotion and protection of human rights; and
- Encouragement of full cooperation and engagement with the HRC, other human rights bodies and the Office of the High Commissioner for Human Rights ('OHCHR').

Principles of the UPR

In establishing the principles which would guide the UPR, the HRC was cognizant of the essential need to indicate how this mechanism would fit into the other available human rights mechanisms and approaches. A number of legal and political instruments are used under the UPR mechanism to assess a state's compliance with human rights: the Charter of the UN; the Universal Declaration of Human Rights; human rights instruments to which a state is party; voluntary pledges and commitments made by states, including those given when presenting their candidatures for election to the HRC; and applicable international humanitarian law.

The Resolution provided that the UPR should:

- Promote the universality, interdependence, indivisibility and interrelatedness of all human rights: this approach may be contrasted with the treaty-body approach which seeks state accountability in relation to the particular themes to which a state has bound itself by treaty.

- Be a cooperative mechanism based on objective and reliable information and on interactive dialogue: the UPR came to pride itself on the interactive dialogue which it allowed between peer states and the state being reviewed. States regularly charged treaty bodies with being far more cavalier and judgmental in the way they sought information from states delegations, and the possibly arbitrary character of the resulting concluding observations.

- Ensure universal coverage and equal treatment of all states: this selling point of the UPR is that human rights reviews would be undertaken holistically for all UN members regardless of whether they were parties to particular human rights treaties; and whether they were from developing or developed countries.

- Be an intergovernmental process, UN member-driven and action-oriented: on one hand this reassured states which did not wish non- state actors to participate in this process; but on the other hand this principle was intended to manage the long-winded rhetoric from some states which had characterised the Human Rights Commission.

- Fully involve the country under review.

- Complement and not duplicate other human rights mechanisms, thus representing added value: as already stated, it might at first glance not be easy to discern the non-duplicatory character of the UPR mechanism; but one indicator of this would be the fact that in the last four years states generally have adopted an approach which fuses implementation of UPR recommendations into implementation initiatives from other human rights bodies.

- Be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner.

- Not be overly burdensome to the concerned state or to the agenda of the Council: concerns have been raised that the UPR mechanism calls upon resources of state beaurocracies to prepare further human rights reports instead of focusing their limited energies and resources on implementation work to enhance exercise of human rights.

- Not be overly long; it should be realistic and not absorb a disproportionate amount of time, human and financial resources.

- Not diminish the Council's capacity to respond to urgent human rights situations.

- Fully integrate a gender perspective.

- Take into account the level of development and specificities of countries.

- Ensure the participation of all relevant stakeholders, including NGOs and NHRIs.

The first session of the UPR took place from 7 to 18 April 2008, with the review of 16 states. There are divergent views on how the process has faired. The International Service for Human Rights (2008) has for instance pointed out that on the one hand states that would otherwise never have found their human rights records being discussed at the Council have, at times during their reviews, found themselves facing difficult questions before their peers. However, the process has also been vulnerable to consummate manipulation, where 'friendly States' have collectively presented or represented an image that is not reflective of the human rights context in the specific

country under review. States have applied different standards of scrutiny to states with whom they have regional or organisational allegiances. Also, even as the UPR was being launched, no concrete measures had been put in place to ensure that the new mechanism would not itself fall foul of the same criticisms which befell the Human Rights Commission. Sweeney and Saito cite a number of concerns which treaty bodies continue to raise regarding the UPR, that the UPR is sallied by: the political selectivity with which political body recommendations are referenced; the refusal of states to accept recommendations which anyway they are already obligated to under treaty; UPR recommendations are far too general; and there are no clear follow-up procedures.

Conclusion

Despite challenges and the criticisms that the UPR has drawn, it continues to be one of the most important human rights mechanisms in the UN system today. It has been utilised to ask important and difficult questions to states: questions such as on the rights of homosexual persons which would otherwise not have been raised through the Council generally. In addition, the compilation of information submitted for the review as well as comments, questions and recommendations and states' commitments to implement them are being recorded in official UN documents; amounting to valuable compendiums on the situations of human rights in various countries. The UN Secretary-General sums all this very aptly when he describes the UPR as a mechanism which has: "great potential to promote and protect human rights in the darkest corners of the world".[5]

5 Video message of the Secretary-General for the opening of the fourth session of the Human Rights Council, 12 March 2007

SECTION IV: HOW STAKEHOLDERS ENGAGED WITH THE UPR PROCESS FOR KENYA

Introduction

The review for any state under the UPR is based on three sets of information. First, is information prepared by the state concerned, which can take the form of a national report and any other information considered relevant by the state, which may be presented either orally or in writing. States are encouraged to prepare the information they submit: "through a broad consultation process at the national level with all relevant stakeholders" (Para.15(a) of General Guidelines Regarding Information Prepared by the State Concerned, adopted by the HRC at its 6th session). Second, is a compilation prepared by the OHCHR of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the state concerned, and other relevant official UN documents. Third, is additional, credible and reliable information provided by other relevant stakeholders to the UPR. OHCHR prepares a summary of such information. Other relevant stakeholders include civil society organisations and NHRIs.

As already stated, this account does not aim to provide a comprehensive assessment of the Kenya UPR: its aims are limited to describing and assessing the specific roles and interventions which Kenya's stakeholders deployed to reap optimal value from Kenya's UPR. This section of the account therefore describes the steps which Kenya's UPR stakeholders took to influence the final product.

With hindsight, it is easy to describe and explain neatly the multiple interventions which different actors made towards the Kenya review. While a great measure of cogent thinking and action indeed did take place, it would be overstating the case to suggest that stakeholder engagements were totally anticipated and planned in every regard.

The UPR process is undertaken in four phases:

- The preparatory phase when the three reports which constitute the information for the review are prepared;
- The interactive dialogue phase when the state engages with the Working Group by presenting its report and responding to questions at the Working Group session;
- Adoption of the outcomes report by the HRC; and
- The implementation phase.

While details vary from state to state, these four phases involve the following key steps:

- Step 1: dissemination of information on UPR;
- Step 2: preparation of stakeholder reports, including NHRI submissions and NGO reports;
- Step 3: consultation on the national report;
- Step 4: advocacy to encourage other states to ask specific questions or make specific recommendations during the interactive dialogue;
- Step 5: interactive dialogue at the Working Group between the state being reviewed and its peers;
- Step 6: release of outcomes report;
- Step 7: dissemination and follow-up with the state on recommendations;
- Step 8: implementation of commitments made by the reviewed state; and
- Step 9: monitoring of implementation of UPR commitments.

Key dates and facts

The table below sets out the key dates, facts and outputs of the stakeholder engagements which culminated in the Kenya UPR review

Date	Activity	Output
19-20 October 2008	Introduction to Kenyan civil society of the UPR mechanism at a side event before the Ninth International Conference for NHRIs held in Nairobi between 21-24 October 2008	Informational/awareness-raising
10 March 2009	Initial meeting of stakeholders convened by the KNCHR to brainstorm and strategise on a possible common approach for the Kenya review	Established the Kenya Stakeholders' Coalition for the Universal Periodic Review (KSC-UPR) which prepared a common stakeholder report for the Kenya review
6 April 2009	Half-day meeting co-facilitated by the KNCHR and the Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA) formally introducing the UPR to state and non-state actors	Kick-started preparation of the national UPR report
19-20 May 2009	KSC-UPR capacity-building workshop on the UPR mechanism	Capacity-building on the UPR mechanism and finalisation of the plan of action for the KSC-UPR report

Date	Activity	Output
31 July 2009	Meeting of KSC-UPR Steering Team, thematic cluster conveners and rapporteurs	0-draft of the KSC-UPR Report reviewed; drafting sub-committee established to reduce 72-page 0-draft to 10 pages
6 October 2009	KSC-UPR meeting to review draft 1 of their report	Feedback provided to enable finalisation
28 October 2009	Final validation meeting of the KSC-UPR report	Final report
2 November 2009	Submission of reports to OHCHR	KSC-UPR report submitted to OHCHR; KNCHR report likewise submitted
January -April 2010	KSC-UPR prepare Advocacy Charter for UPR lobbying	Advocacy Charter entitled 'Kenya's Human Rights Balance Sheet'
March-April 2010	KSC-UPR/KNCHR prepares its advocacy and lobbying road-map	Lobbying strategy in place
13 April 2010	Breakfast meeting with media	Publicity of the UPR for national audience
29 April 2010	KSC-UPR meeting with the Minister for Justice, National Cohesion and Constitutional Affairs	Discussed KSC-UPR's recommendations on the Kenya UPR and encouraged Kenya to make voluntary commitments

Date	Activity	Output
4 May 2010	Side event on Kenya's UPR organised by the KNCHR and KSC-UPR in Geneva	Engagement with international actors, including diplomatic missions in Kenya and Geneva, NGOs and International Organisations.
5 May 2010	Further side event organised by IMLU	Further engagement on Kenyan issues with international actors
3-10 May 2010	Continuous engagement with media and diplomats	Publicity on Kenya situation and advocacy for inclusion of KSC-UPR ideas in questions and recommendations put to Kenya
6 May 2010	Review- Interactive dialogue	Kenya is reviewed at the eighth session of the UPR Working Group
8 May 2010	Meeting with the Minister for Justice at Kenya's Geneva Mission	Explored the extent to which Kenya could make commitments in light of the Working Group's recommendations of 6 May
10 May 2010	Working Group report	The Report on Kenya adopted by the UPR working group

Date	Activity	Output
22-23 June 2010	KSC-UPR Workshop on UPR	Taking stock of KSC-UPR activities in the UPR and discussing strategies to ensure maximum gains at the completion of Kenya's review
22 September 2010	Adoption of Kenya's outcomes report	The outcomes report adopted by the HRC

Preparation of the KSC-UPR report

The KSC-UPR was initiated on 10 March 2009 at a meeting of human rights organisations convened by the KNCHR and attended by 22 persons from 17 human rights organisations.[6] The meeting made several key decisions. First, the KSC-UPR would prepare a joint UPR report for submission to the OHCHR. The KSC-UPR would be steered to this goal by a team comprising the KNCHR and individuals from several other organisations which would form the KSC-UPR Steering Team.[7] Perhaps of most significance was the decision that initial content for the report would be negotiated and prepared by the KSC-UPR under nine human rights thematic clusters: civil and political rights; economic, social and cultural rights; children's rights; the rights of the youth; the rights of older persons; the rights of women; the rights of persons with disabilities; the rights of indigenous groups and minorities; and the

6 These were League of Kenya Women Voters (LKWV), Transparency International – Kenya, Help Age Kenya, CRADLE (The Children's Foundation), Kenya Alliance on the Advancement of Children's Rights (KAACR), Africa House, Tomorrow's Child Initiative, Centre for Minority Rights Development (CEMIRIDE), Gay and Lesbian Coalition of Kenya (GALCK), Minority Women in Action, United Disabled Persons of Kenya, United Disability Empowerment in Kenya, Youth Agenda, Young Muslim Association, Kenya Human Rights Commission (KHRC), Kenya Section of the International Commission of Jurists (ICJ-Kenya), and Kenya National Commission on Human Rights (KNCHR)

7 Its initial members were Andrew Songa (CEMIRIDE), Christine Alai (KHRC), Chris Gitari (ICJ-Kenya), Consolata Yombo (KLWV) and Abdulrahman Wandati (Muslim Consultative Council).

rights of sexual minorities. Each thematic cluster identified a convenor.[8]

Annex III lists the overall membership of the KSC-UPR broken down by cluster. In practice, membership of the Coalition fluctuated from time to time: some organisations which initially attended meetings stopped attending them; while some which did not formally attend any Coalition meetings participated in cluster meetings; some organisations attended at least one KSC-UPR meeting; while others were regular participants of and contributors to KSC-UPR meetings and work. At least 97 organisations at one time or another were part of the KSC-UPR.

