

KENYA STAKEHOLDERS COALITION FOR THE UNIVERSAL PERIODIC REVIEW

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I. EXECUTIVE SUMMARY

The four year period between 2006 and 2010 within which Kenya is set to be reviewed has been a true test of the State's promise to protect and uphold the human rights of every Kenyan. Preceded by heated political campaigns in 2006 and 2007, the bungled 2007 general elections resulted in violence with gross effects on individual and group human rights including loss of life, displacement, loss of property and livelihoods, suspicion and animosity between ethnic groups, compromise of institutional credibility and serious threat to the country's nationhood. The National Dialogue and Reconciliation process initiated in 2008 resulted in the formation of a Grand Coalition Government and a comprehensive reforms agenda to address the root causes of the post-elections and other recurrent violence. Identified reforms include Constitutional, institutional and legal reform; land reform; addressing poverty, inequity, regional imbalance and unemployment, particularly among the youth; consolidation of national cohesion and unity; and transparency, accountability and combating impunity. Recent evaluations demonstrate chequered progress on the implementation of the reform agenda attributable to a number of issues including; the failed prosecution of suspected perpetrators of the post-election violence; the failure to effectively resettle and rehabilitate the internally displaced persons (IDPs) of the 2007-2008 post-election conflict; and the fragmented leadership of the Government Coalition which has resulted in an ineffective and uncoordinated approach to reforms.¹ Furthermore, this report highlights key human rights concerns and violations in the country within four themes including justice, economic, social and cultural rights and development; the protection of civil and political rights; and non-discrimination and equality. The Kenya Stakeholders Coalition for the Universal Periodic Review makes recommendations in the report for legal, policy and institutional reforms to be undertaken by the State within a four year time frame before Kenya's next review and with

¹ South Consulting (2009), 'The Kenya National Dialogue and Reconciliation (KNDR) Monitoring Project, Status of Implementation of Agenda Items 1-4, 4th Review Report', Kenya: South Consulting; and Kenyans for Peace with Truth and Justice (KPTJ) submissions to the National Dialogue and Reconciliation Team in October, 2009 summary. See **Annexure 1**

a view to remedying the highlighted violations. The Coalition anticipates that the findings in this report will contribute to an open and honest dialogue towards ensuring greater protection for the human rights of all persons in Kenya.

II. METHODOLOGY

1. This report has been prepared by the Kenya Stakeholders' Coalition for the Universal Periodic Review (UPR) comprising of 97 national and international organisations and institutions working on human rights and development concerns.² The Coalition was facilitated by the Kenya National Commission on Human Rights and held its first meeting on 10th March, 2009. To facilitate the preparation of the Report, a steering committee was established and the stakeholders were sub-divided into various thematic clusters including women, children, youth, older persons, persons with disabilities, minorities and indigenous communities, sexual minorities, civil and political rights, and economic, social and cultural rights. An initial series of cluster meetings demonstrated the need for a capacity building workshop on the UPR, which was subsequently held on 19th and 20th May, 2009. The workshop was facilitated by experts from Rights and Democracy – Geneva Office; Conectas, Brazil; Human Rights House Foundation, Norway; the South African Commission on Human Rights; and an independent expert on the Human Rights Based Approach. The information gathered by each cluster on areas of critical human rights concern was then collated and validated into the Kenya Stakeholders' Coalition for the UPR Report.

