



General Assembly

Distr.: Limited
10 May 2010

Original: English

Human Rights Council
Working Group on the Universal Periodic Review
Eighth session
Geneva, 3-14 May 2010

Draft report of the Working Group on the Universal Periodic Review*

Kenya

* The final document will be issued under the symbol A/HRC/15/8. The annex to the present report is circulated as received.

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Introduction

1. The Working Group on the Universal Periodic Review, established in accordance with Human Rights Council resolution 5/1, held its eighth session from 3 to 14 May 2010. The review of Kenya was held at the 7th meeting, on 6 May 2010. The delegation of Kenya was headed by The Honourable Mutula Kilonzo, Minister for Justice, National Cohesion and Constitutional Affairs. At its 11th meeting, held on 10 May 2010, the Working Group adopted the report on Kenya.
2. On 7 September 2009, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Kenya: Bangladesh, Egypt and Mexico.
3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of Kenya:
 - (a) A national report submitted/written presentation made in accordance with paragraph 15 (a) (A/HRC/WG.6/8/KEN/1);
 - (b) A compilation prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in accordance with paragraph 15 (b) (A/HRC/WG.6/8/KEN/2);
 - (c) A summary prepared by OHCHR in accordance with paragraph 15 (c) (A/HRC/WG.6/8/KEN/3).
4. A list of questions prepared in advance by Argentina, Belgium, the Czech Republic, Denmark, Germany, Ireland, Latvia, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland was transmitted to Kenya through the troika. Those questions are available on the extranet of the universal periodic review.

I. Summary of the proceedings of the review process

A. Presentation by the State under review

5. The head of the Kenyan delegation stated that the report had been formulated and validated through wide consultations involving the Government, the Kenya National Commission on Human Rights, civil society and other stakeholders.
6. Kenya gained independence in 1963 and had been a constitutional multi-party democracy since 1991. There were three arms of the Government: the President was head of the executive, and the unicameral legislature consisted of the National Assembly, while the judiciary was an independent arm of the Government.
7. The primary sources of the laws of Kenya included the Constitution, Acts of Parliament and other specific pre-independence Acts, African customary law and Islamic law.
8. Kenya had a long-term plan, Kenya Vision 2030, to guide its development agenda, and the first medium-term plan was under implementation. Among the priority areas under implementation were projects aimed at national healing and reconciliation, as well as economic reconstruction, with an emphasis on equity; the creation of additional employment opportunities, especially for young people; and the attainment of gender balance.
9. Chapter V of the Constitution provided for fundamental rights and freedoms, without discrimination, subject to respect for the rights of others and for the public interest.

The High Court had inherent jurisdiction in cases involving violations of fundamental rights and was vested with wide powers in that regard. Rights could also be invoked as part of the ordinary court procedure.

10. Parliament had adopted many laws to implement those constitutional rights, as well as those set out in international and regional human rights instruments ratified by Kenya. It had also established institutions to ensure their implementation, such as the National Commission on Gender and Development and the Kenya Anti-Corruption Commission.

11. Other institutions dealt with human rights, such as the Kenya National Commission on Human Rights and the Public Complaints Standing Committee, as well as transitional mechanisms set up to address human rights violations committed after the 2007 presidential elections, including the Commission of Inquiry on Post-Election Violence (the Waki Commission).

12. Kenya was party to most of the core international and regional human rights instruments. International instruments were integrated into domestic law through a single law or several laws.

13. Among achievements in the area of safeguarding human rights, Kenya specifically referred to the following: the 2006 Witness Protection Act, recently amended and operationalized; a de facto moratorium on the death penalty, in force since 1987, with the president recently having commuted 3,953 death sentences to life imprisonment while initiating a national reflection process on the issue; the revamping of the Kenya Prison Service with a view to guaranteeing relevant international standards; and the enactment of the Political Parties Act.

14. Kenya had various national anti-poverty programmes, including the Economic Stimulus Programme 2009, the “Kazi Kwa Vijana” (employment for young people) programme and the Constituency Development Fund.

15. With regard to universal free primary education, school enrolment was on the increase, as well as the rate of transition from primary to secondary education. Measures were being taken to assist the most vulnerable children and children with special needs.

16. Kenya had enacted a number of laws and had developed policies regarding the right to health, such as the HIV and AIDS Prevention and Control Act and the National Malaria Strategy.

17. Concerning the right to housing, Kenya had developed a National Housing Policy and a National Housing Bill and had made great strides in upgrading informal settlements under the Slum Upgrading Programme.

18. With respect to the right to work, Kenya referred to the Employment Act 2007, the Labour Relations Act 2007, the Work Injury Benefits Act 2007 and the Occupational Safety and Health Act 2007.

19. In 2008, the African Report on Child Well-being rated Kenya as one of the most child-friendly African Governments, owing to appropriate legal provisions aimed at protecting children’s rights.

20. Among the challenges and constraints that it faced, Kenya mentioned poverty, inequality and unemployment, all of which were being addressed through Vision 2030 and anti-poverty programmes. In addition, ineffective constitutional and outdated laws were being addressed through the new draft constitution, which had been published on 6 May 2010 and should be put to a referendum in three months’ time. Corruption was being addressed through a policy and legal framework and a multi-stakeholder-driven National Action Plan. Child labour and overstretched prison facilities were other challenges being tackled.

21. Key national priorities included the constitutional review process and the judicial and police reforms. Since 2003, Kenya had expressed its commitment to addressing impunity for human rights violations as well as economic crimes. In July 2009, a Truth Justice and Reconciliation Commission had been appointed to that end.
22. Ethnicity remained highly politicized, and the 2008 National Cohesion and Integration Act outlawed discrimination on ethnic grounds, through the operational National Cohesion and Integration Commission.
23. Enhancing security was a major concern, and administrative and institutional reforms were ongoing. Poverty remained a major impediment to the meeting of basic needs, particularly for women and children. Efforts were being focused on universal primary education, access to basic health and expanded productive capacity in agriculture.
24. The Environmental Policy Framework Paper, aimed at tightening environmental management, policy and legislation, had commenced.
25. Kenya was committed to working closely with the special procedures, as demonstrated by the visit of six special rapporteurs.
26. Kenya welcomed assistance in building capacity sufficient to develop appropriate human rights indices and in the operationalization of the new constitution.
27. Despite all the challenges it faced, Kenya was committed to the promotion and protection of human rights at the national and international levels. Kenya had finalized the development of a National Policy and Action Plan for Human Rights so as to rationally establish human rights goals and priorities and link human rights to the national planning and development agenda.

