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DROITS ÉCONOMIQUES, SOCIAUX ET CULTURELS

**Droit à un logement convenable en tant qu'élément du droit
à un niveau de vie suffisant**

Rapport du Rapporteur spécial, M. Miloon Kothari

Additif

Mission effectuée au Kenya (9-22 février 2004)*

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit, qui est joint en annexe au résumé, n'est distribué qu'en anglais et n'a donc pas été revu officiellement par les services d'édition.

Résumé

Le présent rapport est soumis conformément à la résolution 2004/21 de la Commission des droits de l'homme. La mission du Rapporteur spécial sur le droit à un logement convenable en tant qu'élément du droit à un niveau de vie suffisant avait pour objectif général de faire le point et de rendre compte de la situation en ce qui concerne la réalisation du droit à un logement convenable et d'autres droits connexes au Kenya, en accordant une attention particulière à l'égalité entre hommes et femmes et à la non-discrimination, afin de promouvoir la prise en compte des droits de l'homme à tous les niveaux de la gouvernance, de la formulation des politiques et de l'exécution. Le Rapporteur spécial a également cherché à engager le dialogue avec le Gouvernement, les organismes des Nations Unies et d'autres organismes internationaux, ainsi qu'avec la société civile, et à identifier des solutions concrètes et les meilleures pratiques pour la réalisation des droits relevant de son mandat.

Le Rapporteur spécial prend acte des efforts que le nouveau Gouvernement déploie, tout comme de la volonté et de l'engagement politiques qu'il manifeste, mais il constate que les défis à relever sont immenses et que, s'agissant de remédier à la situation actuelle en matière de logement et de propriété foncière, tous les aspects du problème n'ont pas été suffisamment pris en considération. Ayant hérité d'un pays miné par la corruption et la mauvaise gestion des ressources de l'État et des ressources locales, y compris la terre, le Gouvernement doit faire face à la croissance des bidonvilles, dont certains sont les plus grands de l'Afrique subsaharienne, au manque d'accès de la population, et particulièrement des groupes les plus pauvres, à des services essentiels tels que l'approvisionnement en eau potable, l'électricité et l'assainissement, et à la pandémie de VIH/sida. Deux ans après la mise en place du nouveau Gouvernement issu de la Coalition nationale Arc-en-ciel, le Kenya est toujours dans une phase de transition sociopolitique. Le nouveau Gouvernement a affirmé vigoureusement son engagement en faveur des droits de l'homme et sa volonté de corriger les erreurs du passé. Le Rapporteur spécial se félicite certes de ces déclarations d'intention, mais il est préoccupé par le fait que l'on n'accorde pas suffisamment d'attention à certaines questions. Il songe en particulier à la discrimination qui s'exerce contre les femmes, à la persistance des cartels fonciers et à la pratique des déplacements et des expulsions forcées.

Le Rapporteur spécial s'efforce, tout au long de son rapport, de mettre en évidence les progrès accomplis et les domaines où des mesures complémentaires pourraient être prises. Il formule à cet égard plusieurs recommandations, notamment sur les points suivants: prise en considération des droits de l'homme dans les politiques sectorielles, les programmes de logement et d'assainissement des quartiers insalubres, et le cadre constitutionnel et juridique, et application d'indicateurs tenant compte des droits de l'homme; réexamen des programmes en place ainsi que des politiques et lois qui sont en cours d'élaboration, afin de les orienter en faveur des femmes et des groupes de population les plus pauvres, vulnérables et marginalisés, notamment les populations autochtones, les personnes vivant avec le VIH/sida, les habitants des forêts et les personnes handicapées; adoption d'une démarche globale pour le traitement des problèmes touchant aux expulsions forcées, à la sécurité d'occupation, à la légalisation des établissements spontanés et l'assainissement des quartiers insalubres; et création d'un organe juridictionnel compétent pour connaître des questions relatives aux établissements humains spontanés.

Le Rapporteur spécial se félicite vivement du dynamisme du mouvement issu de la société civile et des relations fécondes qu'entretiennent de plus en plus les autorités de l'État et les

acteurs de la société civile au sujet des droits au logement et à la terre. Il a apprécié l'empressement et le réel intérêt manifestés par les responsables gouvernementaux et il espère que, comme lui, le Gouvernement verra dans le présent rapport le point de départ d'un dialogue suivi sur les moyens constructifs à mettre en œuvre pour favoriser la réalisation du droit à un logement convenable. Le Rapporteur spécial espère aussi que le Gouvernement n'hésitera pas à faire appel au Programme de coopération technique du Haut-Commissariat aux droits de l'homme et à d'autres organismes pour l'élaboration et l'exécution de programmes et plans d'action concernant les droits de l'homme.