III CURRENT NORMATIVE & INSTITUTIONAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

2. Kenya is party to the core international and regional human rights instruments covering the protection of all human rights including civil, political, economic, social and cultural rights. These instruments obligate Kenya as a State party to uphold the principles of human dignity, equality and non-discrimination for all individuals and groups including those that have over time faced undue discrimination such as women, children, persons with disabilities, minorities and indigenous communities, among others.³ However, Kenya is yet to sign and/or ratify several fundamental human rights instruments which further provide protection mechanisms against violations including the Optional Protocols to the International Covenant on Civil and Political Rights (ICCPR), the newly adopted Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the International Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on Elimination of All Forms of Discrimination Against Women. At the national level, while there are ongoing efforts to introduce more laws to govern protection of human rights, the State's domestication record is wanting. For instance, since its accession to the International Covenant on Economic, Social and Cultural Rights in 1972, these rights are yet to be entrenched and recognized as part of the Bill of Rights enshrined in the Constitution. The Government of Kenya has also repeatedly made voluntary pledges to protect human rights. Noteworthy is the Government's most recent pledge to "continually play an active role in mediation and resolution of regional conflicts with the strategic objective of establishing and nurturing ideal conditions for the promotion and protection of human rights" when it presented itself for election in the Human Rights Council in January 2009.⁴

² See **Annex 2** for a list of members of the coalition.

³ See **Annex 3** for a list of Kenya's ratification of international and regional human rights treaties.

⁴ United Nations (2009). UN General Assembly Document [A/63/766*](#). See **Annex 4**

IV. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES & CONSTRAINTS RECOMMENDATIONS

A. JUSTICE

Abuse of children in the criminal justice system

3. The Court of Appeal has ruled that progressive provisions contained in the Child Offenders Rules regarding bail for children charged with capital offences are *ultra vires* the Children Act and the Constitution, thereby declaring them null and void.⁵ There are still cases of children being remanded in adult facilities. They are often subjected to torture and sexual abuse by police officers and other detainees while in custody.⁶ There are instances where the police detain a child in order to arrest the parent.
4. **Recommendation: On speedy disposal of cases, the State should amend the Constitution and the Children Act to provide safeguards for children in conflict with the law particularly with regard to bail. It should introduce Child Protection Units in all police stations to protect children within the justice system. It should introduce proper police accountability, including citing reasons for arrest and preferment of charges.**

Lack of justice for victims of Post Elections Violence

5. The Commission of Inquiry into Post Election Violence (CIPEV) detailed the circumstances and systemic causes of 1,113 killings that occurred during the period following the 2007 general elections. However, the recommendations made by CIPEV towards ensuring accountability and prosecution of the perpetrators of the violence are yet to be implemented. Attempts by the office of the Attorney General to jump start criminal prosecutions and inquests into extrajudicial killings failed due to lack of sufficient evidence, among other things, attributable to the fact that no witness protection mechanisms had been put in place. Furthermore, the government has shown unwillingness and inability to establish a special tribunal to prosecute perpetrators of the violence.⁷
6. **Recommendations: The State should immediately set up the Special Tribunal to investigate and deal with the human rights crimes that occurred immediately before, during and after the 2007 general elections in adherence to the principles of the Rome Statute. It should immediately operationalise a witness protection programme within this Special Tribunal. The State should enable the International Criminal Court to closely monitor the Kenyan situation with a view to finalizing preliminary investigations as a basis for prosecuting perpetrators of the post election violence.**

Children 'imprisoned' with convicted mothers

7. Many children under 4 years suffer as a result of staying in prison together with their mothers who are remanded or convicted for otherwise petty offences without due regard to the welfare of the child.

⁵ Kazungu Kasiwa Mukunzo & Swaleh Kambi Chai V Republic [2006] eKLR at http://www.kenyalaw.org/CaseSearch/case_search_fts.php?words=Criminal+AppealKAZUNGU+KASIWA+MKUNZO+%26+SWALEH+KAMBI+CHAI+V+REPUBLIC+&check_submit=1&submitter=SEARCH+%BB&mode=normal

⁶ Broken Trust, The CRADLE's Case and Media trends on Sexual Violence against Children in Kenya 2007 Page 52

⁷ The Commission of Inquiry on the Post Elections Violence [CIPEV (2008)], Final Report of the CIPEV, Kenya: Government Printers. http://www.communication.go.ke/print_media.asp?id=738