B. Interactive dialogue and responses by the State under review

28. During the interactive dialogue, 55 delegations made statements. Twenty-two additional statements, which could not be delivered during the interactive dialogue owing to time constraints, will be posted on the extranet of the universal periodic review when available.¹ Recommendations made during the dialogue are found in section II of the present report. Many delegations welcomed the comprehensive national report, which had been formulated through a consultative process involving all relevant stakeholders and the commitment of Kenya to the universal periodic review.
29. Burkina Faso welcomed the fact that Kenya was a party to most of the core human rights instruments. It noted with satisfaction achievements related to human rights protection, including the establishment of legislative guarantees, the institutional framework and its cooperation with international human rights mechanisms. It referred to difficulties persisting in terms of food security and protecting the rights of minorities and marginalized groups, and encouraged the pursuit of legislative and institutional reforms to improve human rights in those areas with the support of OHCHR. It made a recommendation.
30. India felt encouraged by Kenya's policy efforts, particularly the first medium-term plan under Vision 2030, aimed at national reconciliation and economic development. Referring to institutional and structural shortcomings, India acknowledged the comprehensive legislative review under way. It recognized various poverty alleviation

¹ Switzerland, the Congo, Latvia, Pakistan, Nepal, Chile, Canada, Poland, Thailand, Sri Lanka, Mozambique, Rwanda, Maldives, South Africa, Lesotho, the Democratic People's Republic of Korea, Burundi, the United Republic of Tanzania, Ghana, Cameroon, Ethiopia, Italy.

initiatives and sought information about measures taken to increase employment for persons with disabilities and to ensure the financial autonomy of the National Commission on Human Rights.

31. Egypt welcomed efforts to promote and protect human rights, in particular economic, social and cultural rights, noting poverty eradication plans and programmes and efforts to ensure the right to education and health. It commended Kenya's commitment to achieving the Millennium Development Goal on gender equality and women's empowerment. It appreciated the Women Enterprise Fund and the Government's pledge to allocate additional resources to it. Egypt made recommendations.

32. Algeria congratulated Kenya on its Vision 2030, aimed at providing a high quality of life and promoting economic, social and cultural rights. It noted Kenya's policy aimed at the swift resettlement of persons internally displaced as a result of the post-election violence. It sought information about national reconciliation initiatives and their impact on the enjoyment of human rights. Algeria made recommendations.

33. Zimbabwe noted that Kenya attached great importance to human rights protection and was actively involved in the work of human rights organizations. It noted civil society engagement in human rights issues. Zimbabwe made recommendations.

34. Djibouti welcomed Kenya's achievements regarding education, health, and women's and children's rights. It supported the Government's commitment to promoting sustainable peace, stability and justice. Djibouti welcomed the Children's Act and noted the significant steps taken to combat impunity. It referred to the ongoing police and prison reforms, the witness protection programme, the HIV/AIDS Prevention and Control Act and the moratorium on the death penalty.

35. The Libyan Arab Jamahiriya noted that Kenya had endeavoured to protect human rights through the Constitution and the creation of human rights and transitional mechanisms. It noted national programmes to combat poverty and to ensure free primary education and access to health-care services. It referred to the improvement of production capacities in agriculture and to the rehabilitation of arid and semi-arid areas. Child labour was a major challenge, and children continued to be victims of trafficking and exploitation. It made recommendations.

36. Slovakia commended Kenya, notably for a de facto moratorium on the death penalty. Slovakia referred to the concerns expressed by the Committee against Torture regarding prison conditions in 2008, by the Committee on the Rights of the Child about instances in which children had been treated as adult offenders and limited progress in establishing a functional juvenile justice system outside Nairobi, and by a number of treaty bodies about genital mutilation. Slovakia welcomed the introduction of free primary and free secondary education. Slovakia made recommendations.

37. Cuba noted that Kenya had achieved socio-economic development since independence despite the unjust international economic order, the impact of the international crisis and increasing planetary challenges for humankind. It highlighted programmes to combat poverty, particularly job creation measures, food aid provision and increased food production. Primary education was universal and free, and enrolment rates had increased. Cuba noted measures regarding HIV/AIDS, reproductive health, malaria, progress in adequate housing, and the rights of workers and children. Cuba made a recommendation.

38. Turkey commended Kenya for its efforts to review the Constitution, and the establishment of the National Commission on Human Rights, the Public Complaints Standing Committee and the Constituency Development Fund. It welcomed the Kenya

Vision 2030 programme. Turkey noted that the maternal and infant mortality rates had remained high. It made recommendations.

39. Bolivia acknowledged Kenya's Vision 2030, encouraging the inclusion of economic, social and cultural rights in order to improve living standards. It noted efforts to alleviate poverty through the promotion of employment and productive activities, and it encouraged Kenya to ensure food security. Free education had led to overcrowded schools and reduced quality. Information about the implementation of the recommendations of the Special Rapporteur on indigenous peoples was sought. Bolivia made recommendations.

40. Botswana appreciated Kenya's commitment to improving human rights, including through the witness protection programme, National Vision 2030 and programmes relating to children's rights. It hoped that Kenya would benefit from cooperation with the United Nations human rights system. Botswana made recommendations.

41. Spain recognized the democratic progress that Kenya had made by reviewing the Constitution. It invited Kenya to hold consultations with relevant communities and civil society in order to develop programmes aimed at ensuring adequate housing for all. Spain made recommendations.

42. Morocco acknowledged the duration and scope of Kenya's Vision 2030, allowing for the promotion of all manner of rights, including national reconciliation, employment and the just and equitable development of all regions. The contribution made by the "Kazi Kwa Vijana" programme to the fight against poverty as well as the objective of the Constituency Development Fund were recognized. Morocco welcomed the constitutional and judicial reforms. It made a recommendation.

43. Niger welcomed the formulation of Kenya's Vision 2030 and the establishment of the national human rights commission in conformity with the Paris Principles. Niger made recommendations.

44. The United States of America noted with satisfaction the establishment of a police reform commission and asked about the progress achieved. It remained concerned that the police continued to kill, arbitrarily arrest and extort bribes and failed to observe the due process of law, and that the Government had not fully implemented recommendations of the Commission of Inquiry on Post-Election Violence. It urged that Parliament amend the Witness Protection Act to improve the mechanism for the protection of individuals testifying against human rights abuses. It made recommendations.

45. The head of the Kenyan delegation thanked delegations for their encouraging comments. Kenya was in the process of ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and had ratified ILO Convention No. 143, on Migrant Workers. Kenya had laws that protected the rights of migrant workers and their families, as demonstrated by the Employment Act of 2007. The International Organization for Migration was supporting Kenya in that regard.