Annex**REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING, MILOON KOTHARI, ON HIS MISSION TO KENYA (9-22 FEBRUARY 2004)****Contents**

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Introduction

1. At the invitation of the Government of Kenya, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, undertook a country mission to Kenya from 8 to 22 February 2004. Since 2001, the Special Rapporteur has tried to undertake a mission to Kenya but it required a political shift until the mission could eventually be agreed on. The fact that the new Government invited the Special Rapporteur should be seen as a positive sign, indicating its readiness to allow itself to be scrutinized and its commitment to progress.
2. The general purpose of the Special Rapporteur's mission was to examine and report on the status of realization of the right to adequate housing and other related rights in the country, with particular attention to aspects of gender equality and non-discrimination, aiming at promoting the incorporation of a human rights perspective in all levels of governance, policy-making and implementation. He also sought to engage in dialogue with the Government, United Nations and international agencies and civil society, and to identify practical solutions and best practices in the realization of human rights related to his mandate.
3. Based on provisions found in legal instruments, the Special Rapporteur has adopted a working definition of the right to adequate housing as "the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity" (E/CN.4/2001/51). Based on the interrelatedness and indivisibility of human rights, he has adopted a holistic approach to his mandate, and has sought to explore linkages with other rights and issues, such as the rights related to food, water, and health, access to sanitation, work, property, land, and the right to security of the person and security of home, and protection against inhuman and degrading treatment, in all of his activities, including country missions.
4. The Special Rapporteur met with a wide range of ministries and local authorities, including the Ministry of Roads, Public Works and Housing (hereafter Ministry of Housing), the Ministry of Water Resources, Ministry of Local Governments, Ministry of Land and Settlements, the Ministry for Planning and National Development, the Ministry of Environment and the Ministry of Justice. The Special Rapporteur also had the opportunity to interact with: the Inter-ministerial task force on housing, the Kenya National Commission on Human Rights, the Parliamentary Select Committee on Housing, Health, Labour and Social Welfare, representatives from the Industrial Court, the National Housing Cooperation and the Constitutional Kenya Reform Commission. The Ministry of Housing played a coordinating role. His meetings with United Nations and international agencies included meetings with the United Nations Resident Coordinator of the United Nations Development Programme (UNDP) as well as representatives of the United Nations Human Settlements Programme (UN-Habitat) and the United Nations Development Fund for Women (UNIFEM). The Special Rapporteur also had the opportunity to meet with donor agencies in the Land Policy Development Group. He would like to thank the UNDP for the valuable assistance provided in organizing the mission.
5. The Special Rapporteur met with a number of civil society groups and communities, both in urban and rural areas, including Nairobi, Mombasa, Isiolo, Makueni District, and the Mau and Kieni Forests. Civic forums were organized in Nairobi, Mombasa, Isiolo and Makueni to enable civic and community groups and individuals, including internally displaced, indigenous, minorities, pastoralists, to submit testimonies and for the Special Rapporteur to hear the voices

of vulnerable and/or marginalized groups. The Special Rapporteur would like to extend his sincere appreciation to the Mazingira Institute and the Human Rights Monitoring Group (HURIMOG) for its support and coordination of many civil society activities. He also thanks Muslims for Human Rights (MUHURI), Ilishe Trust, Kituo cha Sheria, Women Access Programme International (WAPI), Waso, Eastern Forum of Operation Firimbi (Blow the Whistle) Campaign against public land grabbing, Kenya Human Rights Commission, and Ogiek Welfare Council, for their facilitation of civic forums and community visits. The Special Rapporteur is also grateful to all other numerous non-governmental actors who provided input through testimonies and submissions.

I. LEGAL AND INSTITUTIONAL FRAMEWORK

6. Kenya is party to the six core international human rights treaties and has ratified the two optional protocols to the Convention on the Rights of the Child. Kenya has also ratified an important number of ILO Conventions, but not the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. At the regional level Kenya is a party to the African Charter on Human and Peoples' Rights.

7. Almost two years after the election of the new National Rainbow Coalition Government, Kenya is still in the middle of a socio-political transition. The new Government has firmly expressed its commitment to human rights and its intention to right wrong-doings of the past. Its key priorities, expressed during the election campaign, include economic recovery, elimination of corruption, trimming the civil service, devolving powers to the regions, making primary education free and health care more affordable, fostering better incomes for the poor, improving infrastructure and maintaining a stable macroeconomic framework.