8. **Recommendation: The State should ensure all mothers with children below the age of 2 years, where the mother is not charged with a felony, are sentenced under the Community Service Order Act in order to safeguard the welfare of the child. In the case of more serious offences, it should amend the Prison's Act to reduce the age of children who can accompany the mother to prison from the current four to two years. It should ensure prison facilities are equipped with proper child-friendly facilities.**

B. ECONOMIC, SOCIAL AND CULTURAL RIGHTS/DEVELOPMENT

Poor working conditions for prison warders

9. In April 2008, prison warders went on strike protesting poor working conditions as they are underpaid and live in squalid conditions.
10. **Recommendations: The State should implement the recommendations of the High Level Taskforce on the Prison Crisis, particularly in relation to improving the working conditions of prison warders.**

Lack of proper environmental management and sustainable use of natural resources:

11. Despite the enactment of Environment Management and Coordination Act (EMCA) in 1999, its enforcement agency, the National Environmental management Authority (NEMA), continues to lack the ability to fulfil its mandate as a result of inadequate funding⁸. Essential ecosystems have continued to be adversely affected by human-instigated practices resulting in environmental degradation. The Mau Forest Complex is one such ecosystem affected by large-scale encroachment, “shambas”, charcoal production, logging of indigenous trees, livestock grazing, Burnt Forest patching and Forest tracks.
12. **Recommendation: Kenya should increase its budgetary allocation to NEMA and other EMCA institutions to enable them to increase their capacity to carry out environmental impact assessments and environmental audits in a timely, consistent and effective manner. The government through its recently constituted Interim Coordinating Secretariat for the Mau Forest Complex on the rehabilitation of the Mau Forest Ecosystem should have due regard to: the effective relocation of the Mau inhabitants in accordance with set international principles on evictions and recognition of the right of contiguous communities to participate in the management and utilization of natural resources in a manner that confers them benefit through periodic consultations.**

Food insecurity

13. The President declared famine a national disaster and presently it is reported that 3.8 million Kenyans are in the grip of hunger. The poor state of infrastructure, post-harvest technology and storage, cooling facilities and electrification has compounded stagnation of food production; this is coupled with unfavourable weather patterns and poverty.
14. **Recommendation: The State should set up rural credit schemes for farmers. It should amend the Bio-Safety Act of 2009 to address the concerns on modern biotechnology issues and their impact on the country's national socio-economic growth and environmental sustainability. It should hasten the enactment and implementation of National Social Protection Policy which will among other things enhance food security.**

Inadequate water supply

⁸ Republic of Kenya Medium Term Expenditure Framework 2007/2008-09 as accessed on www.treasury.go.ke/.../ARD_Sector%20_Report_2007%20_Draft.PDF

15. Even with the enactment of the Water Act in 2002, which sought to increase the efficiency of water delivery services to Kenyans by privatizing the means of doing so, availability of safe and clean water is still a big challenge. Water rationing programmes and cartels that control the water sector have led to a reduction in availability of adequate water supply and compromised the safety of the limited available water.
16. **Recommendation: Kenya should develop and implement procedural and substantive protection to ensure basic water supply regardless of disconnection of water supply due to non payment or water rationing programmes and employ legal penalties to dismantle cartels that are responsible for artificial water shortages that lead to extortion of residents.**

Poor protection mechanisms for workers

17. There is a glaring gap on awareness of workers' rights and corresponding employers' duties by the general citizenry thus providing an avenue for exploitation of workers. The informal sector has grown from 5,716,400 in 2003 to 7,475,600 in 2007⁹; yet the current legal framework offers no protection of the informal sector on an equal basis as the formal sector. This is in spite of the introduction of the new labour laws regime.¹⁰ In addition, following the nullification of sections 4, 7(1) and (4), 10(4), 16, 23(1), 25(1) and (3), 52(1) and (2) of the Work Injuries Benefits Act, 2007, there is a gap in the protection of Kenyan workers' rights to safe and favourable working conditions.
18. **Recommendation: The State should initiate a national awareness campaign on the rights of workers and corresponding employers' duties including the protection provided by the new Labour laws; introduce provisions to guarantee equal treatment and opportunities for informal sector workers; and urgently introduce amendments to the WIBA or a redrafted Bill on Work Injury Benefits to Parliament for enactment to ensure that work injury cases are not held in abeyance before the courts.**