46. Concerning the employment of persons with disabilities, the Persons with Disabilities Act required employers to reserve 5 per cent of their employment opportunities for persons with disabilities. It also prohibited discrimination by employers and required them to provide reasonable accommodation for such persons. Further, the law provided for tax incentives for the employers of persons with disabilities.

47. The practice of female genital mutilation was on the decline, although wide disparities among geographic areas were witnessed in that regard. Vision 2030 referred to female genital mutilation, and measures that had been taken included the establishment of a National Committee on the Abandonment of Female Genital Mutilation, the formulation of a national policy on female genital mutilation, a draft bill on female genital mutilation and various awareness-raising campaigns across the country.

48. Regarding gender-based violence, the following measures had been taken. A taskforce had been established on the operationalization of the Sexual Offences Act 2006, which had developed regulations and a sexual offences manual for the training of investigators and police officers. Gender desks at police stations and a gender-based violence recovery centre had been established. Between 2005 and 2009, there had been a 11.5 per cent decrease in the number of persons reported as having committed offences against morality. Finally, a national framework on gender-based violence had been developed in 2009. Gender-based violence had also received great attention during the post-election violence.

49. The Government of Kenya had been committed to the abolition of the death penalty, but there was widespread public support for its retention, as had recently been observed during the constitutional review. Kenya was working with the Kenya National Commission on Human Rights to create awareness of public support for abolition.

50. With regard to same-sex relationships, there had been serious intolerance because of cultural beliefs and overwhelming opposition to the decriminalization of such relationships, as observed during the constitutional review process. However, the Government did not support discrimination in terms of access to services.

51. Kenya was working hard to achieve food security, and assistance in that area would be welcome, particularly in view of climate change.

52. Kenya attached great importance to police reform and thanked the United Kingdom, Sweden and other countries for their support.

53. The International Criminal Court had been authorized to investigate post-election violence in Kenya, and the Prosecutor was due to commence an investigation. Despite the investigations and prosecutions, Kenya's ultimate goal was to seek reconciliation; hence the establishment of the National Commission on Integration.

54. Kenya was reviewing the minimum age of criminal responsibility.

55. Indonesia welcomed Kenya's intention to review the Constitution to provide for the explicit protection of economic, social and cultural rights and the improved protection of vulnerable groups. It acknowledged the establishment of Kenya's National Commission on Human Rights and the importance of Vision 2030 for Kenya's advancement. Despite increased enrolment rates owing to free and compulsory education, a lack of access for children from poor households was noted. Indonesia made recommendations.

56. Belgium welcomed Kenya's commitment, set out in Vision 2030, to the establishment of a political system promoting the rule of law and all rights and freedoms. Noting the delegation's comments on the death penalty, it stated that that penalty undermined human dignity. In 2009, the Special Rapporteur on extrajudicial killings had castigated Kenyan police forces and judicial authorities and had confirmed that human rights defenders were being harassed by law enforcement officials. Belgium inquired about police reforms. It made recommendations.

57. China appreciated the Vision 2030 anti-poverty programme, the 2009 economic stimulus package and the strengthening of the rule of law. It noted progress made in protecting the right to health, social protection and education. China expressed confidence that, with sustained efforts, Kenya would make progress in economic and social areas and in the promotion of human rights. It made recommendations.

58. Mexico noted Kenya's constitutional reform and its remaining challenges due to, inter alia, poverty, institutional and political instability and the persistence of harmful and discriminatory policies. It acknowledged measures to increase the age of criminal

responsibility and to introduce alternative means of juvenile detention. Mexico made recommendations.

59. Malaysia noted that Kenya had endeavoured to undertake wide-ranging institutional and administrative reforms to promote and protect human rights. It referred to the development agenda and Vision 2030, aimed at a democratic and free society, and noted Kenya's readiness to work with human rights mechanisms. Malaysia made recommendations.

60. Slovenia commended Kenya for the adoption of the proposed constitution and cooperation with the International Criminal Court. Slovenia expressed concern about the reported excessive use of force by police, systematic discrimination against women, the absence of legislation regarding violence against women, the continuation of the practice of female genital mutilation, and large numbers of street children. It asked about measures taken to end impunity and promote gender equality and non-discrimination. Slovenia appreciated the high school enrolment rate. Slovenia made recommendations.

61. Ireland welcomed Kenya's commitment to cooperating with the International Criminal Court, noting concerns regarding the protection of witnesses and human rights defenders. It inquired about intentions to make the de facto moratorium on the death penalty a legal moratorium. Access to education remained of concern, despite free primary education. Information was sought about programmes concerning children with special needs. Ireland made recommendations.

62. Netherlands noted that Kenya was facing human rights challenges. It inquired about measures to address the perceived gap between policy and practice in combating corruption and protecting witnesses. It requested information about the implementation of proposed reforms under the Kenya National Reconciliation Accord and measures to make same-sex relationships more acceptable in society. Netherlands made recommendations.

63. Sweden expressed concerns about reported impunity for crimes, notably those related to violence following the 2007 elections. It noted the reports of human rights violations and threats against human rights defenders. Sweden asked about measures taken to protect the population from acts of violence and end impunity, and to strengthen and implement existing legislation aimed at protecting human rights defenders. Sweden made recommendations.

64. Denmark was concerned that the Government had yet to fully implement the recommendations of the Waki Commission and of the Special Rapporteur on extrajudicial killings. It asked how the Government intended to deal with the perpetrators of grave human rights violations. Denmark inquired about measures to eradicate the torture and ill treatment of detainees, and requested information about the implementation of the recommendations made by the Special Rapporteur on the rights of indigenous people following his 2007 visit. Denmark made recommendations.

65. Venezuela (Bolivarian Republic of) emphasized that Kenya's Vision 2030 should take into account the need to create stable jobs and reverse high youth unemployment rates. It welcomed Kenya's approach in addressing poverty, which affected more than half of its population, noting that special attention should be devoted to vulnerable groups such as women and children. Venezuela made a recommendation.

66. Argentina highlighted the fact that Kenya's national human rights institution had received 'A' status accreditation from the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights. Argentina made recommendations.

67. Somalia thanked Kenya for its key role in stabilizing Somalia and hosting a large number of Somali refugees. It noted that, after the closure of the Kenya-Somali border,

there had been increasing concern about the human rights situation of a large number of Somalis. It noted achievements in terms of promoting social and economic rights, in particular the right to education and health. Somalia made a recommendation.