The question of whether the KSC-UPR should prepare a single report or multiple reports remained a live issue for a while. The KSC-UPR reviewed three options: preparing one report synthesised from information of all members; developing thematic/cluster reports; or preparing individual organisation reports. The decision to prepare one joint report was made on the basis that such a report would have more credibility than multiple reports. It was felt that the summary made by the OHCHR would be influenced more by the strategic choices of content presented in a joint report than by the disjointed content which multiple individual reports would raise.[9] At the same time though, the KSC-UPR acknowledged that as a NRHI, the KNCHR should also prepare its own individual report for submission to the OHCHR.

Each thematic cluster developed a report on the basis of a commonly-agreed template. Each cluster developed its work-plan for purposes of preparing its report.[10] Some clusters employed further sub-groups to prepare drafts on specific issues before these were put together as the cluster report: the economic, social and cultural rights cluster as well as the persons with disabilities cluster did this. While generating initial

8 The convenors' terms of reference included:
- Ensuring that there was as much diverse representation in their thematic clusters as possible;
- Identifying the main issues that the thematic area would highlight in the Stakeholder report;
- Developing their own workplans within the overall Stakeholder timelines;
- Advising on criteria for ensuring effective representation of the cluster in the capacity building workshop; and
- Deciding on whether there would be need for sub-groups within their thematic areas (Minutes of UPR Stakeholders Steering Team of 9 April 2009 at KNCHR).

9 Minutes of Stakeholder Meeting for the UPR of 9 April 2009 at KNCHR.

10 Minutes of UPR Conveners and Steering Team Meeting, 23 April 2009, at KNCHR.

information, cluster drafts did not constitute the KSC-UPR report; they merely provided information which the KSC-UPR would use to draft its report.

Fairly early on, the KSC-UPR decided on the need to undertake an exercise to build its membership's capacities on the UPR process. A workshop for that purpose took place on 19-20 May 2009. Its overall objective was to equip members with in-depth understanding of the principles, norms and practical aspects of the UPR to enable them effectively engage in Kenya's review. Specifically, the workshop:

- Elaborated on the technical guidelines governing the UPR process;
- Discussed the review process including preparation of information, participation in the actual review and follow-up to the UPR;
- Shared good practices from the experiences of other States that had undergone review including South Africa and Brazil; and
- Adopted a common strategy and action plan towards Kenya's review in 2010 (KSC-UPR: 2010[A]).

Fifty seven members drawn from the nine thematic clusters participated in the workshop which was facilitated by resource persons from Kenya; Rights and Democracy, European Office; Conectas, Brazil; the South African Human Rights Commission; and Human Rights House Foundation, Norway.

Finalising the KSC-UPR report following the capacity-building workshop was a herculean undertaking with the twin objectives of ensuring brevity while not undermining quality of content. On 31 July 2009, members were presented with a 72 page 0-draft. The initial idea of hiring a consultant to finalise the report was dropped in favour of tasking a sub-committee[11] to undertake the task of reducing and editing the report to 10 pages. The sub-committee used the 0-draft of the report to prepare draft 1 of the report. Draft 1 was 20 pages long,[12] down from the 0-draft's 72 pages.

11 This Subcommittee was constituted of Linda Wamalwa(Youth Agenda), Andrew Songa (CEMIRIDE),Christine Alai(KHRC), Hellen Mutellah and Gilbert Onyango (CRADLE)

12 Minutes of Stakeholders Meeting for the UPR of 6 October 2009.

The report was discussed at various KSC-UPR meetings and the sub-committee subsequently reduced it to the required 10 pages. A final validation meeting for the KSC-UPR report took place on 28 October 2009.

KSC-UPR involvement in preparation of the national report

The other point on which the initial KSC-UPR meeting agreed was to engage the Government as it prepared the national report for the UPR. At the very outset, the Government made its desire clear that it wished to use a consultative approach in preparing its report. This engagement happened under the aegis of the Inter-Ministerial Committee on International Human Rights Obligations: this Committee was established by the Government in 2005 and includes membership from government ministries, the KNCHR and human rights organisations. Its mandate is to advise the Government with regard to its international obligations. The KSC-UPR tasked the civil society members on the Committee to feed KSC-UPR perspectives into the national report as well as providing feed-back to the Coalition. A representation of the KSC-UPR also participated in the validation meeting of the national UPR report. While many of their contributions were not incorporated into the final report, that participation was still of mutual benefit to the state and the Coalition.

Resourcing UPR activities

Resource mobilisation remained an ever-present challenge for the KSC-UPR, and they agreed on multiple approaches to mobilise funding. Organisations would pool resources for purposes of supporting joint KSC-UPR activities:[13] the KNCHR, KHRC, CRADLE and IMLU made contributions towards this end. Individual organisations fund-raised to support the components of UPR work which they were undertaking individually or within their clusters. This account cannot quantify the resources expended on the UPR process by members, but it included funding for capacity building, report writing forums, publicity events, printing of advocacy material, and funding for the individuals who went to Geneva to represent the Coalition during the two sessions when Kenya came up for discussion. At the same time, the KSC-UPR

13 Minutes of Stakeholder Meeting for the UPR of 9 April 2009 at KNCHR.

sought and received technical assistance from international organisations towards the UPR cause (see pages 25-26 below).

Awareness-raising and publicity for the UPR

The KSC-UPR recognised that the UPR was a novel idea which the bulk of human rights organisations let alone the public were just becoming aware of. An important consideration was the methodologies which members would use to collect information for their report. One view was that the KSC-UPR should undertake intensive grassroots awareness-raising and information collection drives, thereby ensuring that the end-report would be national and not Nairobi-centric.[14] This approach would have entailed far greater resources and time than the Coalition could muster. The view which eventually held sway was based on the realisation that the report would cover four years (2006-2010); and that member organisations already had numerous reports involving participation by the grassroots communities with which they worked across the country. Relevant ongoing or recently completed initiatives with grassroots participation included the African Peer Review Mechanism work for Kenya and the preparation of the National Human Rights Policy and National Action Plan.

The advocacy and lobbying campaign

When the OHCHR posted its summary of recommendations from stakeholders on the Kenya UPR, the KSC-UPR and KNCHR noted that the bulk of recommendations which they had made had been included in the summary. Yet the KSC-UPR/KNCHR axis was well aware that despite this, the recommendations it had made might not be taken up by states if a concerted advocacy campaign was not initiated. The KSC-UPR consequently undertook an advocacy campaign which was prosecuted on the following fronts:

- The preparation of an advocacy charter for the UPR;
- Engagements with diplomats from different states via their Nairobi embassies or missions and their offices in Geneva;

14 Minutes of Stakeholder Meeting for the UPR of 9 April 2009 at KNCHR.

- Engagements with international NGOs who worked on UPR;
- A national and international media campaign;
- Side events and informal meetings in Geneva during the Kenya review; and
- Continuous engagements with the Government of Kenya.

The Advocacy Charter

The KSC-UPR and KNCHR prepared an advocacy charter which would be at the core of their advocacy campaign. This document, entitled: Kenya's Human Rights Balance Sheet (KSC-UPR: 2010[B]), highlighted on a priority basis the key human rights concerns in Kenya for purposes of the UPR process. It drew its information not only from the Coalition's reports to the OHCHR, but also from the national report, and relevant treaty-body and special procedures reports. It proposed questions and suggested recommendations which Kenya's peer states should put to the Government during its review. As the next section of this account will show, the questions and recommendations set out in the Charter were in many cases the very same questions and recommendations which were put to Kenya during its review.

The KSC-UPR recognised the importance of continuing to be as inclusive as possible both in its ideas and organisationally, and organisations which had presented their own reports to the OHCHR became its members at this point.

A sub-committee prepared the draft charter which was reviewed by the Coalition on 19 March 2010[15] before being finalised following a further meeting on 13 April 2010. Three considerations guided the final content of the Charter:

- The key human rights concerns, the available avenues for addressing them and the extent to which the state was taking appropriate remedial measures;
- the priorities in the reforms agenda which required to be pushed more; and

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- The primacy of issues – that certain issues could be addressed as part of other issues.[16]

The Advocacy Charter covered the following:

- A summary of KSC-UPR submissions - These were drawn largely from the joint submission as well as submissions which other organizations had sent to the OHCHR.
- State report- A summary of what the state had said in its report about the particular issues.
- UN treaty body recommendations- concluding observations and comments made by UN treaty body committees, special rapporteurs and special advisers on the issues under consideration.
- Suggested Questions- Specific questions were suggested in order to elicit appropriate responses
- Suggested recommendations- Perhaps the most important part of the advocacy charter which listed the specific recommendations to be made to the state BY ITS PEERS.

Mapping for purposes of advocacy

The KSC-UPR undertook a mapping exercise with the aims of determining where it should focus its advocacy energies. Four classes of players were identified as targets.