8. The Special Rapporteur was impressed by the commitment shown by Ministers, Deputy Ministers and Permanent Secretaries during his mission, and, in particular, by the actions and approach taken by the Ministry of Water Resources and the integrated perspective to planning and development, based on rigorous data and analysis, evident in the work of the Ministry of Planning and National Development. During his visit, the Special Rapporteur also noted a number of positive measures being taken or in the pipeline. At the time of his visit, a new Constitution was being drafted, and the Special Rapporteur welcomes indications that the Constitution will eventually include a clear recognition of the right to adequate housing and an explicit commitment to the reporting obligations of the Government of Kenya under international human rights treaties.

9. Pending the adoption of a new Constitution, the current Constitution of Kenya contains no direct provision recognizing the right to adequate housing. Its Section 75(1) merely recognizes the right to protection of one's property, stating that no property of any kind shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired except under certain conditions, conditions that are laid down in the Government Lands Act. The current Constitution further provides, in its Section 70(c), for protection for the privacy of one's home and other property and from deprivation of property without compensation. Again, the regulations related to the eminent powers of the State to acquire one's property are laid down in the Government Lands Act.

10. The complexity of the legal system governing housing and land has done little to ensure security of tenure or to facilitate realization of the right to adequate housing. Over 30 legal statutes currently deal with land and housing, some of them inconsistent with one another. New positive policies and laws on housing, land, gender and water have emerged. Note should be taken of the recognition in the Sessional Paper on National Housing Policy for Kenya of the right to adequate housing and its progressive realization. The Special Rapporteur was encouraged by the clear reference in the paper on gender policy to the Convention on the Elimination of All Forms of Discrimination against Women and the call for its domestication in Kenya. Since the completion of his mission, Sessional Paper No. 3 (Housing Policy for Kenya) was approved by the Parliament in June 2004. The Special Rapporteur has been informed by the Government that this approval has now paved the way for an on-going process of formulating a comprehensive Housing Act to enable the regularization of the housing sector. The Government similarly informed the Special Rapporteur that its intention is for a comprehensive Land Policy to be developed by June 2005.

11. The Special Rapporteur was encouraged by the emerging governmental and institutional framework which ideally should facilitate addressing, directly or indirectly, housing and land rights issues in the future. He particularly welcomes the recent establishment of a Ministry of Gender, the Ministry of Justice, the Parliamentary Select Committee on Housing, Health, Labour and Social Welfare, an inter-ministerial Inter-Agency Task Force on Housing, including representatives from the civic sector, and the creation of statutory bodies, like the Kenya National Commission on Human Rights that has an important potential in promoting all human rights, as well as the forthcoming Gender Commission.

II. FINDINGS AND ISSUES OF PARTICULAR CONCERN

A. Essential Services

12. Kenya is among the poorest countries in the world. 56 per cent of the population lives below the poverty line of US\$1 per day as of 2002, compared to 52 per cent in 1997¹, the majority of them being women. Kenyan economy has seen a downward trend since 1990, partly due to the suspension of foreign aid by the donor community.² In parallel there has been a failure of the governments in the past to respect and protect the right to adequate housing, including access to essential services, such as potable water, electricity, and sanitation, and land, particularly with respect to the poorest segments of society, including in informal settlements. This failure has been accentuated by corruption, mismanagement of state and local resources, land grabbing, increasing poverty rates and growing slums.

13. The Special Rapporteur received testimonies from slum dwellers in Kibera, Nairobi's largest slum, about the so-called "flying toilets". As of yet local authorities have not made any efforts to connect Kibera to the city sewage system. Though some latrines have been installed in the area, with a population of over half a million,³ they are far from sufficient. It has become common to use polythene bags to defecate, which are then thrown, thus "flying", from shacks and shelters onto paths, or into rivers and garbage dumps. Similar practices are seen in other urban slums. Whereas the absence of a sufficient number of latrines were the main reason given for the existence of "flying toilets", other testimonies, particularly from women, indicated that the lack of security during evenings and at night time was an additional reason for not using existing latrines.

14. According to the 1999 Kenya Population and Housing Census, access to safe drinking water was continuously low. The Census states that “at the national level no significant improvement has been registered in access to clean water in the last decade. [...] In 1999, only 30 per cent of the households had access to piped water [...]. Rural households were worse off in access to clean and safe water as compared to their urban counterparts; less than 40 per cent of rural households had access to water from piped water systems, boreholes and wells compared to over 80 per cent for urban households.