68. Austria welcomed the de facto moratorium on the death penalty and legislative measures to reform the police and improve witness protection. It remained concerned at the wider context of the rule of law, including weak institutions, systemic corruption, police violence, an ineffective judiciary and acts of retaliation against witnesses cooperating with special procedures. Austria made recommendations.

69. Uruguay highlighted Kenya's efforts in the area of human rights protection, including the adoption of Vision 2030. Uruguay encouraged Kenya to continue efforts to implement international human rights instruments. It appreciated the self-critical approach of Kenya to its record in protecting children's rights and highlighted progress in refraining from the use of the death penalty. Uruguay made recommendations.

70. Singapore noted the challenges and constraints faced by Kenya, including with regard to poverty and inequality, governance, the rule of law and corruption. It was encouraged by the enhancement of the policy environment for advancing human rights, and it recognized Kenya Vision 2030. Singapore supported Kenya in capacity-building for development. It noted the National Cohesion and Integration Act 2008, aimed at addressing the problem of negative ethnicity.

71. Brazil welcomed efforts concerning the right to food, such as the integration of smallholder farming production with school feeding and the provision of credit and insurance for local producers, and inquired about challenges and required assistance. With respect to domestic violence, low complaint numbers and the absence of legislative provisions remained of concern. It proposed the establishment of specialized entities to protect women and the training of law enforcement officials on the investigation and prosecution of sexual violence against children, child prostitution and trafficking. Brazil made recommendations.

72. The Czech Republic expressed appreciation for Kenya's participation in the universal periodic review. It acknowledged the existence of legislation prohibiting female genital mutilation. It made recommendations.

73. Germany, referring to the priority placed by Kenya on the swift resettlement of internally displaced persons, noted the lack of access to basic rights and services for hundreds of displaced, and requested information about Kenya's plans to address the situation. It made recommendations.

74. France inquired about the objectives of mechanisms created to overcome the impact of the 2007 electoral violence. It was concerned that those responsible for electoral violence had not been identified and that many witnesses and human rights defenders had been killed. It expressed concern about the delay in establishing a credible ad hoc local tribunal. France welcomed progress regarding women rights. However, violence and discrimination against women, in particular female genital mutilation, remained widespread. France made recommendations.

75. Azerbaijan noted with satisfaction that Kenya was party to almost all core human rights instruments and was considering accession to the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families. It welcomed the adoption of the Kenya Vision 2030 programme. Azerbaijan made recommendations.

76. Japan hoped that the voting in the public referendum on the recently adopted draft constitution would take place in a fair manner. It noted that, during the violence following the 2007 election, more than 1,000 people had been killed and many displaced. Japan hoped

that the Government would continue to make progress on anti-poverty measures and national reconciliation and would support the return of internally displaced persons. It commended reform initiatives and efforts to address the issue of witness protection. Japan made recommendations.

77. Equatorial Guinea commended Kenya for its adoption of Vision 2030 to ensure sustained economic growth and to build a just and cohesive society and a democratic political system. It acknowledged the universal primary education policy and the adoption of the Children's Act. Recognizing measures to widen and diversify the protection of women, such as the Women Enterprise Fund, it sought information about further steps intended.

78. Australia urged Kenya to maintain the momentum towards a national referendum on the draft constitution and to strengthen the rule of law, carry out judicial reform and hold accountable those responsible for the 2007 election violence. Australia welcomed the International Criminal Court investigation into alleged crimes against humanity. It expressed concern about the insufficient assistance to internally displaced persons, sexual violence and the trafficking in children, maternal mortality, HIV/AIDS, gender-based violence and the continued imposition of the death penalty. Australia made recommendations.

79. Belarus considered that the national report comprehensively and objectively reflected problems, including the 2007 political crisis and the situation of internally displaced persons. Belarus positively assessed Kenya's commitment to implementing the Millennium Development Goal on gender equality by 2015 and to expanding rights and opportunities for women. Belarus made recommendations.

80. The United Kingdom acknowledged the progress on the draft constitution providing greater Government accountability. Welcoming Kenya's commitment to cooperate with the International Criminal Court, it noted the need for a complementary local tribunal to bring other perpetrators to justice. It urged Kenya to condemn and eradicate the intimidation of witnesses and to safeguard human rights defenders. It made recommendations.

81. Portugal welcomed Parliament's adoption of a new draft constitution, to be submitted to a referendum. It praised the Government for reaffirming its will to continue to cooperate with the International Criminal Court in investigating and punishing persons responsible for crimes committed during the post-election violence. It asked about the implementation of recommendations set out in the 2009 report of the Special Rapporteur on extrajudicial executions. Portugal made a recommendation.

82. Hungary appreciated the fact that Kenya was party to almost all core human rights conventions and that it had established national human rights institutions in accordance with the Paris Principles. It welcomed the adoption of the draft constitution and cooperation with the International Criminal Court. It encouraged Kenya to pursue efforts to enhance the effectiveness of the institutions entrusted with the enforcement of human rights. Hungary made recommendations.

83. Finland, supporting Kenya's constitutional and electoral reforms, noted remaining challenges concerning the judicial system and police forces. It expressed concern at reported threats and physical violence against human rights defenders and the alleged involvement of security forces, and requested information about related investigations and intended actions to ensure their protection. Information was sought about witness protection measures regarding reported threats against witnesses in the International Criminal Court investigation of the post-election violence. Finland made recommendations.

84. Angola welcomed the steps taken by Kenya to achieve national reconciliation and restore unity, and the initiatives to promote economic and social rights. It commended

Kenya for the efforts to ensure the best attainable standards of health and for its rating as the most child-friendly African Government in 2008. Angola made a recommendation.

85. Saudi Arabia noted that Kenya was party to the main human rights instruments and had set up mechanisms for implementing human rights standards and compensating victims of human rights violations. Despite challenges, Kenya had been able to make large strides in promoting the right to education and health. A National Policy and Human Rights Action Plan was being drawn up. It made a recommendation.

86. The Holy See, acknowledging the de facto moratorium on the death penalty since 1987, noted its continued imposition for crimes other than the most serious ones set out in ICCPR and encouraged Kenya to include in the new constitution the right to life from conception to natural death. The high maternal mortality rate was noted. It made recommendations.

87. The Republic of Korea noted with appreciation Kenya's efforts to promote civil and political rights through a witness protection programme and prison reforms and to promote economic, social and cultural rights through anti-poverty programmes. The Republic of Korea welcomed the implementation of universal free primary education. It stressed the need for a new constitutional order and the importance of the successful pursuit of Vision 2030. It made recommendations.