Youth unemployment

19. Unemployment is one of the most daunting economic challenges facing Kenya. The youth account for 72% of the unemployed.¹¹ Ninety two percent (92%) of the unemployed youth have no job training other than formal schooling. Hence, unemployment is not just a lack of jobs, but also a lack of job skills due to inadequacy of the training infrastructure as well as lack of resources to access training. This is despite the numerous Government initiatives.¹² Most of these initiatives are marred with corruption owing to lack of transparency and accountability; The Auditor General's report on the Youth Enterprise Development Fund revealed gross irregularities in the management of the funds.
20. **Recommendations: The State should revise and make less stringent the administrative requirements related to accessing the Youth Enterprise Development Fund. It should also investigate and prosecute persons suspected to have embezzled money from the Youth Enterprise Development Fund and the recently established "Kazi kwa Vijana" programme. It should facilitate the establishment of resource centres at the community level where the youth may get information, training (both formal and informal),**

⁹ The Kenya National Bureau of Statistics. <http://www.knbs.go.ke> as accessed in June 2009

¹⁰ The new labour laws enacted in 2007 include the Employment Act, the Labour Institutions Act, the Labour Relations Act, The Work Injuries Benefits Act and the Occupational Health and Safety Act.

¹¹ Government of Kenya (2008), Kenya Vision 2030 Medium Term Plan 2008-2012.

¹² Government of Kenya (2009), 'Youth Enterprise Development Fund Status Report' and *Kazi Kwa Vijana* Manual.

recreational activities, counseling on employment creation and technical support; and subsequently support their existence through continuous capacity building.

Inaccessibility to quality health care

21. Despite having well defined National Health Policies, there has not been a breakthrough in improving the health of many segments of Kenya's population. Affordability and physical accessibility remain major hindrances to quality healthcare.
22. **Recommendation: Kenya should increase investment in health including adhering to the Abuja 2001 Declaration which requires that 15% of the national budget be allocated to the improvement of the health sector; and recognition of health needs as an important component of economic development. Kenya should take a central role in funding HIV&AIDS initiatives or create a sustainable funding mechanism in order to avoid relying heavily on donors and to urgently develop and implement a Health Financing Strategy.**

Adverse effects of the Economic Partnership Agreements (EPAs) on the realisation of human rights

23. The proposed expanded protection for Trade Related Aspects of Intellectual Property Rights (TRIPs) in the ongoing renegotiation of bilateral and multilateral trade and economic agreements would allow pharmaceuticals at least 20 years monopoly over production and distribution of patented inventions, increased European Union subsidies and Non-Tariff Barriers with dire effects on the rights to health, food security and development of Kenyans.
24. **Recommendation: The Government should, in its negotiations, deliberately ensure the protection of the right to health in the EPAs, in compliance with all international and regional health conventions including budgetary allocations as provided under the Abuja Declaration. It should also ensure that the EPAs contain provisions to protect infant industries by maintaining local subsidies or advocating for the removal of EU subsidies by a stipulated date. Lastly, the Government should speedily establish one central trade negotiation body to jointly work on COMESA, EAC and WTO agreements.**

High maternal and infant mortality rate

25. Approximately 14,700 women of reproductive age die each year due to pregnancy related complications while between 294,000 and 441,000 suffer from disabilities caused by complications during pregnancy and child birth.¹³
26. **Recommendation: The State should enact the Reproductive Health Bill. Primary and secondary school education and information campaigns that target the sexual and reproductive health of women must be increased and strengthened and made more accessible and culturally appropriate.**

Lack of comprehensive law on housing

27. There are no legislative provisions that recognize the right to adequate housing yet a substantial proportion of the urban population live in informal settlements with no adequate infrastructure or security of tenure.
28. **Recommendation: The State should enact Housing Rights legislation and comprehensive legislation for the regulation and prevention of forced evictions.**

¹³ Government of Kenya (2005), Millennium Development Goals Status Report for Kenya.