The principal player in the UPR discourse obviously was the Government of Kenya, and the KSC-UPR's work aimed directly or indirectly to influence the Government's approach to the UPR. Apart from having consultations with technocrats in MOJNCCA, the KSC-UPR requested and got a meeting with the Minister for Justice. During that meeting, which took place on 29 April 2010, the KSC-UPR presented its Charter to the Minister and impressed on him the importance of making particular voluntary commitments at the Working Group session. Again, following the Working Group

16 Stakeholders meeting of 19 March 2010

session in Geneva, members of the KSC-UPR met the Minister and his delegation on 8 May 2010 at Kenya's Geneva Mission to explore the extent to which Kenya might make voluntary commitments.

The second class of targets were Kenya's peer states within the UPR Working Group and generally within the HRC. The KSC-UPR divided these states into priority and other states on a regional basis. This delineation was arrived at by assessing the extent to which specific states had engaged in the review of other states, and the sorts of issues which interested particular states. Specific organisations were tasked to approach particular countries. For example, the Gay and Lesbian Coalition of Kenya (GALCK) and KHRC: Western Europe; IMLU: Eastern Europe; Article 19 Kenya: Asia; International Centre for Transitional Justice and ICJ-Kenya: the Americas and Caribbean; FIDA and Centre for Law and Research International: West Africa; CRADLE: East and Southern Africa; CEMIRIDE and KAACR: Middle Eastern states.[17]

The third category of players were national, regional and international NGOs which work on UPR issues. The need of this class of organisations arose because those NGOs could leverage their formal and informal networks to influence the approaches of diplomats towards the Kenya review. Also, they could offer specific technical and logistical support. NGOs which provided particular assistance to the KSC-UPR were:

- The East and Horn of Africa Human Rights Defenders' Project which offered a substantive critique of the Advocacy Charter in a meeting with the Coalition on 13 April 2010;
- The International Service for Human Rights which provided accreditation to enable members of KSC-UPR attend the review session in Geneva;
- Conectas Direitos Humanos (Brazil) which gave insightful feedback for improvement of the stakeholders' advocacy charter, arranged meetings between KSC-UPR and some state delegations, disseminated the stakeholders Advocacy Charter and also assisted in accrediting members of KSC-UPR to enable them travel to Geneva for the sessions;

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- Amnesty International which arranged for meetings with some state delegations and also disseminated the stakeholders' advocacy charter;
- Media 21 which mobilised the international media to attend KSC-UPR's press briefings in Geneva and which arranged for a meeting between the KSC-UPR team and Kenyan journalists attending a UPR training activity in Geneva;
- Centre on Housing Rights and Evictions (COHRE) which disseminated the stakeholders' advocacy charter; and
- UPR info which assisted with lobbying other state delegations and disseminating the stakeholders' advocacy charter, particularly to the EU delegates, and by assisting with contacts for journalists. UPR info also posted the stakeholders' advocacy charter on its website (upr-info.org).

  The KSC-UPR, particularly the KNCHR, got excellent support from a representative of the International Coordinating Committee of NHRIs in Geneva. Among other things, this representative assisted the Commission by organizing meetings with state delegations and international organizations, widely disseminating the stakeholders' advocacy material and co-ordinating all the logistical issues including arrangements for the Commission's side and media events.

Finally, the KSC-UPR was aware of the need to engage the Troika for Kenya which was constituted by Egypt, Mexico and Bangladesh. The Coalition was able to have a close relationship with at least one of the three states which was furnished with first-hand as well as background material on the Kenya situation.

The Media campaign

The KSC-UPR's media strategy was approved in March 2010.[18] Its key components were the following:

- The KSC-UPR should hold an initial briefing of the national press on the UPR

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process: this took place on 13 April 2010 and involved 7 media houses. No significant coverage of the UPR process resorted from this briefing though.

- The KSC-UPR should participate in radio and television talk-shows: 2 such shows were undertaken in April and May.
- The KSC-UPR should write articles for the mainstream press explaining the UPR process: at least 2 such articles were published in the Daily Nation and in the Nairobi Star newspapers;
- A comprehensive publicity UPR package should be prepared and disseminated to the media and others: such a package was prepared;
- The media should be approached to carry the life webcast of Kenya's review at the Working Group: this initiative did not succeed; and
- The KSC-UPR should engage the national and international press during the interactive dialogue and adoption of the outcomes report: Two such meetings were held in Geneva, one before the review and a press conference after the review.

Stakeholder engagements during the interactive session

The KSC-UPR held two side events in Geneva in the days preceding Kenya's review. The KNCHR organised the first of these on 4 May 2010, with the objective of providing Geneva stakeholders (diplomats, civil society and others) with an opportunity to engage with stakeholders on the Kenya review: this side event was attended by persons from states delegations (including the Kenya delegation), civil society, and the media. It was interactive and served to raise and discuss key issues and concerns which could feed into the Kenya review. IMLU, a member of the Coalition, hosted another equally successful side event on 7 May 2010.

From the interactive dialogue to adoption of the outcomes report

Following the Working Group session, the KSC-UPR provided urgent advice to the state particularly covering the recommendations which it had deferred. It sent a detailed communication to the state explaining the importance of making commitments on the issues it had deferred. On 22-23 June 2010, the KSC-UPR held a workshop to take stock of their engagement in the process thus far and device strategies for further engagement. Between 5-8 July 2010, KNCHR and MOJJNCA convened a technical workshop to explore the question of optional protocols to human rights conventions and what Kenya's approach on these should be. Finally, the KSC-UPR also began preparing an implementation plan of the outcomes of the UPR which would be made operational subsequent to the adoption of Kenya's outcomes report by the HRC in September.

During the 22 September 2010 adoption of Kenya's outcomes report, the KNCHR and representatives of the KSC-UPR raised some of their concerns at the plenary of the HRC.

Following finalisation of Kenya's review in September, the KSC-UPR and the KNCHR prepared an advocacy tool framing the recommendations that Kenya had accepted as commitments which it should fulfil during the 4-year UPR cycle preceding its next review in 2014. The Outcomes charter would guide state and non-state actors to implement the recommendations from states and subsequent commitments made by Kenya during the UPR process. It set out the key expectations, indicators, actions and actors whose interventions are necessary to ensure successful implementation. The Charter aimed to:

- Record the understandings of the KSC-UPR and KNCHR on the commitments which the state made before the HRC;
- Propose a four-year road-map on how the recommendations made by Kenya's peer states and the consequent commitments made by Kenya should be turned into actions so that the exercise of human rights in the country may be improved;
- Synthesize the recommendations and commitments into indicator-driven

actions which the state and other actors in the country should undertake during the current UPR cycle (2010-2014); and

- Establish the framework which the KSC-UPR and KNCHR would use to monitor implementation of Kenya's UPR commitments.

This advocacy tool was used in March 2011 to guide state departments while they were preparing their UPR plan of action.

UPR Stakeholders conduct a side event in Geneva

UPR stakeholders at a workshop in Mombasa.

UPR stakeholders at a workshop in Mombasa.

SECTION V: ASSESSING THE VALUE OF PROPOSALS MADE BY THE KSC-UPR

Introduction

This section of the account assesses the extent to which the substantive proposals made by the KSC-UPR and the KNCHR found their way into the recommendations which Kenya's peer states put to her; and the extent to which those proposals were captured in the commitments which Kenya eventually m

On 7 September 2009, the HRC selected Bangladesh, Egypt and Mexico as Rapporteurs/Troika for Kenya. The Working Group held its eighth session from 3 to 14 May 2010 and reviewed Kenya on 6 May 2010. On 10 May 2010, the Working Group adopted the report on Kenya. Subsequently, the HRC adopted Kenya's UPR report at its next session on 22 September 2010.

The state delegation at the Working Group session in May and at the HRC session in September was amenable to the bulk of recommendations made by its peer states. At the Working Group session, it immediately accepted 128 recommendations; and it deferred making commitments on 15 recommendations which it promised to provide responses on in September. Of the seven recommendations which it rejected at the Working Group session, Kenya revised its views in relation to six recommendations and eventually rejected in total only one recommendation.

Recommendations from KSC-UPR, Recommendations from Peer states and Kenya's Responses

A total of 55 states had oral engagements with Kenya at the Working Group session while 22 others made written statements. Only with greater research may one assert that the recommendations made to Kenya by its peer states were influenced principally by the work of the KSC-UPR and the KNCHR. Yet, it is still important to describe the manner in which KSC-UPR and KNCHR's concerns were raised during the interactive dialogue.

As has already been established in this account, the KSC-UPR's main advocacy instrument was its Advocacy Charter whose content was drawn principally from the KSC-UPR, the KNCHR and organisations which had sent individual reports to the OHCHR. This assessment describes the recommendations of the KSC-UPR and KNCHR alongside the recommendations made by states at the Working Group session; and also relates that with the commitments made by Kenya to the HRC.

The Advocacy Charter contained recommendations arranged under 14 themes as follows:

Theme one: justice for the victims of post election violence

The recommendations in this regard from the KSC-UPR were that:

- The state should immediately establish a special tribunal to investigate and prosecute cases of crimes that occurred immediately before, during and after the 2007 general elections in adherence to the principles of the Rome Statute of the International Criminal Court (ICC).
- The state should fully cooperate with the Prosecutor of the ICC in conducting investigations in Kenya.

The KNCHR's recommendations in this regard were for the state to:

- Initiate an effective and credible domestic process for investigating and prosecuting alleged perpetrators of the violence;
- Provide internally displaced persons (IDPs) with adequate reparations and establish conditions and means that facilitate their resettlement and reintegration, including by providing adequate basic infrastructure where they are resettled; and
- Criminalise hate speech in line with Article 20 of the ICCPR by passing legislation to protect against incitement to hatred or use of language which prejudices or engenders discrimination on an individual or group on grounds such as gender, religion and disability.

At the Working Group, Kenya's peer states showed great concern about the post 2007 election violence and recommended further remedial actions. It was recommended that Kenya should:[19]

- Cooperate fully with the ICC investigation, to seek accountability (Australia, Norway) against persons bearing the greatest responsibility for post election violence crimes (Republic of Korea), and the implementation of warrants that might be issued by the Court (Portugal);
- Ensure the protection of post election violence witnesses from intimidation and violence (Austria), and establish an independent and reliable witness protection programme (Finland);
- Ensure that human rights defenders and witnesses are protected and can freely talk to the ICC investigative team so that the Court can carry out its mission successfully (Ireland);
- Establish a credible national mechanism or tribunal (United Kingdom) independent of the Public Prosecutor and the Attorney General for the investigation and prosecution of crimes committed during and following the 2007 election (Denmark, Austria).
- Continue addressing the problem of IDPs (Belarus), sustain its efforts with regard to their resettlement, and ensure their access to basic human rights and social services (Algeria).