15. Water is a prerequisite to the realization of a range of human rights, including the right to adequate housing. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 15 on the right to water, stated that “[t]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” (E/C.12/2002/11, para. 2). As in other Covenant rights, the right to water imposes certain obligations on the State parties. The Committee states:

“Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum-seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, States parties should take steps to ensure that: [...] Rural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status” (ibid. para. 16).

16. Ironically, slum dwellers and others residing in informal settlements, often the poorest segments of society, pay exorbitant prices for water. Scarce water points and high demand lead to constantly rising water prices. In 2001, the Habitat International Coalition (HIC) reported that residents in the Mtumba slum in Nairobi paid up to five times the price paid by their middle class neighbours with access to piped water from the Nairobi City Council.⁴

17. Testimonies at the Mombasa Civic Forum indicated that Mombasa residents pay their water bills to the Mombasa Water Company, which in turn remits the money to Nairobi, from where water distribution and management is controlled. Allegedly due to corruption and mismanagement, disruption of water supply in Mombasa is common. Representatives from a number of non-governmental organizations also criticised the Municipality’s recently initiated “beautification project”, including the extension of road islands. They argued that if communities had been allowed to participate in planning and decision-making they would have given priority to development and improvement of city infrastructure including drainage, sewage, electricity, and transport. According to the Government, it has in the recent past given attention to the Local Authorities Service Delivery Plans (LASDAPs), which provide for participatory planning, as a prerequisite for local authorities to benefit from so-called Local Authority Transfer Funds (LATF). The Special Rapporteur understands that the LASDAPs have been in the pipeline for considerable time and will follow their implementation with interest.

18. Testimonies from the civic forum in Isiolo also raised the seriousness of the housing situation of the Watta community, and generally for former or 'dropout destitute' pastoralists, with particular emphasis on their lack of access to essential services.

19. The Government has also stated that in order to meet increasing demands for essential services, it is working on modalities to privatize and/or allow consultancy services in the physical planning process to augment existing capacities. In this context the Special Rapporteur wishes to recall that while human rights law does not prevent the provision of basic rights and services, including water, electricity, education, and sanitation through private companies as such, States have the responsibility to ensure that such privatization does not infringe on the human rights of the population.

B. Policies, strategies and legislation

20. Whereas it is positive that the Government is committed to the establishment of clear policies on a number of previously neglected areas such as water, housing and gender, the Special Rapporteur is nevertheless concerned that the emerging policies are not based upon the human rights obligations of Kenya, nor on the reality on the ground, despite the fact that extensive data from the 1999 Census and the Central Bureau of Statistics⁵ exist which would have permitted the elaboration of policies particularly targeted at ensuring the basic human rights for the poor and other marginalized groups of society, particularly women. The Special Rapporteur welcomes the National Housing Development Programme, the creation of Water Boards, the Economic Recovery Strategy for Wealth and Employment Creation and the elaboration of a Millennium Development Goals Responsive Plan. However, it is vital that such plans and strategies must fully incorporate all human rights obligations of Kenya.

21. In order for policies to achieve a purpose, there is a need for increased cooperation and consultation between ministries on policies with a cross-sectional character, such as on housing, land and water. Emerging policies also need to be complemented by implementing strategies, the implementation perspective being largely absent at the time of the mission.

22. Although the development of policies and comprehensive action plans is vital, the most urgent rights and needs of the poor and other vulnerable groups should be able to be addressed even in the absence of established policies.

23. The implementation process needs to address the attainment of the minimum essential elements of the right to adequate housing. As an example, by adopting a primary education policy providing for free primary education, the Government has demonstrated its recognition in practice of the progressive realization of the right to education. A similar approach is required for housing, health and food.

C. Macro-economic conditions and the right to adequate housing

24. The current Government has inherited a challenging economic reality. In the first Millennium Development Goals progress report for Kenya in 2003⁶, the low economic growth from 1994 "culminated into a 0.3 per cent contraction in 2000, inflation and rise in consumer prices". The poor economic performance is largely a result of bad governance, corruption and inefficient use of public resources. Kenya is among the bottom ten income economies in the

world. In 2002 an estimated 56 per cent of the population lived below the identified poverty line. It is recognized that prevailing poverty and limited economic growth has undermined the Government's ability to ensure adequate health care, food and basic education for large parts of the population. This is equally true for the right to adequate housing and other relevant rights.