Challenges in accessing education

29. Despite the fact that the State introduced free primary education, it is estimated that about 1.7 million children are still not attending school.¹⁴ The influx of children into the free primary education system resulted in a disproportionate teacher pupil ratio thereby compromising the quality of education. There is no legal framework to ensure that education is compulsory and accessible to all. The Government also introduced devolved funds such as Constituency Bursary Funds to support poor, marginalized and vulnerable children but they have been politicized by Civic Leaders and Members of Parliament who often oversee the allocation of the funds and inequitably influence the allocation of the bursaries to the detriment of deserving children. Many girls also miss school for several days per month due to lack of sanitary towels during menstruation.¹⁵
30. **Recommendation: The State should establish a legal framework to regulate and ensure that quality education is compulsory and accessible to all especially poor, marginalized and vulnerable groups; recruit more teachers to meet the demand or alternatively employs a multi-shift programme in schools; establish stricter measures, proper accountability, transparency mechanisms and greater public participation in the administration of bursary and education funds; and also develop a policy that will allow for adequate budgetary allocations to cater for the provision of sanitary towels for girls in schools.**

Failure to address educational needs of children with special needs:

31. While commending the State for adopting a policy of inclusive education for children with special needs, certain categories of children with special needs still face discrimination. This is because the Government has not developed adequate programs for children with special needs, more so instances of multiple and severe disabilities.
32. **Recommendation: The State should finalise the Special Needs Education Policy. It should ensure that all children with disabilities who require individualized educational programmes receive necessary support.**

Protection of children from child labour

33. The socio-economic situation prevailing in Kenya has subjected children to exploitative work. This has been compounded by the increasing incidences of child headed households. Further, the requisite Ministerial regulations in respect of periods of work and legitimate establishments for such work by children beyond the age of 16 years are yet to be established.
34. **Recommendation: The State should finalize the Policy on Child labour. It should formulate and implement regulations under Section 10(4) of the Children Act that would govern the engagement of children between 16 and 18 years in labour. It should enhance programmes preventing children from joining the labour market and rescuing and rehabilitating children who are engaged in labour.**

¹⁴UNICEF Child Friendly Schools Manual,

http://www.unicef.org/lac/Child_Friendly_Schools_Manual_EN_040809.pdf at page 11, posted April 14, 2009.

¹⁵ Many girls are losing as many as 5 school days every month due to lack of sanitary towels during menstruation. This translates to 50 Lessons per month and 450 per year (Girl Child Network (GCN), Child life Trust, et.al, '5/30 Sanitary Towel Campaign' brochure.

Restricted access to land and land based resources

35. The Constitutional provisions on Compulsory Acquisition of land (Section 75) and Setting Apart of Trust Land (Sections 117 and 118) have been consistently abused leading to the privatization of traditional communally owned grazing lands belonging to pastoralists. Furthermore, conservation efforts such as the establishment of gazetted forests and wildlife parks have likewise led to the expulsion of pastoralists and hunter-gatherers from their traditional lands and the outlawing of subsistence hunting by indigenous communities.
36. **Recommendations: The State should fully implement the newly adopted National Land Policy which provides a vital framework for recognition and protection of communal rights to land; develop an evictions policy that takes into consideration the rights of pastoralists, hunter-gatherers and other minorities modeled around the United Nations Evictions Guidelines; and ensure an elaborate and sufficient reparations programme within the Truth Justice and Reconciliation Commission as a mechanism for resolving historical injustices related to land.**