Theme two: legal and credibility challenges to the Truth, Justice and Reconciliation Commission ('TJRC')

The KSC-UPR recommended that the state should:

- Address the persistent controversies surrounding the TJRC's Chairperson's office to safeguard the credibility of the truth seeking process; and

19 Recommendations from the Working Group session are drawn from: Human Rights Council, Fifteenth session, Report of the Working Group on the Universal Periodic Review of Kenya ??

- Take immediate steps to repeal the Indemnity Act (cap. 44), and the Official Secrets Act (Cap. 187), and address the flaws within the TJRC Act.

No specific enough recommendations were made to Kenya by its peer states on this theme. Of significance, though, states made recommendations to Kenya even where such states' human rights records were not exactly glowing. In those instances states sought to express their particular points of view or ideologies even as they made their recommendations. Sudan recommended that Kenya should resolve issues related to truth, justice and reconciliation within the national framework.

Theme three: insecurity

The KSC-UPR said that the state should:

- Without further delay investigate and prosecute security agents culpable for extra-judicial killings and torture; and
- Significantly increase the level of its security presence on Kenya's borders while undertaking a comprehensive disarmament programme in a manner consistent with human rights standards.

The Working Group's recommendations in this regard were broad. Kenya should:

- Establish an independent, credible and authoritative Police Oversight Authority, with sufficient powers and resources (United Kingdom);
- Strengthen efforts to implement police (Netherlands) and judicial (France) reforms;
- Fully implement the proposals made by the National Task Force on Police Reforms (United States of America);
- Take every useful measure to investigate human rights violations committed by the police, in particular extrajudicial killings, in order to bring to justice the perpetrators of such acts (France);
- Set out how it will act against the culture of impunity, including for perpetrators of extrajudicial killings (United Kingdom);

- Strengthen the law on the use of firearms by police officers, by introducing a policy of 'zero tolerance' for their abusive use (Belgium);
- Take all steps to eradicate the use of torture and ill treatment by public officials, and prosecute and punish those responsible (Denmark);
- Introduce in its national legislation the definition of torture, reflecting that set out in Article 1 of CAT, and accede to the Optional Protocol of CAT (OP-CAT) (Czech Republic); and
- Continue human rights education and training (Senegal), and in particular provide human rights training to judges, police officers, prison guards and all law enforcement officers (Brazil).

Kenya initially rejected the recommendations on extra-judicial killings, particularly that it should:

- Prevent extrajudicial killings and ensure compensation and justice for the families of victims, taking into account the recommendations of the UN Special Rapporteur on Extrajudicial killings (Netherlands); and
- Immediately implement all the recommendations put forward by the Waki Commission and the Special Rapporteur on Extrajudicial Killings (Denmark).

Kenya's rejection of these recommendations was founded on two reasons. It queried the use of the word 'all' in one of the recommendations: the word made the recommendation unimplementable since it demanded implementation in totality. In fact, Kenya argued, many of the Waki recommendations were already being implemented. Second, Kenya was miffed that the issue of extra-judicial killings had been linked to the report of the Special Rapporteur on Extra-judicial Killings who had caused a storm with his report detailing instances of such killings and recommending radical changes. In due course, though, Kenya dropped its protestations on these two recommendations, opting to agree to them in terms of their substance rather than letter.

Of note is that no state lurched onto KSC-UPR's recommendations focusing on disarmament of the population on Kenya's borders.

Theme four: threats to human rights defenders

The KSC-UPR recommended that the state should:

- Institute immediate and genuine investigations and prosecutions of all persons, including security agents, culpable of extra-judicial killings of human rights defenders;
- Commit to immediately establish the Witness Protection Agency provided for by the Witness Protection Act (No. 16 of 2006) and provide it sufficient technical and financial resources; and
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and accept the request of the Special Representative of the Secretary General on Human Rights Defenders.

States at the Working Group made several recommendations covering protection of human rights defenders and more generally human rights witnesses. Kenya was asked to:

- Provide adequate protection for witnesses of human rights violations (Netherlands, United Kingdom), including by establishing an independent witness protection agency free of political influence (United States of America, Japan); and
- Undertake credible and effective investigations as a matter of priority regarding the Mungiki killings, the Mount Elgon operation and the murders of two civil society activists in addition to the post-election violence (Norway).

Regarding UN special procedures, Norway recommended that Kenya should extend an invitation to the Special Rapporteur for Human Rights Defenders.

Theme five: infringement on the freedom of expression and access to information

The KSC-UPR's recommendations here were that the state should:

- Enact and implement freedom of information legislation by the end of 2010; and
- Institute investigations into cases of harassment and attacks against journalists and prosecute those found liable.

The Working Group's recommendations in this regard were fairly straightforward. Kenya should:

- Review its national legislation on freedom of expression so that it fully complies with the relevant provisions of the ICCPR (Czech Republic, Norway); and
- Enact as a matter of urgency the Freedom of Information Bill (Norway).

Theme six: the death penalty

The KSC-UPR asked the state to:

- Legislate for *de jure* abolition of capital punishment; and
- Ratify and implement the 2nd Optional Protocol to the ICCPR Aiming at the Abolition of the Death Penalty.

Recommendations on this at the Working Group were that Kenya should:

- take all measures to abolish the use of the death penalty (Uruguay, Ireland, Austria, Germany, Argentina), including by continuing to review its legislation concerning the death penalty (Holy See), amending national legislation to abolish the death penalty (Belgium), and acceding to the 2nd Optional Protocol to the ICCPR (Spain); and
- Strictly ensure that the death penalty is not imposed for children (Australia).

At the Working Group session, Kenya rejected these recommendations. It clarified that in fact Kenya does not impose the death penalty on children. It also said the Kenyan public had overwhelmingly rejected abolition of the death penalty for the most serious crimes. It told the Working Group that the Government, in collaboration with the KNCHR and other stakeholders, continued to raise public awareness regarding abolition of the death penalty. The KSC-UPR's rejoinder to this was that the Government ought to provide leadership in repealing the death sentence, rather than hiding behind the apparent public opinion.

Theme seven: discrimination on the basis of sexual orientation and gender identity

On this controversial subject, the KSC-UPR recommended that the state should:

- Enact comprehensive anti-discrimination law affording protection to all individuals irrespective of their sexual orientation or gender identity;
- Deal with any attacks on lesbian, gay, bisexual, transgender and intersex ('LGBTI') persons;
- Develop appropriate health policies to protect the health rights of LGBTI persons, including enhancing their access to HIV/AIDS prevention, care and treatment; and
- Develop appropriate and specific policies to deal with trans-sexual and intersex conditions.

This was the one set of recommendations which Kenya rejected both at the Working Group and HRC sessions. The recommendations it rejected were that it should:

- Take concrete steps to provide for the protection and equal treatment of LGBT persons (Netherlands), including by decriminalising same-sex activity between consenting adults (Czech Republic, United States of America) through abrogation of the legal provisions currently punishing such sexual relations, and subscribing to the December 2008 General Assembly Declaration on sexual orientation and human rights (France).

Kenya explained its rejection of these recommendations by stating that same-sex unions were culturally unacceptable in Kenya. Here, it is instructive to note that while the tenor of the recommendations was broad – covering non-discrimination as well as same-sex activity, Kenya's response was crafted extremely narrowly – focusing on 'unions' –intended to imply some sort of legal union. The bulk of LGBTI activists in Kenya insist that their primary focus remains protection against discrimination and basic rights violations, not civil unions or marriage in any other form. So it was incredibly ingenious of the Government to frame the discussion in such narrow terms which were obviously intended to put the bulk of Kenyans off the subject.

Theme eight: persons with disabilities

The KSC-UPR recommended that the state should:

- Implement provisions in the Persons with Disabilities Act (No. 14 of 2003) to ensure that at least 5% of employment opportunities are secured for persons with disabilities; and
- Domesticate the CRPD and ratify its Optional Protocol.

No specific recommendations were made at the Working Group with regard to persons with disabilities except that Kenya should ratify the Optional Protocol to the CRPD.

During the interactive dialogue, however, India sought information about measures taken to increase employment for persons with disabilities; to this, Kenya responded that the Persons with Disabilities Act required employers to reserve 5 per cent of their employment opportunities for persons with disabilities, prohibited discrimination by employers and required them to provide reasonable accommodation for such persons.

Theme nine: minority and indigenous peoples

The KSC-UPR recommended that the state should:

- Ratify International Labour Organisation ('ILO') Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, and adopt the UN Declaration on the Rights of Indigenous People;

- Implement the Il chamus case decision[20] and ensure nomination of representatives of indigenous peoples to the next parliament and take into account the special interests of minority and indigenous communities in the boundaries review exercise;

- Fully operationalise the National Land Policy by 2012;

- Begin consultations with the Endorois community with a view to implementing the Endorois case communication;[21] and

- Accept the request for a field visit from the Independent Expert on Minority Issues.

Kenya deferred to September recommendations asking it to recognise indigenous peoples in the country, including that it should:

- Implement all recommendations put forward by the Special Rapporteur on the Rights of Indigenous People following his visit to Kenya in 2007, and ratify ILO Convention No. 169 (Denmark, Mexico);

- Take steps to implement the UN Declaration on the Rights of Indigenous Peoples, including through constitutional and statutory recognition of land and resource rights and effective political participation (Norway); and

20 In the Il Chamus case (actually Rangal Lemeiguran et al vs Attorney General et al) Misc. Civ. Appl. 305 of 2004, the High Court declared that the Il Chamus community constitutes a special interest group in terms of Section 33 of the former Constitution, and nominations to Parliament under that section should involve the Il Chamus and other minority groups constituting special interests.

21 The African Commission on Human and Peoples' Rights made a series of recommendations to the Government of Kenya following a case filed by the Endorois community alleging violation of their human rights. The principal recommendations made by the Commission were that Kenya should:
- Recognise rights of ownership to the Endorois and Restitute Endorois ancestral land;
- Ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rights and for grazing their cattle;
- Pay adequate compensation to the community for all the loss suffered;
- Pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve.