D. Slum upgrading

25. In Nairobi, over 60 per cent of the population lives in informal settlements, but the land occupied only corresponds to 5 per cent of Nairobi's surface. A slum is characterized by lack of basic services, substandard housing or illegal and inadequate structures, overcrowding, unhealthy living conditions, hazardous locations, insecurity of tenure leading to irregular or informal settlements, poverty, and social exclusion. Kibera, Sub-Saharan's largest slum, has over half a million inhabitants, although accurate data is difficult to come by and variations in numbers are common. According to UN-Habitat "(b)etween 1971 and 1995, the number of informal settlement villages within the Nairobi divisional boundaries rose from 50 to 134 while the estimated total population of these settlements increased from 167,000 to some 1,886,000 individuals.⁷

26. On 16 January 2003, the Minister for Roads, Public Works and Housing and the Executive Director of UN-Habitat signed a Memorandum of Understanding on the "Slum upgrading Programme of Kenya". The aim of the programme is to improve housing, infrastructure, services, and livelihoods of people working in informal settlements. The programme also gives priority to ensure that the poor are given some form of tenure security so they can participate in improvement of the urban environment. It was foreseen that work would start on slum upgrading in Nairobi and Kisumu, and that experiences from these places would be used in order to plan slum upgrading in other areas of the country.

27. Upon the signing of the Memorandum of Understanding it was announced that the first pilot project would be to upgrade Kibera-Soweto. According to the Government Kibera-Soweto is to be "the starting point for city-wide and country-wide initiatives". However, the project has still not taken off the ground. In reply to the Special Rapporteur's observations regarding the implementation of the Slum upgrading Programme, the Government emphasized that "an institutional framework for co-ordination, implementation and monitoring of the programme involving all relevant Government institutions, local authorities, community-based organizations, donor and development partners has been put in place. The implementation of the programme will embrace the principles of decentralization, partnerships, consultation, stakeholder participation, consensus building, leadership and the empowerment and participation of beneficiary communities in upgrading projects." Likewise, on the issue of slum-upgrading, according to UN-Habitat "we as a UN organisation and bilateral and multi-lateral organisations living in Kenya should come together in supporting efforts to create a platform of negotiation and helping the Government of Kenya in making this story of the past."⁸

28. While it is true that a Nairobi Situation Analysis has been undertaken and other examinations of the situations in slums and squatter settlements in the capital have been done, the project has, not surprisingly, been met with opposition from shack owners and rent collectors. More significantly, and of great concern, the slum dwellers themselves have expressed criticism, and fear, ungrounded according to UN-Habitat, of being forcibly evicted to the other side of the river. According to information received from the Government, a Settlement

Executive Committee, responsible for consultation with the community, has been elected and is operational. As a stark contrast from the position of the Government and information received, testimonies gathered from slum dwellers of Kibera-Soweto indicate that consultation has been implemented in an ad hoc as opposed to an in-depth and comprehensive manner, and involvement in planning and decision-making has been even less prominent.

29. There is a Government commitment to address the growing slums in urban areas, particularly in Nairobi. According to the City Council, a water distribution system was installed in Kibera in 2000, and street lighting has been provided for in other informal settlements. However, in the past, as stated by the Government itself, such initiatives have been ad hoc and uncoordinated. With respect to slum upgrading, reference is repeatedly made to its cooperation with UN-Habitat in this respect. It should be made clear however, that the initiative to undertake upgrading of Kibera-Soweto is limited in scope, and will not provide the ultimate solution to the problems of slums in Nairobi or other urban areas in Kenya. Slum upgrading cannot take place in isolation. There is an urgent need for a comprehensive city wide strategy and action plan, based on consultation and participation, to identify geographical housing alternatives, which will not only enable those relocated to sustain their livelihoods but also create dignified housing and living spaces for slum-dwellers.

30. Strategies for slum-upgrading need to take into account the regimes related to security of tenure. Tenants, so-called squatters, internally displaced, slum dwellers, the minority Nubian community and others, all face different obstacles to the realization of their right to adequate housing. However, with respect to security of tenure, the regimes governing this area have not been sensitive to different needs and rights, nor has the diversity of situations and actors been taken into account.

31. In light of the above, it is therefore somewhat worrying that in parallel with the slow progress in implementation of the slum-upgrading programme for Kibera-Soweto, forced evictions from road reserves and from structures built under power lines and near railway lines in Kibera were initiated at the time the Special Rapporteur's visit, yet another indication that a comprehensive strategic city action plan is needed (see Section I).