C. PROTECTION OF FUNDAMENTAL FREEDOMS

Under representation

37. The electoral system marginalizes women, persons with disabilities, indigenous peoples and ethnic minorities. Women are particularly grossly underrepresented in decision making positions, in the political arena, in government appointments, in national institutions and local levels. Women formed only eight per cent (8%) of the seats in the 9th Parliament and only about ten per cent (10%) in the current 10th Parliament which places Kenya 112th in rankings of female participation in parliaments on a global scale.¹⁶ All political parties failed to nominate persons with disabilities as MPs in terms of Section 33 of the Constitution after the 2007 General Elections. Ethnic minorities and indigenous communities too have been underrepresented due to their numerical disadvantage which can be attributed to administrative and electoral units that have failed to contemplate community interests; the failure of political parties and the (now defunct) Electoral Commission of Kenya (ECK) to properly utilize existing Constitutional safeguards that would ensure some measure of participation for these groups.¹⁷
38. **Recommendations: The State should ratify, domesticate and implement the Protocol on the African Charter on Human and Peoples Rights on the Rights of Women in Africa. It should implement the policy to fulfill the 30% women representation in leadership and decision making positions. The Boundary Review processes being undertaken by the Interim Boundary Review Commission should take into account the interests of the ethnic minorities and indigenous communities and persons with disabilities in line with the principles as set out in the judgment of the *Il Chamus Case*.¹⁸**

Weak electoral system

¹⁶ Inter-Parliamentary Union. <http://www.ipu.org/wmne/classif.htm> Accessed in June 2009.

¹⁷ Section 33 of the Constitution of Kenya calls for the Nomination of Members of Parliament to cater for special interests and Section 42(3) (e) allows the Electoral Commission of Kenya to consider community interest when establishing constituency boundaries.

¹⁸ CEMIRIDE, African Centre for Democracy and Human Rights Studies (ACDHR) and MRG (2008). 'Beyond Rhetoric: Emerging Best Practices in Mainstreaming Minority Rights in the Social, Political and Economic Life of African States' Briefing Note published by CEMIRIDE; Also see case summary in **Rangal Lemaiguran and others vs. Attorney General of the Republic of Kenya and Others** (Kenya High Court Civil Application 305/2004) at http://www.kenyalaw.org/CaseSearch/view_preview.php?link=41614722442187857994712&words=Il%20Chamus%20&mode=2

39. Kenya's constitutional and legal framework relating to elections contains a number of inconsistencies that weaken its effectiveness. During the preparation and conduct of the 2007 elections the ECK lacked the necessary independence, capacity and functionality because of weaknesses in its organisational structure, composition, and management systems.¹⁹
40. **Recommendation: The State should implement the electoral reforms and recommendations outlined in the report of the Independent Review Commission (The Kriegler Report).**²⁰

Lack of legislation on freedom of information

41. There is retrogressive legislation that impinges on freedom of expression such as the Official Secrets Act and sections of the Penal Code. The enactment of the Freedom of Information Bill has been unreasonably delayed.
42. **Recommendation: The State should repeal the Official Secrets Act. It should enact the Freedom of Information Bill. It should enact comprehensive legislation on hate speech and enforce the provisions in the National Integration and Cohesion Act, 2008. The Kenya Broadcasting Corporation Act should establish a public service broadcaster independent of government control.**

Cattle rustling

43. Cattle rustling among pastoralist communities has taken endemic proportions with raiders shifting from the use of traditional bows and arrows, to guns and bullets. The inability to curb this vice is mainly attributable to inadequate security, economic marginalization of pastoralist communities and lack of effective government policies.²¹
44. **Recommendations: The State should move with speed to adopt an electronic branding programme to enhance traceability of stolen livestock and act as a disincentive for cattle rustlers. It should enhance its support to livestock rearing in like manner as with agriculture and farming. The Government, in conjunction with its East Africa and Horn of Africa counter-parts, should urgently ratify the 2008 Protocol on Cattle-Rustling to curb cross-border cattle rustling and facilitate greater security in the region.**