88. Norway emphasized the State's primary responsibility for human rights protection regardless of the challenges faced, noting its contribution to stability and State legitimacy. It expressed concern at the curtailment of the freedoms of expression and assembly and stressed the importance of addressing the culture of impunity, including for reconciliation, and of supporting the International Criminal Court process. Constitutional progress was acknowledged. Norway made recommendations.

89. The Sudan appreciated Kenya's role in restoring peace in the south of the Sudan. It mentioned the legal reform programme, including with regard to the Constitution, the judiciary and human rights. The Sudan commended the establishment of the truth, justice and reconciliation commission and the adoption of plans and laws to eradicate corruption and ensure administrative reform. It referred to transitional justice and national reconciliation principles as important means to resolve disputes and provide compensation. The Sudan made recommendations.

90. Senegal noted Kenya's commitment to human rights protection and the universal periodic review mechanism, which had been reflected in particular by the adoption of a number of measures for the protection of civil, political, social and economic rights. Senegal made recommendations.

91. Chad noted that the post-election violence had created awareness of the negative role of ethnicity, the need for reforms related to the Constitution, the judiciary and the police, and the need to combat impunity and political violence. Measures in the area of education, health and poverty reduction, in the light of an arid territory and resource constraints, were also acknowledged. It made a recommendation.

92. Kuwait stressed that the Government had made intense efforts to promote equality and alleviate poverty by focusing on universal primary education, improving access to health-care services and expanding production capacities in terms of agriculture and the development of arid areas. Kuwait made recommendations.

93. Nigeria commended Kenya for having engaged in broad consultation in the process of preparing its national report and for its development agenda, aimed at becoming a middle-income country. It was encouraged by the country's incorporation of a substantial number of ratified international human rights instruments into its domestic legislation.

Nigeria acknowledged the Government's efforts to protect economic, social and cultural rights. Nigeria made a recommendation.

94. Kenya stated that the establishment of the National Task Force on Police Reform had been a recommendation of the Waki Commission. Several recommendations of the Task Force were being implemented, including those concerning the role of the Administration police, the establishment of an independent complaints commission and the recruitment and training of more police officers. A budget of \$11 billion was recommended for implementation by 2012.

95. Kenya had been taking action regarding police suspected of unlawful killings. Since 2005, 34 police officers had been charged, and challenges would be overcome once the Witness Protection Act had been operationalized. Kenya condemned the killing of two human rights defenders, and investigations were under way.

96. Kenya had undertaken a number of anti-corruption initiatives, including the establishment of special courts, the inclusion of anti-corruption units in all Government institutions, the development of a national anti-corruption policy, and public education. Suspects in large corruption cases had been prosecuted, with a number of convictions.

97. In terms of the ratification of various protocols, a Consultative Committee on International Human Rights Obligations was examining them with a view to advising on ratification. Concerning the inspection of detention places as provided for in OP-CAT, the Kenya National Commission on Human Rights was already vested with that competence.

98. Regarding gender issues, the new draft constitution enshrined provisions on the elimination of all forms of discrimination against women, as well as gender equality and affirmative action. The Kenya National Commission on Human Rights, together with other entities, had carried out awareness-raising programmes on gender discrimination. The Women Enterprise Fund had been established in 2007 with a view to women's economic empowerment.

99. The Government, in collaboration with the civil society, had undertaken various legislative and administrative measures aimed at ensuring children's rights, particularly combating child labour and child marriage. The Children's Act 2001 had been operationalized through the National Plan of Action on Children 2008-2012.

100. The head of delegation thanked all delegations for their interest and the troika for its assistance. Kenya's commitment to cooperating with the International Criminal Court was not a favour, but an obligation under the International Crimes Act; therefore, the Prosecutor of the Court prosecutor would receive support. He assured the Human Rights Council of Kenya's continued support.

II. Conclusions and/or recommendations

101. The recommendations formulated during the interactive dialogue listed below have been examined by Kenya and enjoy its support:

101.1. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (Burkina Faso);

101.2. Consider ratifying ICRMW (Algeria);

101.3. Consider ratifying OP-CAT (Denmark);

101.4. Consider ratifying the Convention on the Prevention and Punishment of the Crime of Genocide (Brazil);

- 101.5. Undertake specific measures to ensure the implementation of international United Nations and African human rights conventions, and develop and streamline domestic legislation ensuring the constitutional rights of citizens (Finland);
- 101.6. Continue to carry out the identified constitutional, judicial and police reforms (Zimbabwe);
- 101.7. Ensure that the new constitution of the country takes greater account of the dimension of human rights protection and promotion, as well as of democracy (Niger);
- 101.8. Unite behind a new constitution through a fair referendum, and fully implement the result (United Kingdom);
- 101.9. 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);
- 101.10. Enact as a matter of urgency the Freedom of Information Bill (Norway);
- 101.11. Set up mechanisms to implement the national child act, which incorporates the Convention on the Rights of the Child and which is considered a positive step that grants applicable rights to Kenyan children (Libyan Arab Jamahiriya);
- 101.12. Continue to implement the core elements of the Children's Act, which is a great step forwards in the achievement of the Millennium Development Goals (Angola);
- 101.13. Undertake all measures, including by seeking technical assistance and capacity-building to address the concerns relating to the need to strengthen institutions responsible for the enforcement of human rights (Botswana);
- 101.14. 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 (Indonesia);
- 101.15. Establish an independent, credible and authoritative Police Oversight Authority, with sufficient powers and resources (United Kingdom);
- 101.16. Accelerate the process of finalizing its National Policy and Action Plan for human rights, and strengthen its national human rights infrastructure (Egypt);
- 101.17. Include in the national action plan for the promotion and protection of human rights continued attention to and focus on children and an emphasis on ensuring their right to health and education (Saudi Arabia);
- 101.18. Consider expediting the adoption process of the Kenyan National Policy and Action Plan for human rights (Malaysia);
- 101.19. Adopt a national plan of action on children and children's rights (Germany);
- 101.20. Fully implement the proposals made by the National Task Force on Police Reforms (United States of America);
- 101.21. Strengthen efforts to implement the key reforms, including the police reform (Netherlands);
- 101.22. Accelerate the judicial and police reform processes (France);