- Further strengthen relations with the indigenous communities with a view to promoting and protecting their rights and assisting them in their development initiatives (Malaysia).

Kenya initially rejected these recommendations based on its argument that the term 'indigenous peoples' was not applicable in the country, as all Kenyans of African descent were indigenous to Kenya. However, it reversed this rejection at the HRC in September, stating that the Government recognised the vulnerabilities of minorities/ marginalized communities.

Theme ten: children's rights in the criminal justice system

The KSC-UPR's recommendations were that the state should:

- Establish a comprehensive legal framework that tackles the special needs of children within the criminal justice system; and
- Promote the use of other sanctions in the judiciary with regard to children as an alternative to deprivation of liberty.

Recommendations focusing on children's rights covered many more areas. They were for Kenya to:

- Implement the core elements of the Children's Act (Libyan Arab Jamahiriya, Angola);
- adopt a national plan of action on children and children's rights (Germany), including adoption of a comprehensive national policy aimed at the fight against child prostitution and the trafficking of children (Uruguay);
- Take all appropriate measures to ensure for street children, who are vulnerable to various forms of violence, appropriate care and protection (Slovenia);
- adopt and implement measures necessary to address the needs and challenges of juveniles in prison custody, including raising the minimum age of criminal responsibility, in line with international standards (Slovakia, Czech Republic);
- Establish a comprehensive national policy and guidelines governing adoption in compliance with CRC (Germany);

- Further promote the law on the minimum age of marriage at 18 years (Holy See); and

- Take effective steps to address child labour (Azerbaijan), including by undertaking a study on child labour at the national level with the support of the ILO and other partners, and enact as quickly as possible legislation focused on the prevention of child labour and the removal of its victims from the workplace, as well as their rehabilitation, social reintegration and education (Uruguay).

Theme eleven: violations by non-State actors

The KSC-UPR's recommendation here was that the state should treat killings of older persons on allegations of witchcraft as murder and promptly investigate and prosecute perpetrators. The KNCHR had, in relation to older persons, recommended that the state should pass and implement the National Policy on Older Persons and Ageing as well as the National Policy on Social Protection.

No states addressed these recommendations.

Theme twelve: statelessness

The KSC-UPR recommended that the state should:

- Abolish discriminatory policies, administrative procedures and other practices in the issuance of citizenship documents;

- Develop and legalise a uniform registration process for all Kenyans; and

- Safeguard the milestones achieved in the constitutional review process towards elimination of citizenship based gender discrimination.

The Czech Republic recommended that Kenya should review its national laws to fully uphold the principle of non-discrimination, in particular on grounds of gender, personal status and citizenship.

Theme thirteen: corruption in the education sector

The KSC-UPR recommended that the state should rein in the corruption rampant in the administration of educational funds.

States' recommendations under this theme tended to be broad and generic. Botswana and Azerbaijan urged Kenya to stay the course in dealing with challenges relating to the rule of law and good governance. The Netherlands mentioned corruption specifically. Other recommendations focused on corruption in the judiciary, calling on Kenya to:

- Develop an administration of justice policy that would address principles of access to justice and public interest education, and take reform measures to address corruption, in particular within the judicial system (Germany); anGive priority to combating corruption and incompetence in the judiciary, and provide sufficient human and material resources for the administration of justice (Hungary).

Theme fourteen: HIV/AIDS management and treatment

The KSC-UPR recommended that the state should: streamline the tendering process so as to ensure the sustainability of the supply of anti retroviral drugs and adopt inclusive policies in the management of HIV/AIDS to ensure that vulnerable groups are catered for.

Theme fifteen: environmental protection

The KSC-UPR recommended that the state should:

- Undertake environmental management policy and legislation reforms;
- commit to increase funding for the National Environmental Management Authority over the next four years and effectively enforce environmental management regulations; and
- Ensure the active participation of contiguous communities within its environmental restoration processes.

Other recommendations made by KNCHR

On women's issues, KNCHR recommended that Kenya should:

- ratify the Protocol on the African Charter on Human and Peoples Rights on the Rights of Women in Africa; and
- Use policy and law to fulfil the 2006 presidential directive for at least 30% women representation in leadership and decision making positions, and enforce party funding provisions in the Political Parties Act (No. 10 of 2007) linking funding with the level of gender diversity when electing/appointing party office bearers.

Recommendations at the Working Group on this were that Kenya should:

- Take measures aimed at ensuring the economic rights of women, addressing their employment and increasing their participation in the political life of the country (Belarus);
- Undertake more effective measures to address impunity, violence and trafficking in women and girls, including through the strengthening of law enforcement and judicial institutions and intensive media and education programmes aimed at increasing public awareness on the rights of women (Malaysia);
- Strengthen protection for women and children against violence and exploitation (Australia), including by drafting a plan to combat violence against women and establishing reliable indicators in this field (France), and by devoting special attention to the situation of women in communities of refugees and IDPs (Argentina);
- Take measures to guarantee effective access for female victims of gender-based violence to justice, redress and protection (Brazil);
- Adopt and duly implement measures to eradicate female genital mutilation

(Slovenia, Japan), including public awareness-raising campaigns against this phenomenon (Slovakia, Argentina), and by adopting legislation and a coherent national policy criminalizing female genital mutilation (Germany, Czech Republic), and train members of the police, prosecutors and judges on the strict application of laws and regulations to be adopted in this field (Hungary);

- Improve access to reproductive health services for pregnant women (Turkey); and
- Redouble its efforts to save mother and child (Holy See).

In relation to education, the KNCHR's recommendations were for Kenya to:

- Ensure that the minimum acceptable teacher-student ratio of 1-40 is achieved, and establish further milestones for increasing the quality of education;
- Legislate free and compulsory primary education; and
- Pass the Special Needs Education Policy to enable children with disabilities to exercise their right to education on an equal basis with their non-disabled peers.

States' focus regarding the right to education was comprehensive enough. Kenya was asked to:

- Strengthen its educational policy to guarantee the required quality of education which should be free (Cuba), accessible to all members of its population, especially the marginalised and most vulnerable groups (Slovakia), and request international assistance to that end (Bolivia);
- Formulate an educational policy aimed at combating illiteracy, with particular emphasis on the education of the girl child (Niger); and
- Develop and implement a specific education policy which would cover all children with special needs (Ireland).

Regarding the right to food, KNCHR recommended that Kenya should:

- Guarantee this right in the Constitution alongside other socio economic rights;
- Finalise harmonization of regulations relating to food security under a single food security legislation; and
- Establish a long term strategy for facilitating vulnerable communities to meet their food requirements and ensure that no Kenyans are denied their basic right to adequate food.

States at the Working Group made various recommendations covering economic and social rights such as the right to food and more generally focussing on poverty and development. Kenya should:

- Ensure the equitable distribution of water and food to the entire population, especially during times of drought (Spain);
- Continue its efforts to promote economic, social and cultural rights and intensify national and anti-poverty programmes (Algeria, Libyan Arab Jamahiriya);
- Ensure that public policies for combating poverty are in accordance with the rights recognised in the ICESCR and that they are not negatively affected by commitments that might be undertaken in the context of trade and investment agreements (Bolivia);
- Pursue its efforts to achieve the highest possible level of social justice and find adequate solutions to the problems of poverty and unemployment (Kuwait, Azerbaijan, Senegal);
- Place emphasis on linking the objective of poverty eradication to those of eliminating child labour and increasing school enrolment (Sudan);
- Continue its implementation of the poverty alleviation policies, in particular through the Kazi Kwa Vijana programme (Botswana), the Kenya Vision 2030 strategy, and the Constituency Development Fund, and seek the technical and financial assistance that it will require to that end (Morocco);

- Continue its strategies for social and economic recovery, and promote social peace and sustainable development (China);
- Continue to pursue development and anti-poverty policies, step up international cooperation, and intensify its efforts to alleviate poverty (China); and
- Continue to increase and consolidate programmes and social measures that will lead to and are essential for the urgent reduction of poverty and social exclusion levels, with the fair distribution of national wealth, to permit the best possible well-being of its population, and, if necessary to that end, seek international assistance and solidarity (Bolivarian Republic of Venezuela).

Other issues of Note

Kenya's delegation repeatedly emphasised the importance of the Proposed Constitution of Kenya as an avenue for ensuring protection of human rights. Possibly because of this, numerous states delegations made recommendations around the Constitution. It was recommended that Kenya should:

- Continue to carry out constitutional, judicial and police reforms (Zimbabwe);
- Ensure that the new constitution takes greater account of the dimension of human rights protection and promotion, as well as of democracy (Niger);
- Unite behind a new constitution through a fair referendum, and fully implement the result (United Kingdom); and
- Exert its utmost efforts in ensuring a free and fair referendum to enable a new constitution to be adopted, in order to establish a firm foundation for the promotion and protection of human rights (Republic of Korea).

The UPR as an international as distinct from regional human rights mechanism has received lukewarm support from certain quarters: African diplomats on the continent prefer African solutions such as the African Peer Review Mechanism. It was therefore insightful to see how the regional angle played itself out at the Working Group. A concern was that African states would ask Kenya 'soft' questions or make generic or ideologically-driven recommendations. An assessment of the initial

sessions of the Working Group showed the propensity for 'friendly' states "filling the speaker's list to complement the state under review" (Sweeney and Saito). In this instance, 'soft' recommendations were indeed made; but so too were more searching recommendations: "Although the review began with a large number of African and developing states praising Kenya's efforts to promote human rights in the face of poverty, the overall balance of questions and recommendations throughout the interactive dialogue was fairly split between praise and constructive criticism" (International Service for Human Rights, 2010). On one hand, developing countries made multiple recommendations urging Kenya to seek technical and other support from the international community. Kenya was, for example, asked to:

- Seek international assistance to sustain its efforts aimed at the promotion and protection of human rights, in particular economic, social and cultural rights, in line with its national priorities (Egypt);
- Identify its needs in terms of technical and financial assistance as well as capacity-building, and seek accordingly the requisite assistance from the relevant organisations (Algeria);
- Continue to seek assistance to build enough capacity to develop appropriate human rights indices (Zimbabwe);
- Seek assistance from the international community in tackling the challenges it faces (Chad);
- Seek from the international community the technical assistance necessary to ensure capacity-building in various development fields, in particular those creating work opportunities for young people in cities and rural areas (Kuwait);
- Seek the support of the international community and cooperate with it to formulate policies aimed at further broadening access to free and compulsory education, particularly for children from poor households (Indonesia);
- Engage members of the international community and international organisations for capacity-building support and technical assistance, particularly in the areas of economy, employment opportunity, human resources development and poverty alleviation (Malaysia); and

- Continue to seek support from the international community in the form of financial or technical assistance in accordance with its national priorities (Nigeria).