32. Since the time of his mission, the Special Rapporteur has been informed that several components of the Kibera-Soweto slum-upgrading project have been undertaken, including social-economic mapping of the Kibera slum, physical planning of the settlement, and identification of the decanting site. The project was ultimately launched by the President on World Habitat Day on 4 October 2004.

33. Examples from the past should serve as lessons. A slum-upgrading project funded by German contributions had a negative impact on the intended project beneficiaries. The Mathare slum dwellings were turned into housing units, but since many of the previous slum-dwellers were unable to pay the demanded rent, they had to leave and move into other slums, some of them in worse conditions than those in Mathare. In their place, families with capacity to pay the necessary rent moved in. Examples like this have led to mistrust among slum dwellers with regard to slum-upgrading projects. To overcome such reluctance on the part of slum dwellers, it is of particular importance that all slum-upgrading projects are done in close consultation with those affected at the planning stage and with respect for the right to participation in decision-making.

E. Millennium Development Goals

34. During the Special Rapporteur's official meetings, especially with the Ministry for Planning and National Development, the commitment of the Government of Kenya to the Millennium Development Goals was made evident. Among the MDGs of particular significance for housing rights are the global commitments to achieve a significant improvement in the lives of at least 100 million slum dwellers by 2020, and to halve the proportion of people without access to safe drinking water by 2015. Also, at the World Summit for Sustainable Development, States agreed to halve the proportion of people without access to adequate sanitation by 2015.

35. The need for elaborating indicators and monitoring tools to measure the developing process from a human rights perspective has become more pertinent with the emergence of the MDGs. Developing rights-based indicators and monitoring tools could contribute both to more effective implementation of MDGs and to the realization of relevant human rights. The Government claims it is in the process of generating statistics and developing indicators necessary to monitor the MDGs. Given that the human rights and MDG discourse was to a large extent, distinct, the Special Rapporteur wishes to underline that it is important that such indicators reflect the human rights principles that underlie the development process, such as accountability, non-discrimination, the rule of law, gender equality and progressive realization of economic, social and cultural rights (see also the 2003 report of the Special Rapporteur, UN document E/CN.4/2003/5, paras. 51-62). Applying the human rights principles requires an effort to establish a clear link between the duty holder(s) and their actions, on the one hand, and the corresponding goals towards the progressive realization of the human right, on the other.

36. MDGs are important benchmarks for the realization of relevant rights. As such, the goals and principles contained in the MDGs should not be interpreted in a narrow sense but as a way to capture the normative contents of the rights and to contribute towards the overall realization of all human rights. The absence of such an approach may result in two parallel, distinct and sometimes contradictory processes, one devoted to the realization of the MDGs in a narrow sense and one devoted to the implementation of ratified international human rights treaties. The commitment to eradicate slums in Nairobi and other urban areas is an illustrative example. Whereas efforts to decrease slum-dwellings may comply with MDG targets, the process should take obligations under human rights law into account.

37. The Special Rapporteur is of the view that the implementation of the MDGs could be enhanced and facilitated by embracing a human rights framework and approaches which are consistent with existing State obligations under the human rights instruments.⁹

F. Women and housing and land

38. The discrimination faced by women with respect to land, property and inheritance, and their being denied access and control, has a direct and negative impact on their right to adequate housing. The current Constitution in its Article 82(1) and (3) states that no one should be subject to discrimination on the basis of sex. Policies, programme strategies and regulations are also found in the Economic Recovery Strategy on Wealth and Employment Creation, and in the Sessional Paper on Housing Policy. However, Article 82(4) of the Constitution provides for an exception with respect to certain personal and customary laws. Exemption is explicitly made "with respect to adoption, marriage, divorce, burial, devolution of property on death or other

matters of personal law” and for “the application in the case of members of a particular race or tribe of customary law with respect to that matter which is applicable in the case of other persons”.¹⁰ Since access, control and ownership of land in Kenya is governed by both statutory and, to a large extent, customary laws, discrimination in customary law with respect to women’s property and inheritance rights negatively affects their right to adequate housing. The adoption of a new Constitution will hopefully ensure full respect for the principle of non-discrimination.

39. Under statutory law, any Kenyan above the age of 18 may own property. However, the Kenya National Human Development Report (1999) estimates that less than 5 per cent of Kenyan women own land. Married women are registered under their husband’s names and single women are rarely given titles. Women are similarly denied property ownership with regard to housing. Even if a woman builds or pays for a house herself, tradition often dictates that it belongs to her husband. Without a woman’s name on the title deed, her husband is legally allowed to mortgage the property without her knowledge or consent.