- 101.23. Resolve issues related to truth, justice and reconciliation within the national framework (Sudan);
- 101.24. Devote attention to transitional justice and national reconciliation as an approach used to contain disputes and prevent their recurrence (Sudan);
- 101.25. Take all measures necessary to contribute to the promotion of tolerance and national cohesion (Senegal);
- 101.26. Take measures to comprehensively address long-standing issues identified under agenda item 4 of the Kenya National Dialogue and Reconciliation, including with regard to judicial and police reform (Australia);
- 101.27. Remain unswerving in pursuing measures geared at addressing the challenges that the Government identifies in its national report, in particular relating to good governance and respect for the rule of law (Botswana);
- 101.28. Further promote good governance (Azerbaijan);
- 101.29. Strengthen measures to address corruption (Netherlands);
- 101.30. Continue efforts to resolve the problems of internally displaced persons, and take all measures necessary to implement the Government's National Reconciliation and Emergency Social and Economic Recovery Strategy and the National Cohesion and Integration Act of 2008 (Belarus);
- 101.31. Strengthen and promote respect for civil and political rights through the judicial process regarding complaints initiated regarding the violation of such rights (Argentina);
- 101.32. Provide human rights training to judges, police officers, prison guards and all law enforcement officers (Brazil);
- 101.33. Better educate security and law enforcement authorities at all levels about the basic rights of the citizens, take each reported case seriously and impartially investigate and punish those found guilty of such actions (Finland);
- 101.34. Establish a human rights education system for members of the police and detention and prison staff, together with systems for the full and independent investigation and regular punishment of human rights violations by such personnel (Czech Republic);
- 101.35. Continue human rights education and training (Senegal);
- 101.36. Extend an invitation to the Special Rapporteur for human rights defenders (Norway);
- 101.37. Continue to take all efforts necessary to implement the recommendations of United Nations special procedures who have visited the country, and request international assistance to that end, if deemed necessary (Bolivia);
- 101.38. Intensify cooperation with the Office of the United Nations High Commissioner for Human Rights with a view to implementing the recommendations of the mission deployed by the Office in February 2008 to investigate the post-electoral violence that occurred at the end of 2007 (Mexico);
- 101.39. Establish a policy for gender promotion to ensure the improved representation of women in decision-making bodies (Niger);

- 101.40. Review its national laws so that they fully uphold the principle of non-discrimination, in particular on grounds of gender, personal status and citizenship (Czech Republic);
- 101.41. Take measures aimed at ensuring the economic rights of women, addressing the issue of their employment and increasing their participation in the political life of the country (Belarus);
- 101.42. Continue to review its legislation concerning the death penalty (Holy See);
- 101.43. 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 and ensure the effective protection of human rights defenders and witnesses (France);
- 101.44. Set out how it will act against the culture of impunity, including for perpetrators of extrajudicial killings (United Kingdom);
- 101.45. Strengthen the law on the use of firearms by police officers, by introducing a policy of “zero tolerance” for their abusive use (Belgium);
- 101.46. Take all steps available to eradicate the use of torture and ill treatment by public officials, and prosecute and punish those responsible (Denmark);
- 101.47. Undertake more effective measures to address the problems of impunity, violence and trafficking in women and girls, including through the strengthening of law enforcement and the judicial system and intensive media and education programmes aimed at increasing public awareness on the rights of women (Malaysia);
- 101.48. Take measures to guarantee effective access for the women victims of gender-based violence to justice, redress and protection (Brazil);
- 101.49. Draft a plan to combat violence against women, and establish reliable indicators in this field (France);
- 101.50. Strengthen protection for women and children against violence and exploitation (Australia);
- 101.51. Implement measures to prevent, punish and eradicate all forms of violence against women, devoting special attention to the situation of women in communities of refugees and internally displaced persons, and also completely eradicate the practice of female genital mutilation (Argentina);
- 101.52. Adopt and duly implement measures to eradicate female genital mutilation, including public awareness-raising campaigns against this phenomenon (Slovakia);
- 101.53. Ensure strict criminalization of female genital mutilation and carrying out awareness-raising to eradicate its acceptability among the public (Czech Republic);
- 101.54. Adopt legislation and a coherent national policy criminalizing female genital mutilation (Germany);
- 101.55. Take appropriate and efficient measures with the view to ending the practice of female genital mutilation (Slovenia);

- 101.56. Urgently adopt legislation criminalizing female genital mutilation, and train members of the police, prosecutors and judges on the strict application of laws and regulations to be adopted in this field (Hungary);
- 101.57. Eliminate the practice of female genital mutilation (Japan);
- 101.58. Intensify its efforts to humanize its penitentiary system (Slovakia);
- 101.59. Adopt a comprehensive national policy aimed at the fight against child prostitution and the trafficking of children (Uruguay);
- 101.60. Take all appropriate measures to ensure for street children, who are vulnerable to various forms of violence, appropriate care and protection (Slovenia);
- 101.61. Take legislative and practical measures to ensure the independence and effectiveness of the judiciary (Austria);
- 101.62. 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);
- 101.63. Give priority to combating corruption and incompetence in the judiciary, and provide sufficient human and material resources for the administration of justice (Hungary);
- 101.64. Move forward on reform similar to that of the police of the judicial system, which has to this point proved inadequate to handle the cases of those suspected of involvement in the violence (Japan);
- 101.65. Establish an independent witness protection agency that is free of political influence (United States of America);
- 101.66. Provide adequate protection for witnesses of human rights violations (Netherlands);
- 101.67. Establish, through these efforts to address the issue of witness protection legislatively and administratively, a witness protection system (Japan);
- 101.68. Better protect witnesses giving evidence and human rights defenders (United Kingdom);
- 101.69. Effectively implement the recent legislation on police reform and witness protection (Austria);
- 101.70. Raise the age of criminal responsibility in order to bring it into line with international standards (Czech Republic);
- 101.71. Adopt and implement measures necessary to address the needs and challenges of juveniles in prison custody, including raising the minimum age of crime responsibility, in line with international standards (Slovakia);
- 101.72. Intensify its efforts to investigate and punish those responsible for punishable violence, especially that perpetrated by security forces and armed forces (Spain);
- 101.73. Take effective measures against police violence, in particular by ensuring comprehensive investigations and the prosecution of alleged offenders within the police and security forces (Austria);
- 101.74. Take effective steps to improve accountability with a view to eradicating impunity (Sweden);