But as the account has shown, developing countries engaged on more direct human rights issues too. For example, it was developing countries which engaged on the question of strengthening Kenya's NHRI. Botswana recommended that Kenya should undertake all measures, including by seeking technical assistance and capacity-building, so as to strengthen institutions responsible for the enforcement of human rights; and Indonesia recommended that Kenya should strengthen the capacity of Kenya's National Commission on Human Rights to enable it to play a greater role in promoting human rights awareness in the country. Egypt and Malaysia recommended that Kenya should accelerate the process of finalising its National Policy and Action Plan for Human Rights, and strengthen its national human rights infrastructure.

A further concern was that particularly non-African states would stress international obligations to the exclusion of regional obligations. In fact, Finland recommended that Kenya should undertake specific measures to ensure the implementation of UN and African human rights conventions.

At the Working Group, Kenya deferred recommendations asking it to ratify particular human rights instruments, as follows, that it should:

- Accede to the human rights conventions and protocols to which Kenya is not yet a party (Niger), including: OP-ICCPR I and OP-ICCPR II, OP-ICESCR, OP-CRPD, OP-CAT, OP-CEDAW and OP-CRC-SC (Germany, Austria, Argentina, Uruguay, Spain), and ICPPED (France, Uruguay), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Argentina); and
- Extend an open and standing invitation to all special procedures (Brazil, Argentina).

At the September HRC session, Kenya agreed to these recommendations, the state delegation indicating first though that a ratifications law would be passed first after which optional protocols providing individual remedies would be acceded to. Other optional protocols would be considered on a case by case basis.

Interventions by the Coalition between the Working Group session and adoption of the outcomes report

The KSC-UPR provided the state with two concrete sets of proposals to assist it to prepare for the HRC session in September 2010. They first prepared an advisory brief commending the Government on its conduct at the Working Group session but also furnishing it with the basis and rationale for agreeing to more of the Working Group's recommendations. The salient issues raised in the advisory were:

- In relation to the 128 recommendations that were accepted, the KSC-UPR urged the state to with expedition develop a detailed and mile-stoned implementation action plan to cover Kenya's UPR cycle from 2010 to 2014.
- The state was advised to accept that it would accede to optional protocols to core human rights treaties, in particular those that would give Kenyans recourse to individual remedies before treaty body committees. Specifically, the state was asked to immediately sign and ratify/accede to: the 1st Optional Protocol to the ICCPR, the OP-ICESCR, the OP-CEDAW and the OP-CRPD.
- The state was advised to reconsider the rejected recommendations. It should commit to lead awareness-raising efforts showing the public why it was necessary to abolish the death penalty. The state should similarly commit to ensure protection of the rights of LGBTI persons particularly by ensuring they were not discriminated in the provision of health and related services.

The KNCHR in partnership with MOJNCCA then convened a technical workshop to review Kenya's approaches to optional protocols. The specific aims of the convening were: to explore issues which had influenced the state's actions or inactions in relation to human rights optional protocols; to have in-depth discussions on specific optional

protocols and outline the merits or demerits of ratifying them. It was this convening that enabled the state to revise its approach on optional protocols.

Finally, in this section of the account , it is necessary to note the sorts of contributions which the KSC-UPR made at the plenary of the HRC on 22 September 2010 before the adoption of Kenya's outcomes report. This was the only moment throughout the whole UPR process when stakeholders could address the HRC formally. Concerns had been raised that addressing states when they were at the point of adopting a state report did not add value to the UPR process. In fact, as will be noted from the communications made by Kenya's stakeholders, their addresses had both the practical effect of officially recording their concerns as well as establishing important symbolism particularly regarding recommendations which the state had declined.

The KSC-UPR prepared for their brief comments to the HRC by segmenting the issues which each speaking organisation would focus on to ensure optimal use of the limited time allotted to them – a maximum of 20 minutes. In their brief comments at the HRC, the KSC-UPR noted:[22]

- That:
    - Kenyans had adopted a Constitution containing a robust bill of rights, incorporating economic, social and cultural rights and mechanisms designed to enhance fairness, justice and equality as well as to improve general standards of living;
    - The Kenyan Government had declined to accept important recommendations made during the interactive dialogue, such as the proposal to abolish the death penalty; and
    - The UPR process was welcome and that it would expectedly confer real benefits to individuals and communities in Kenya – Commissioner Lawrence Mute, KNCHR

22 Drawn from report available at: http://unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/4B84AC14DAEFFEE2C12577A6003CC895?OpenDocument

- That:
    - The Kenyan Government had rejected recommendations to take measures to provide for the protection and equal treatment of LGBTI persons;
    - The criminalisation of consensual same-sex relations in Sections 162 and 165 of the Penal Code, cap. 63, fuelled stigma, discrimination and violence against sexual minorities;
    - Human rights were universal, inalienable and inherent, and these principles applied to all citizens including LGBTI Kenyans – Judith Ngunjiri, Action Canada for Population and Development[23]
- That:
    - The Government had breached its obligations under the ICC Statute by failing to arrest President Al-Bashir in August 2010 and aggravating the situation by harassing two human rights defenders who publicly protested on the matter;
    - Kenya should accord the ICC full cooperation in carrying out its mandate towards ensuring access to victims of the 2007/2008 post election violence in Kenya - Joan Nyanyuki, World Organisation Against Torture[24]
- That:
    - The Government should fully operationalise all the provisions of the Persons with Disabilities Act, and track the nature and extent of women's participation in the political arena in the country;

23 It should be noted that since only NGOs that are accredited by the Economic and Social Council (ECOSOC), may engage the HRC at this point, non-accredited organisations wishing to address the Council seek to use the names of their accredited partners. In this instance, Ngunjiri articulated the view-point of Kenya's sexual minorities as established in the KSC-UPR report.

24 Really speaking on behalf of the Independent Medical-Legal Unit, a member of the KSC-UPR

- The Government should seek the assistance pledged by the international community and build the capacity of the relevant institutions for the realisation of the Millennium Development Goals - Esther Waweru, International Federation of Human Rights Leagues[25]

- That:

  - The Government's reconsideration of the recommendations pertaining to the rights of indigenous peoples was welcome;

  - The new Constitution had expanded the bill of rights to include the rights of minorities and marginalised groups;

  - It should consider ratifying ILO Convention 169 and adopting the UN Declaration on the Rights of Indigenous People as an enhancement of the constitutional safeguards accorded to minorities and marginalised groups - Andrew Songa, Conectas[26]

Conclusion

Kenya's extremely high receptiveness to the recommendations made by its UPR peers benefited from information initially provided by the KSC-UPR. While a definitive assertion on the exact extent to which the KSC-UPR influenced the agenda cannot be made here, the Coalition's interventions made a significant difference. The state itself as well as international actors have acknowledged that much. The final section of this account gleans good practices which may be drawn from the interventions of the Coalition.

25 Really of Kenya Human Rights Commission, another member of the KSC-UPR
26 Really of Centre for Minority Rights Development, a further member of the KSC-UPR

SECTION VI: LESSONS AND GOOD PRACTICES

Introduction

The engagements between the state and stakeholders as described in this account aimed for an outcomes report which would establish a clear baseline of recommendations and action-points for guiding work during the four years of the UPR cycle (2010-2014). The aim of the KSC-UPR and KNCHR was to influence the whole process rather than a segment of the process. The Coalition was involved centrally in the UPR process - from its initiation, to the HRC and now into its implementation.

When it addressed the HRC in September 2010, the KNCHR made a commitment that it would work with and monitor implementation of the recommendations. Soon after the September session, the KNCHR and KSC-UPR embarked on the process of ensuring that the state would implement its commitments. The approach to realise this included:

- Working with the state on the recommendations which required further clarifications and advising it in relation to the recommendations it declined; and
- Undertaking awareness raising and advocacy on implementation the UPR recommendations, among others, through dissemination of the recommendations including by translating them into accessible and easily understandable formats.

Important Considerations and Good Practices

What considerations guided effectiveness in terms of results at the HRC? What lessons may be identified which future Kenyan engagements with the state can adopt? What may stakeholders from other states learn?

Consideration one: candid engagement with the state

Throughout the UPR process, KNCHR and the KSC-UPR engaged with the state in a frank and open manner. The KNCHR introduced the UPR concept to the state. Then alongside the KSC-UPR it participated in preparation of the national report: while the KSC-UPR and KNCHR did not actually write the report, they participated in validation of the national report. Then, they undertook pre-Working Group advocacy with the state: KNCHR got a meeting with the Minister for Justice at which the KSC-UPR reports were shared with the state delegation; it also invited the state to participate in a side-event in Geneva before the Working Group's interactive dialogue with Kenya. Following the dialogue, the KNCHR and KSC-UPR met Kenya's delegation at Kenya's Geneva UN Mission to explore and encourage it to accept the recommendations which it had either deferred or declined. The KNCHR and KSC-UPR then provided post-Working Group technical and advocacy support to the state, in particular covering the approach which Kenya should take on optional protocols. The KNCHR also furnished the state with an advisory brief providing overall advice on the approach it should take with the rest of the process. It also engaged on the UPR in the context of the Inter-Ministerial Committee on International Human Rights Obligations. Finally, at the HRC in September, the KNCHR and KSC-UPR engaged the delegation during a couple of dinner events.

Hence, lesson one: stakeholders should engage with candour; they will influence the national report, discussions at the interactive dialogue, and in due course they will influence the commitments the state makes.

Consideration two: leadership (steering) of stakeholder report process

The KNCHR introduced the UPR to human rights organisations at the initial meeting it convened. The Commission remained keen to ensure that the stakeholder process was broad-based and that it included groups advocating on diverse human rights issues. It was particularly significant that no groups sought to exclude the sexual minorities cluster from the joint process. Finally, an inclusive steering team was put in place to ensure that the process would remain a stakeholder rather than Commission-driven process.