D. NON DISCRIMINATION AND EQUALITY

Discrimination of sexual minorities

45. There is lack of legal protection from discrimination against lesbian, gay, bisexual, transgender and intersex persons on account of sexual orientation or gender identity. They face discrimination in accessing education, employment, health and reproductive health services. Indeed, their sexuality is also criminalized by the existing penal laws.
46. **Recommendation: The State should decriminalize homo sexual acts. It should pass a comprehensive Anti-Discrimination Law affording protection to all individuals irrespective of their sexual orientation or gender identity. It should develop and adopt positive policies for the management of trans-sexualism and intersexuality.**

¹⁹ The Independent Review Commission [IREC (2008)], IREC Final Report, Kenya: Government Printers. At <http://www.communication.go.ke/media.asp?id=719>

²⁰ Ibid. Chapter 8.

²¹ These findings were made following a fact-finding mission conducted by Kenya Human Rights Commission in October, 2009, following an attack on resident of Kanampiu, Samburu by Pokot raiders, which left more than 30 people dead.

Killing of older persons on allegations of witchcraft

47. There have been numerous cases particularly in Nyanza and Coast provinces where older persons are lynched and murdered on allegations of practicing witchcraft.
48. **Recommendation: The Government through its National Policy on Ageing should propose measures for the protection of older persons through the criminalization of witch-hunting.²² The Government should protect persons at risk of being lynched on allegation of practicing witchcraft, who usually are older persons.**

Legal recognition of minorities and indigenous peoples

49. Minorities and indigenous peoples lack legal recognition and adequate avenues for participation in decision making processes within the current Constitutional Framework. The current Constitution does not define the terms ‘minority’, ‘indigenous’, ‘minority interests’ or ‘indigenous interests’ and this has had a detrimental effect on their visibility in National policy-making and their capacity to seek legal redress.
50. **Recommendations: The State should ratify and domesticate ILO 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). More specifically, the State should infuse minority and indigenous rights within the Constitution’s Bill of Rights and the National Action Plan on Human Rights.**

Citizenship based discrimination

51. Certain laws, policies and administrative actions continue to perpetuate citizenship-based discrimination in Kenya. For instance, the Nubian community, since their demobilization from the colonial army, has had their citizenship status in contention²³ and has in fact been the subject of litigation.²⁴ A similar predicament is shared by Kenyan Somalis who are subjected to extraordinary screening and vetting exercises by the government as a precondition to accessing identification documents which are the basis of legal recognition of Kenyan citizenship. Furthermore, Sections 90 and 91 of the Constitution restrict the ability of women to confer citizenship to foreign spouses and children who are not born of Kenyan fathers.
52. **Recommendations: The National Registration Bureau should adopt a clear and uniform registration process and; the government should shift from the paradigm of 42 ‘official’ ethnic groups to a more fully inclusive approach to identity on the basis of inherent citizenship rather than tribes; and hasten the Constitutional Review process to ensure equal enjoyment of citizenship rights irrespective of gender.**

²² GROWING OLD IN KENYA: MAKING IT A POSITIVE EXPERIENCE. Kenya National Commission On Human Rights; Human Rights Report, May 2009

²³ Minority Rights Group International (MRG) and CEMIRIDE (2005), Kenya: Minorities, Indigenous Peoples and Ethnic Diversity. pp. 16-17. Published by Minority Rights Group International

²⁴ Citizenship has been the subject of domestic litigation (High Court Civil Case No. 256 of 2003) and is now currently before the African Commission on Human and Peoples’ Rights (Communication 317/2006)