- 101.75. Take further measures to prevent impunity of the perpetrators of the post-election violence (Netherlands);
- 101.76. Reinforce the inquiries regarding the electoral unrest as well as the national reconciliation mechanisms, in particular through an independent review of their effectiveness (France);
- 101.77. Cooperate fully with the International Criminal Court investigation, and ensure the protection of witnesses from intimidation and violence (Austria);
- 101.78. Fully cooperate with the International Criminal Court and its investigations, as well as ensure an independent and reliable witness protection programme (Finland);
- 101.79. Fully cooperate with the International Criminal Court to seek accountability against persons bearing the greatest responsibility for crimes, particularly crimes against humanity, committed during the 2007 general elections in Kenya (Republic of Korea);
- 101.80. Ensure that human rights defenders and witnesses are protected and can freely talk to the International Criminal Court investigative team so that the Court can carry out its mission successfully (Ireland);
- 101.81. Cooperate with the International Criminal Court's investigation and take measures to ensure that those responsible for post-election violence are held accountable (Australia);
- 101.82. Cooperate fully with the International Criminal Court throughout the process (Norway);
- 101.83. Continue its cooperation with the International Criminal Court, in accordance with its responsibilities as a State party to the Rome Statute, namely regarding access for Court officials to investigate, the implementation of witness protection programmes and the implementation of warrants that might be issued by the Court (Portugal);
- 101.84. 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);
- 101.85. Establish a comprehensive national policy and guidelines governing adoption in compliance with CRC (Germany);
- 101.86. Further promote the law on the minimum age of marriage at 18 years (Holy See);
- 101.87. Review its national legislation on freedom of expression so that it fully complies with the relevant provisions of the International Covenant on Civil and Political Rights, and ensure the effective protection of human rights defenders against harassment or persecution (Czech Republic);
- 101.88. Promptly take effective measures to safeguard the work of human rights defenders, including by ensuring that witness protection and the protection of human rights defenders who assist witnesses are a priority for the Government (Sweden);
- 101.89. Investigate harassment and attacks against journalists and human rights defenders in order to bring those liable to justice (Norway);
- 101.90. Undertake a study on child labour at the national level with the support of the International Labour Organization and other partners to look at the

issue of child labour, 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);

101.91. Take effective steps to address child labour (Azerbaijan);

101.92. Improve access to reproductive health services for pregnant women (Turkey);

101.93. Ensure the equitable distribution of water and food to the entire population, especially during times of drought (Spain);

101.94. Redouble its efforts to save mother and child (Holy See);

101.95. Follow through with the implementation of its national development agenda under Vision 2030 (Egypt);

101.96. Continue to devote great attention to the situation of the most vulnerable groups (Senegal);

101.97. Continue its efforts to promote economic, social and cultural rights and intensify national and anti-poverty programmes (Algeria);

101.98. Pursue the implementation of the national programmes for alleviating poverty and improving living conditions, which will result in improvements in the lives of Kenyan children (Libyan Arab Jamahiriya);

101.99. Ensure that public policies for combating poverty are in accordance with the rights recognized in the International Covenant on Economic, Social and Cultural Rights and that they are not negatively affected by commitments that might be undertaken in the context of trade and investment agreements (Bolivia);

101.100. Continue to put in place effective national policies to alleviate poverty and unemployment (Azerbaijan);

101.101. Pursue its efforts to achieve the highest possible level of social justice and find adequate solutions to the problems of poverty and unemployment (Kuwait);

101.102. Strengthen the fight against poverty (Senegal);

101.103. Place emphasis on linking the objective of poverty eradication to those of eliminating child labour and increasing school enrolment (Sudan);

101.104. Continue its implementation of the poverty alleviation policies, in particular through the Kazi Kwa Vijana programme, and share its experiences in this regard (Botswana);

101.105. Continue the implementation of the Vision 2030 strategy, the “Kazi Kwa Vijana” programme and the Constituency Development Fund, and seek the technical and financial assistance that it will require to that end (Morocco);

101.106. Continue its strategies for social and economic recovery, and promote social peace and sustainable development (China);

101.107. Continue to pursue development and anti-poverty policies, step up international cooperation, and intensify its efforts to alleviate poverty (China);

101.108. 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);

- 101.109. Strengthen its educational policy to guarantee the required quality of education, accessible to all members of its population, especially the marginalized and most vulnerable groups (Slovakia);
- 101.110. Develop education policies that ensure quality education, particularly for the poor, marginalized and vulnerable segments of its population, and request international assistance to that end (Bolivia);
- 101.111. Formulate an educational policy aimed at combating illiteracy, with particular emphasis on the education of the girl child (Niger);
- 101.112. Develop and implement a specific education policy which would cover all children with special needs (Ireland);
- 101.113. Continue to develop programmes and measures aimed at ensuring quality and free education and health services for its population (Cuba);
- 101.114. Implement the recommendations and decisions of its own judicial institutions and of the African Commission on Human and Peoples' Rights, particularly those relating to the rights of indigenous peoples (Bolivia);
- 101.115. Continue the current policy vis-à-vis Somali refugees, based on solidarity and the protection of fundamental human rights (Somalia);
- 101.116. Sustain its efforts with regard to the resettlement of internally displaced persons, and ensure their access to basic human rights and social services (Algeria);
- 101.117. Follow up on the recommendations made by the Representative of the Secretary-General on the human rights of internally displaced persons, particularly those relating to the need to adopt measures for reconciliation and to implement a comprehensive strategy for the internally displaced (Mexico);
- 101.118. Ensure that the policies aimed at assisting displaced persons take into account the Guiding Principles on Internal Displacement (Argentina);
- 101.119. Engage in a participatory and inclusive process with civil society in the implementation of universal periodic review recommendations (Norway);
- 101.120. 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);
- 101.121. Identify its needs in terms of technical and financial assistance as well as capacity-building, and seek accordingly the requisite assistance from the relevant organizations (Algeria);
- 101.122. Continue to seek assistance to build enough capacity to develop appropriate human rights indices (Zimbabwe);
- 101.123. The international community to support Kenya through a programme to build capacities and strengthen institutions for the promotion and protection of human rights (Niger);
- 101.124. Seek assistance from the international community in tackling the challenges it faces (Chad);
- 101.125. 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);

101.126. 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);

101.127. Engage members of the international community and international organizations for capacity-building support and technical assistance, particularly in the areas of economy, employment opportunity, human resources development and poverty alleviation (Malaysia);

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

102. The following recommendations will be examined by Kenya, which will provide responses in due course, but no later than the fifteenth session of the Human Rights Council, in September 2010:

102.1. Accede to the human rights conventions and protocols to which Kenya is not yet a party (Niger);

102.2. Sign and ratify OP-CAT in the near future (Germany);

102.3. Ratify the optional protocols to ICCPR (Austria);

102.4. Ratify, as soon as possible, the International Convention for the Protection of All Persons from Enforced Disappearance (France);

102.5. Implement all recommendations put forward by the Special Rapporteur on the rights of indigenous people following his visit to Kenya in 2007, as well as ratify ILO Convention No. 169 (Denmark);