Hence, lesson two: NHRIs can provide leadership to stakeholders. They should offer facilitation; but they should not be domineering. They should take advantage of their particular niche, which in this instance includes the greater access which they have with other national and international agencies.

Consideration three: capacity-building

The KSC-UPR steering team quickly identified the importance of building the capacities of the Coalition to prepare the report. It drew funding from within and without its membership to ensure capacity building happened. It also drew on technical support internally and externally (both from local agencies and international organisations) for this purpose.

Hence, lesson three: stakeholders must ensure they build their capacities to implement the UPR process. This process calls for resources, but these can be leveraged and harnessed from the network as well as from other backers.

Consideration four: quality recommendations (prioritising from hundreds to arrive at fewer solid recommendations)

The eventual 10-page KSC-UPR report was negotiated and synthesised from extremely bulky information. Each of nine clusters prepared their reports which together amounted to over 70 pages of material. Technical teams reduced these pages to the eventual 10-page report through a process of prioritising recommendations. A lot of the initial information was already in the possession of the various organisations having been gathered in the ordinary course of their work in the preceding four years. The KSC-UPR report's recommendations were included specifically in the OHCHR summary.

Hence, lesson four: joint Stakeholder Reports are far more valuable than individual reports. Stakeholders though should not assume that individual reports will not be prepared by some organisations. Furthermore, stakeholders should not reinvent the wheel. Information to be fed into the UPR process need not be generated from scratch. It is readily available to organisations which have been working on human rights in their particular settings.

Consideration five: effective advocacy

The KNCHR and KSC-UPR prepared effective advocacy material. Multiple theatres of advocacy were then opened: with the State; with other states; with the public; with international civil society; etc. A useful conversation was struck up with at least one of Kenya's Troika. Since not all states could be approached, strategic choices of states to engage with were made.

Hence, lesson five: Effective advocacy causes states to ask the right questions and make valuable recommendations. The assumption that African states do not make valuable recommendations is not true. Finally, it is not disloyal for a NHRI to lobby States to ask the right questions.

Consideration six: post-WG technical support

Following the Working Group session, lots of work still remained, and the KSC-UPR and KNCHR proceeded to undertake it by co-hosting the technical meeting on optional protocols and preparing an advisory brief for the state on the UPR.

Hence, Lesson six: stakeholders should realise that the detailed nuts and bolts work is crucial to the success of a process like this one.

Consideration seven: stakeholder responses at the HRC

The fact that stakeholders do not speak formally before the HRC until at the end of the process raised concerns. However, the KSC-UPR planned to make strategic interventions; and at least five of its members including the KNCHR spoke before Kenya's report was adopted. Their messaging was intended to acknowledge progress while putting the state on notice that even rejected recommendations would remain on Kenya's human rights agenda.

Hence, lesson seven: though stakeholders speak at the very end of the process, their overall influence is significant. Seeking to change the rules so that stakeholders speak earlier may actually undermine the delicate balance which the UPR seeks: of encouraging a state under review to listen to its peer states, thereby benefiting the exercise of human rights.

Consideration eight: implementation

The KSC-UPR and KNCHR prepared their outcomes charter on the basis of which they have lobbied the state to finalise its operational plan for implementing UPR recommendations. That plan should have objectives and time-lined milestones. The aim should be to mesh implementation of UPR recommendations into implementation of other ongoing human rights work.

Hence, lesson eight: the UPR does not happen in Geneva during one event; it happens in the subject State in a long drawn-out process. The state should be prevailed upon to prepare a time-lined implementation plan and stakeholders should monitor its implementation throughout the UPR cycle.

Challenges

While KSC-UPR's engagement in the UPR review of Kenya was very strategic and fruitful, it also confronted the following key challenges:

- Resources: *Most members* did not have specifically allotted or adequate financial resources to actively participate in or contribute to the UPR process. While KNCHR and a few other organisations facilitated meetings and workshops, the participation of other stakeholders oscillated from stage to stage, often because of resource constraints. Financial constraints also hampered the participation of members in the review process in Geneva. Also, the idea of telecasting Kenya's interactive dialogue at the Working Group to the public failed on account of resources.

- Limited participation of grassroots organisations: While the clusters were diverse in terms of thematic areas, the involvement of grassroots organisations was unsatisfactory. Most meetings and workshops were held in Nairobi and offered limited opportunities for the participation of grassroots organisations. The few such organisations which participated in the process were involved irregularly, due to budgetary constraints. This was remedied by sending regular updates through e-mail but it was still difficult for the UPR to have impact at the grassroots level in the manner in which stakeholders would have wanted it to.

- Accreditation: Only a handful of KSC-UPR's members had been accredited by the Economic and Social Council (ECOSOC). This meant that for the participation in the Geneva process, the KSC-UPR had to rely on international organisations with ECOSOC status to accredit some of its members. While the organisations approached assisted in the accreditation process, it would have been far more convenient if KSC-UPR's members had been able to participate in the UPR deliberations in their own names.

Conclusion

The eight considerations presented in this section provide insights into a useful engagement model with the UPR process. The holistic nature of the review a state undergoes during the UPR necessarily implies that all actors in the human rights field should be involved to bring out the key concerns in the country under review.

Successful involvement in the UPR will however always depend on the internal dynamics of any country, particularly its political context. Where there is a possibility of stakeholders dialoguing and engaging with the government throughout the process, this should be pursued, particularly since one of the overall objectives of the UPR is improvement of the human rights situation in the country under review.

In this instance, the joint approach adopted by the Kenyan stakeholders, and the continuous dialogue with the state, proved invaluable. The strategic advocacy that was undertaken was also extremely useful and could not have happened without the support, good will and partnerships that existed between the Kenyan stakeholders, international organisations and diplomats.

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ANNEXES

Annex I:

Core International and Regional Human Rights Instruments to which Kenya is Party and Extent of Reporting[27]

Instrument	Information	Reporting Status
International Covenant on Economic, Social and Cultural Rights (ICESCR)	• Opened for Signature 19/12/1966 • Entered into force on 3/01/1976 • Kenya acceded on 1/05/1972 with a reservation to article 10(2)	• Initial report due in 1995 • Initial report submitted in 2006 • 2nd report not yet submitted
International Covenant on Civil and Political Rights (ICCPR)	• Opened for Signature 19/12/1966 • Entered into force on 23/03/1976 • Kenya acceded on 1/05/1972	• Initial report due in 1977 • Initial report submitted in 1979 • 2nd report due in 1986 • 2nd periodic report submitted on 27/09/04 • 3rd report due for consideration by the Committee

27 This information is drawn from various websites, including: http://www1.umn.edu/humanrts/research/ratification-kenya.html

Instrument	Information	Reporting Status
International Convention on the Elimination of All Forms of Racial Discrimination ('ICERD)	• Entered into force on 4/01/1969 • Opened for signature on 21/12/1965 • Kenya acceded on 13/08/2001	• Initial, 2nd ,3rd and 4th reports due in 2002, 2004, 2006 and 2008 respectively. • Combined report submitted in 2010, scheduled for consideration in August 2011
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('CAT')	• Opened for signature 10/12/1984 • Entered into force on 26/06/1987 • Kenya acceded on 21/02/1997	• 1st , 2nd & 3rd reports due in 1998, 2002 and 2006 • Report submitted in 2007 and considered in 2008 • 2nd report due in 2012
Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW')	• Opened for signature 1/03/1980 • Entered into force on 3/09/1981 • Kenya acceded on 9/03/1984	• Initial & 2nd reports due 8/04/1985 & 8/04/1989 • Initial & 2nd reports submitted in 1990 • 3rd & 4th reports due 1993 & 1997 • 3rd & 4th reports submitted on 5/01/2000 • 5th report due in 2001 • 5th & 6th report submitted in 2006 • 7th report submitted in 2009 and considered in 2011

Instrument	Information	Reporting Status
Convention on the Rights of the Child ('CRC	• Opened for signature 20/11/1989 • Entered into force on 2/09/1990 • Kenya signed on 26/01/1990 • Ratified on 30/07/1990	• Initial report due in 1992 • Initial report submitted in 2000 • 2nd report due in 1997 • 2nd report submitted in 2005 • 3rd report due in 2012
Convention on the Rights of Persons With Disabilities (CRPD)	• Opened for signature on 30/03/2007 • Entered into force 3/05/2008 • Kenya signed the Convention on 30/3/2007 • Kenya ratified the Convention on 19/05/2008	• 1st Report due 2010 • 1st report currently undergoing stakeholders validation and will be submitted in 2011
African Charter on Human & Peoples' Rights	• Opened for signature on 27/06/1981 • Entered into force 21/10/1986 • Kenya ratified on 23/01/1992	• 1st report submitted in May 2007
African Charter on the Rights & Welfare of the Child	• Opened for signature on 11/7/1990 • Entered into force on 29/11/1999 • Kenya ratified on 25/07/2000	• Kenya has not submitted any report

Annex II

Illustration: extent to which Recommendations by the Committee Against Torture Have Been Implemented

Recommendations by the Committee Against Torture[1]	Assessment of implementation
1. Ensure the incorporation of the Convention into its legal framework ... include a definition of torture in its penal legislation in conformity with article 1 of the Convention ...	The Constitution of Kenya 2010 protects against torture; enabling legislation – the Prevention of Torture Bill, 2011 – is in draft form
2. Ensure a more comprehensive approach to reform the justice system to enhance its integrity, efficiency and transparency	Whole scale judicial reform is taking place in the context of the Constitution: new Chief Justice and Deputy Chief Justice have been appointed; all serving judges and magistrates to be vetted
3. Take all necessary measures to ensure that the lack of resources is not an obstacle to accessing justice ... implement the recently established national legal aid scheme ... (and) the setting up of an office of public defender	Recommendations on increased resources tend to be far too vague … the National Legal Aid Scheme remains a pilot which reaches very limited numbers of people
4. Raise the minimum age of criminal responsibility in order to bring it in line with international standards	This recommendation has not yet been implemented. The minimum age of criminal responsibility still stands at 8 years according to Section 14 of the Penal Code instead of the international standard of 10 years.