40. Women’s entitlement to land, property and adequate housing becomes a contentious issue particularly in connection with divorces and inheritance. There are five recognised marriage regimes in the country, civil, Christian, Hindu, Muslim and customary marriage regimes.¹¹ Divorce, or judicial separation, is governed by the Matrimonial Causes Act and the Subordinate Courts (Maintenance and Separation) Act, but these acts are only applicable to civil, Christian and Hindu marriages. No legal provision assumes co-ownership of land and property for married couples. The woman’s right to a share of matrimonial property is calculated on the basis of her contribution to it. However, since women are frequently involved either in the informal sector or contribute with extensive work on the property itself, courts have had to define the meaning of contribution. The last decade has seen a growing jurisprudence taking into account non-monetary contributions.

41. Divorce under Islamic law can be obtained either unilaterally by the husband or by mutual consent, or through a court decision if the wife wishes to divorce. The right of the woman after the divorce is limited to a period of three months. In theory, Islamic law allows women to own and inherit property regardless of marital status.

42. Inheritance is regulated by the Law of Succession Act, adopted in 1972. It gives widows, including widows from a polygamous marriage, certain rights to inheritance. Following an amendment in 1990, Muslims are not covered by the Act.

43. Despite existing laws, the Special Rapporteur received numerous testimonies regarding challenges faced by women in ensuring their right to adequate housing. It was repeatedly underlined that men traditionally control both access to and ownership of land, even though women have the main burden in developing and maintaining the house. Accounts were frequent of cases where a husband decides to leave his wife, takes another one or passes away, and the wife is chased out of the home by her in-laws. She leaves with nothing, not even her personal belongings. Although such testimonies were more frequent with respect to rural women, the practice does seem to also exist in urban areas.

44. Some customary traditions preclude women from inheriting property. A widow may be forced to marry a male relative in order to ensure her and her children’s economic and social protection. In addition to wife inheritance, ‘cleansing’ practices exist in certain communities. In

order to ‘cleanse’ the widow of her husband’s spirit, she is forced to have sexual intercourse with a social outcast, who is paid for his ‘services’. This is also often a condition for the widow to be able to retain her house and belongings. The contrary is also true; women who refuse to take part in the cleansing ritual are chased away by their in-laws.¹² The choice is often to return to their parents’ home or to move to urban areas, where it is not uncommon to find such women in slum settlements.

45. Female-headed households in urban slums live in poorer housing than their male counterparts and struggle to provide for their families. As a coping mechanism, single mothers often turn to unsafe occupations including commercial sex work (increasing exposure to HIV/AIDS and other sexually transmitted diseases) and bootleg alcohol sales (see Section H)¹³. Further, lack of proper sanitation in slum areas is a security hazard for women. Without facilities nearby (or in existence at all), women have to leave their homes at night, putting themselves at risk of sexual assault or other personal attacks. There is little legal protection against violence if it occurs in the home. Perpetrators of domestic violence rarely end up in court, and when they do, sentencing is typically lenient and hardly serves as a deterrent. Violence against women and housing violations are inextricably linked as causes and consequences of each other. Just as inadequate housing in the slums leads to risk of violence, a situation of domestic violence can lead to a woman being deprived of housing.

46. In the absence of a national legal aid scheme, access to courts is restricted. Women are less likely than men to be able to afford a lawyer. Non-governmental organizations attempting to provide legal services are hampered by resource constraints. This impairs the Kenyan woman’s ability to defend her housing, land and property rights, in particular in cases of divorce, inheritance and domestic violence.

47. The Draft 2002 Constitution proposed several progressive measures for women and housing. The right to adequate housing is explicitly recognized in Article 59(1). Further, women are specifically given the right to inherit property and the tradition of deferring to customary law on the subject of inheritance is disallowed. This is consistent with the Commission on Human Rights resolution 2003/22 which:

“Encourages Governments to support the transformation of customs and traditions that discriminate against women and deny women security of tenure and equal ownership of, access to and control over land and equal rights to own property and to adequate housing”.¹⁴

48. The Draft Constitution obliged the State to ensure that married women’s and widow’s interests become law. The draft was the direct result of advocacy by numerous rights groups and constitutional entrenchment of these provisions is welcomed.