102.6. Consider ratifying ILO Convention 169, and take steps to implement the United Nations Declaration on the Rights of Indigenous Peoples, including through constitutional and statutory recognition of land and resource rights and effective political participation (Norway);

102.7. Extend an open and standing invitation to all special procedures, and sign and ratify the Optional Protocols to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Social, Economic and Cultural Rights (ICESCR), the Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (CED) and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC) (Spain);

102.8. Ratify the Optional Protocol to ICESCR, the Second Optional Protocol to ICCPR, OP-CEDAW, OP-CAT, the Optional Protocol to CRPD, OP-CRC-SC, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and CED (Argentina);

102.9. Ratify ICCPR-OP2, OP-CEDAW and CED (Uruguay);

102.10. Extend an open and standing invitation to all United Nations special procedures (Argentina);

102.11. Consider issuing a standing invitation to special procedures (Brazil);

102.12. Introduce in its national legislation the definition of torture, reflecting that set out in article 1 of the Convention against Torture and other Cruel, Inhuman

and Degrading Treatment or Punishment, and accede to its Optional Protocol (OP-CAT) (Czech Republic);

102.13. Establish a national mechanism independent of the public prosecutor and the attorney general for the investigation and prosecution of crimes committed during and following the 2007 election period (Denmark);

102.14. Consider establishing an independent investigative authority that can effectively investigate the violence related to the 2007 elections and the alleged involvement of the police and public prosecutor (Austria);

102.15. Cooperate fully with the ICC investigation, in accordance with Kenya's obligations under the Rome Statute, and establish a credible local tribunal in parallel (United Kingdom).

103. The recommendations below did not enjoy the support of Kenya:

103.1. Amend national legislation to abolish the death penalty so it is completely prohibited, and sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (Spain); establish a de jure moratorium on capital punishment, with a view to abolishing the death penalty (Belgium); take all measures to abolish the use of the death penalty (Uruguay); abolish the death penalty (Ireland, Austria, Germany); suspend the application of the death penalty and definitely abolish it (Argentina);

103.2. Strictly ensure that the death penalty is not imposed for children, and declare an official moratorium on executions with a view to abolishing the death penalty (Australia);

103.3. Prevent extrajudicial killings and ensure compensation and justice for the families of victims, taking into account the recommendations of the United Nations Special Rapporteur on extrajudicial killings (Netherlands);

103.4. Immediately implement all the recommendations put forward by the Waki Commission and the Special Rapporteur on extrajudicial killings (Denmark);

103.5. Take concrete steps to provide for the protection and equal treatment of lesbian, gay, bisexual and transgender persons (Netherlands); decriminalize same-sex activity between consenting adults (Czech Republic); repeal all legislative provisions which criminalize sexual activity between consenting adults (United States of America); decriminalize homosexuality by abrogating the legal provisions currently punishing sexual relations between consenting individuals of the same sex, and subscribe to the December 2008 General Assembly Declaration on sexual orientation and human rights (France);

103.6. Support the United Nations Declaration on the Rights of Indigenous Peoples, and devote attention to the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, after her visit to the country (Mexico);

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

104. With regard to recommendations in paragraph 103.1 above, Kenya indicated that the Kenyan public had overwhelmingly rejected the abolition of the death penalty for the most serious crimes. The Government, in collaboration with the Kenya National Commission on Human Rights and other stakeholders, continued to raise public awareness regarding the abolition of the death penalty.

105. With regard to recommendations in paragraph 103.2 above, Kenya wished to clarify that it did not impose the death penalty on children, and therefore there was no need for such a recommendation. Regarding the issue of an official moratorium, the position remained that elaborated under recommendation 103.1.

106. With regard to recommendations in paragraph 103.3 above, Kenya indicated that, while it was committed to preventing extrajudicial killings and ensuring compensation and justice for the families of victims through due process, it did not agree with linking that issue to the Special Rapporteur's report, whose shortcomings had already been pointed out by the Government.

107. With regard to the recommendation in paragraph 103.4 above, Kenya indicated that the use of the term "all" was not acceptable, as it was not feasible; however, most of the recommendations of the Waki Commission Report were being implemented and aspects of the Special Rapporteur's report had given rise to issues of concern.

108. With regard to recommendations in paragraph 103.5 above, Kenya indicated that same-sex unions were culturally unacceptable in Kenya.

109. With regard to recommendations in paragraphs 103.6 and 103.7 above, Kenya indicated that the term "indigenous peoples" was not applicable, as all Kenyans of African descent were indigenous to Kenya. However, the Government recognized the vulnerabilities of minorities/marginalized communities.

110. All conclusions and/or recommendations set out in the present report reflect the positions of the submitting State(s) and/or the State under review. They should not be construed as endorsed by the Working Group as a whole.

Annex

Composition of the delegation

The delegation of Kenya was headed by The Honourable Mutula Kilonzo, EGH, M.P., Minister for Justice, National Cohesion and Constitutional Affairs, and was composed of 14 members:

- Amb. Amina C. Mohamed, CBS, Permanent Secretary, Ministry of Justice, National Cohesion and Constitutional Affairs, alternate head of delegation;
 - Mr. Geoffrey Kibara, Secretary, Justice and Constitutional Affairs, Ministry of Justice, National Cohesion and Constitutional Affairs;
 - H.E. Mr. Philip R.O. Owade, Ambassador/Chargé d'affaires, a.i., Permanent Mission of Kenya to the United Nations Office;
 - Mr. Peterlis Nyatuga, Director, National Commission on Gender and Development;
 - Mrs. Maryann Njau-Kimani, Chief Legal Officer, Ministry of Justice, National Cohesion and Constitutional Affairs;
 - Mr. Samuel Gitau, Deputy Chief Economist;
 - Ms Jacinta Murgor, Senior Assistant Director of Children Services, Ministry of Gender Children and Social Services;
 - Mr. George Arogo, Deputy Secretary, Office of the President;
 - Mr. Erick Kibaara Kiraithe, ACP, Office of the Commissioner of Police;
 - Ms. Emily Chweya, Assistant Deputy Chief Legal Officer;
 - Ms. Emily Wangari Kamau, Senior Principal State Counsel, Office of the Attorney-General;
 - Ms. Jeannette Wanjiru Mwangi, Principal State Counsel, Office of the Attorney-General;
 - Mr. Nilly Kanana, First Secretary, Legal, Permanent Mission of Kenya to the United Nations Office;
 - Ms. Anne C. Keah, Third Secretary, Permanent Mission of Kenya to the United Nations Office.
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