Recommendations by the Committee Against Torture[1]	Assessment of implementation
5. Address police actions, including unlawful and arbitrary arrests and widespread police corruption ... through clear messages of zero-tolerance to corruption ..., the imposition of appropriate penalties and adequate training ... reform the bail system ... to ensure it is more reasonable and affordable ... promptly adopt effective measures to ensure that all persons detained are afforded ... the fundamental legal safeguards during detention ...	This is the sort of detailed technical recommendation which treaty body committees as distinct from the HRC may make. Kenya will need to show the extent to which it has implemented this recommendation when it reports to the Committee in 2012.
6. Keep under systematic review interrogation rules, instructions, methods and practices to prevent cases of torture ... provide detailed statistical data disaggregated by crime on prosecution as well as criminal and disciplinary actions against law enforcement officials found guilty of torture and ill-treatment	Statistical data on incidence and typology of torture were extremely hard to come by during preparation of the state report to the Committee. This dearth of concrete data has not changed to any appreciable extent but may improve with the establishment of Independent Police Oversight Authority as required under the Constitution.

Recommendations by the Committee Against Torture[1]	Assessment of implementation
7. Take all appropriate measures to ensure that the KNCHR ... is provided with the necessary conditions to carry out its mandate to independently monitor all places of detention, including police stations	While KNCHR has been able to monitor prisons, by and large it is still prevented from monitoring police cells. This is the sort of recommendation which would gain from a high profile political statement at the HRC
8. Take effective measures to bring conditions of detention into line with UN standard minimum rules for the treatment of prisoners ... allocate the material, human and budgetary resources necessary to: ... reduce overcrowding in prisons ..., ensure availability of adequate health services in prisons ..., reduce the high level of violence inside prisons ..., and strengthen judicial supervision of conditions of detention ...	A study by KNCHR in 2009,titled *'A True Measure of Society; An account of the status of human rights in Kenyan Prisons*' found that the Kenya Prisons Service had improved on provision of healthcare services and prisoners' diet. However, budgetary deficits impeded efforts towards improvement and overcrowding, torture, poor sanitation and corruption remained endemic and Judicial Supervision of conditions of detention was non-existent.
9. Adopt the necessary measures to bring expulsion and refoulement procedures and practices fully in line with article 3 of the convention ... expulsion and refoulement of individuals should be decided after careful assessment of the risk of being tortured in each case and should be subject to appeal ...	This has also not been given effect; in certain instances, there have been ssystematic rendition of individuals from Kenya to other states, particularly Somalia then to Ethiopia, without any assessment of risk being carried out.

Recommendations by the Committee Against Torture[1]	Assessment of implementation
10. Ensure that any measure taken to combat terrorism is in accordance with security council resolutions 1373 (2001) and 1566 (2004), which require that anti-terrorist measures be carried out with full respect for, inter alia, international human rights law ...	This recommendation has not been effected concretely
11. Reinforce and expand the human rights training programmes ... to bring about change in attitudes and behaviour. Training should include the prohibition of torture as a specific crime of grave nature and should be made available to all law enforcement personnel ...	Implemented in part through KNCHR's training of law enforcement officers on the laws on Torture
12. Take immediate action to ensure prompt, impartial and effective investigation of all allegations of excessive use of force and torture by the police ..., including sexual violence and gang rape, with the aim of prosecuting and punishing perpetrators ... ensure that the victims of post-election violence obtain redress and adequate compensation	Victims of post-election violence are yet to obtain compensation after efforts to establish a local mechanism to deal with perpetrators of the post-election violence failed.

Recommendations by the Committee Against Torture[1]	Assessment of implementation
13. Take immediate action to ensure prompt, impartial and effective investigations into the allegations of use of excessive force and torture by the military during the "operation okoa maisha" in march 2008 ... ensure that perpetrators are prosecuted and punished ..., that the victims who lost their lives are properly identified and that their families, as well as the other victims, are adequately compensated	This recommendation is yet to be implemented. In 2010, victims of ''Operation okoa maisha'' filed a suit in the East African Court of Justice regarding the government's failure to investigate the executions, torture, cruelty, and degrading treatment the victims were subjected to.
14. Adopt effective measures to prevent the use of excessive force during evictions and provide specific training on such actions for police officers, and ensure that complaints concerning forced evictions are thoroughly investigated and that those found responsible are brought to trial	Partially implemented through revision of the Curriculum for police training.

Recommendations by the Committee Against Torture[1]	Assessment of implementation
15. Take vigorous steps ... to eliminate impunity for perpetrators of acts of torture and ill-treatment by ensuring that all allegations are investigated promptly, effectively and impartially, that perpetrators are prosecuted and convicted in accordance with the gravity of the acts, and that victims are adequately compensated ...	Not yet implemented
16. Take the necessary measures to ensure that all individuals who may have been subject to torture and ill-treatment have the possibility to complain and their case promptly and impartially examined ... ensure that all necessary steps to file a complaint are facilitated, including access to medical assessment as required by the "p3 form".	Not yet implemented

Recommendations by the Committee Against Torture[1]	Assessment of implementation
17. ... take all necessary legal and administrative measures to protect women and children from all forms of violence ... facilitate access to justice for women, including through the revision of section 38 of the criminal procedure code ... ensure the speedy enactment of relevant legislation, including the domestic violence (family protection) bill, the anti-trafficking in persons bill, the equal opportunities bill and the matrimonial property bill ...	Partially implemented through enactment of the Counter-trafficking in persons Act, (No. 8 of 2010). The family Law Bills, including the Family Protection Bill and the Matrimonial Property Bill are yet to be enacted.
18. Take all necessary steps to eradicate the practice of female genital mutilation, including through the intensification of nationwide awareness raising campaigns, and to punish the perpetrators of such acts	Partially implemented though largely through the efforts of civil society organizations.

Recommendations by the Committee Against Torture[1]	Assessment of implementation
19. Take effective steps to ensure that all persons reporting on acts of torture and ill-treatment are protected from intimidation and from any form of reprisal as a result of their activities ... seek closer cooperation with civil society in preventing torture, in particular in the ongoing process of investigating and holding persons accountable for the post-election violence	Not yet implemented
20. Take the necessary steps to establish an official and publicly known moratorium on the death penalty with a view of eventually abolishing the practice ... take the necessary measures to improve the conditions of detention for persons serving on death row in order to guarantee basic needs and rights	The moratorium is in place; however steps are yet to be taken towards abolishing the practice.

Annex III: Members of the KSC-UPR[28]

Cluster	Organisation
Civil and Political Rights Cluster	• The Kenya Section of the International Commission of Jurists (ICJ Kenya-Convenors)- www.icj-kenya.org • Transparency International • AFRICA HOUSE • Legal Resources Foundation Trust • Muslim Consultative Committee • Independent Medico-Legal Unit (IMLU) • Kituo Cha Sheria • Bunge La Mwananchi • Centre for Enhancing Democracy and Good Governance (CEDGG) • Development through Media (DTM) • Kenya National Commission on Human Rights • Open Society Initiative of East Africa (OSIEA)
Economic, Social and Cultural Rights Cluster	• Kenya Human Rights Commission (KHRC-(Convenors)- www.khrc.or.ke • East African Coalition for Social and Cultural Rights (EACOR) • Social Reform Centre(SOREC) • Mount Kenya Human Rights Network • OXFAM IYP/CWF • Health NGOs Network (HENNET) • Samia Environmental Management • Centre for Law and Research International • Kenya National Civic Education Programme (URAIA) • Goal Kenya • Elimu Yetu Coalition • Seed Institutue • Global Call to Action against Poverty (GCAP Kenya) • Kenya Youth Education & Community Development Programme (KYCEP) • Daraja Civic Initiatives Forum

28 These were the organizations which presented a joint KSC-UPR report to the Office of the High Commissioner for Human Rights on 2nd November 2009

Cluster	Organisation
Rights of Children Cluster	• Kenya Alliance for the Advancement of Children's Rights (KAACR -Convenors)- www.kaacr.com • African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN Kenya) • Young Muslims Association • The CRADLE (The Children's Foundation) • Zabibu Special Needs Centre • Children Legal Action Network (CLAN) • International Child Support (ICS) Africa • Undugu Society • Legal Resources Foundation • Girl Child Network • Tomorrow's Child Initiative(TCI)
Rights of the Youth Cluster	Youth Agenda (Convenors)- www.youthagenda.org • Youth Alive Kenya • Young People's Forum • Kenya Youth Education and Community Development Program • Seed Institute • Bunge la Wananchi
Rights of Older Persons Cluster	• HelpAge Kenya(Convenors)- www.helpagekenya.org • HelpAge International • Lavington United Church

Cluster	Organisation
Women's Rights Cluster	• Federation of Women Lawyers- Kenya (Convenors)- http://fidakenya.org • Coalition of Violence Against Women (COVAW) • League of Kenya Women Voters • Caucus for Women Political Leadership • Centre for Rights Education and Awareness(CREAW) • Women in Law and Development (WILDAF) • African Women & Child Features(AWC) • Development Through Media (DTM) • Young Women Leadership Institute (YWLI) • Bar Hostess Empowerment Programme • National Council of Women in Kenya (NCWK) • Maendeleo ya Wanawake (MYWO) • Kenya National Deaf Women Peace Network (KNDWOPNET) • Coast Women Right • Kenya Female Advisory Organisation (KEFEADO) • The League of Kenya Women Voters
Rights of Persons with Disabilities Cluster	• United Disability Empowerment Kenya (UDEK) -Convenors • United Disabled Persons of Kenya (UDPK) • Kenya Society for the Blind • Zabibu Special Needs Centre • Kenya Association for the Intellectually Handicapped • Global Deaf Connection • Kenya National Deaf Women Peace Network • Joint Epilepsy Foundation • Kenya Sign Language Interpreters Association • Federation of and for people with disability • Kenya Sign Language Interpreters Association

Cluster	Organisation
Rights of Indigenous Groups and Minorities Cluster	• The Centre for Minority Rights Development CEMIRIDE (Convenors)- www.cemiride.or.ke • The League of Pastoralist Women of Kenya (MPIDO) • MAA Civil Society Forum • Indigenous Fisher People's Network • Ogiek People's Development Programme • Isiolo Human Rights Network • NCCK Lower Eastern Migori Human Rights Network
Rights of Sexual Minorities Cluster	• Gay and Lesbian Coalition of Kenya (GALCK) – Convenors- http://galck.org • Minority Women in Action • Ishtar MSM • Centre for Legal Information and Communication in Kenya (CLICK) • Transgender Education and Advocacy • Gay House • Bar Hostess Program