49. Legal changes are a significant step forward, but are in no way sufficient to ensure women’s right to adequate housing. In his 2003 study on women and housing, the Special Rapporteur urged States “to pay particular attention to the need to bridge the gap between legal and policy recognition of women’s right to adequate housing and implementation.”¹⁵

50. Responding to the Special Rapporteur’s concern during his mission regarding women’s rights, the Government stated that “an analysis of the forms of discrimination faced by women

and other vulnerable groups will be undertaken; and programmes put in place to address this issue in order to gauge the magnitude of the problem and sensitize and empower women on their rights.” The Special Rapporteur is looking forward to interacting continuously with the Government in its endeavour.

G. Persons with disabilities

51. Persons with disabilities (physical, intellectual or sensory, medical or mental) in Kenya suffer an additional disadvantage in the areas of land, housing and property due to the country’s lack of coordinated policy and law on housing and land. Cultural bias and disability-insensitive laws have been the key contributing factors in curtailing disabled persons’ access to land and property.

52. Persons with disabilities are perceived as unworthy or incapable of owning and managing property. Thus, property is allotted to and registered in the name of others in the family or clan, ostensibly to assist the person(s) with disability, even in a case where the latter has rightfully earned the property. In many communities, mentally/intellectually challenged persons are not allowed to own or inherit any property. More generally, persons with disability rarely inherit land or property. They are also unlikely to be able to afford such purchases as 93 per cent live below the poverty line¹⁶.

53. Women with disabilities experience multiple disadvantages with respect to inheritance. Family or clan members are always the beneficiaries of land and property; this often leads to expulsion of the disabled widow.

54. The *Persons with Disabilities Act 2003*, while a great achievement for advocates, is silent on housing and property rights for persons with disabilities, and therefore fails to address the above concerns.

H. People living with HIV/AIDS

55. An estimated 2.5 million people in Kenya live with HIV/AIDS, over one million being orphans. According to information received from the Inter-agency Committee on housing, HIV/AIDS prevalence in urban centres is 10 per cent, compared to 6 per cent in rural areas. According to the broad national strategic plan designed to guide the country’s response to the epidemic, the Ministry of Roads, Housing and Public Works is expected to design projects to create environments within which communities can combat its effects. The challenge is enormous as illustrated by the alarming testimonies, illustrating how discrimination and stigmatization vis-à-vis people living with HIV/AIDS has had an adverse impact on their right to an adequate standard of living, including adequate housing.

56. Whereas stable, permanent and medically appropriate housing is often crucial in order to maintain care, there are, according to testimonies from civil society, numerous examples of how widows are evicted from their homes, following their husbands’ death of an HIV/AIDS related illness.¹⁷ Similarly, orphaned children are at risk of being chased away from their homes, or seeing their houses burned and locked. Reports of landlords evicting HIV positive tenants are common. According to the Government, HIV/AIDS testing as a prerequisite for either insurance

or mortgage has been outlawed, but there are still reports alleging denial of people living with HIV/AIDS from accessing mortgage and other housing funds.

57. One result of discrimination and stigmatization has been that people living with HIV/AIDS increasingly find themselves forced to find shelter in slums. In Nairobi, the majority of people living with HIV/AIDS reside in slum areas. Overcrowding and poor sanitary conditions often impede proper care for those living with HIV/AIDS. Similarly, inadequate housing and living conditions, including high density and lack of hygiene in large urban slums increases the risk of outbreaks of HIV/AIDS related illnesses, disease and infection, including the spreading of tuberculosis.

58. Reports and testimonies revealed that customary traditions and practices affecting women's right to adequate housing and property might also contribute to the spread of the epidemic. 'Cleansing' practices in certain communities, involving unprotected sex, puts women at risk of becoming infected with HIV/AIDS.

I. Indigenous peoples – logging in the Mau Forest

59. The marginalization and disadvantage experienced by indigenous communities in Kenya is largely a result of the history of colonization, and the shift by successive post-independence governments from communal land ownership to individualized, private land ownership. The British colonial Government turned large amounts of land owned by indigenous peoples into Crown land thereby freeing arable land for the new colonial settlers, whereas indigenous peoples were referred to reserves. The expropriation of indigenous lands continued after independence well into the 1990s.

60. The Special Rapporteur met with representatives from the Ogiek community in the Mau Forest in Nakuru District. The Ogiek, an estimated 15,000 to 20,000 individuals¹⁸, were traditionally gatherers and hunters, who since the colonial period have faced repeated evictions from their settlements. Ancestral land of the Ogiek in the Mau Forest was declared a protected forest area by colonial authorities in 1942, and communities living in the area were resettled to other lands. The Ogiek nevertheless remained or returned to their ancestral land from resettlement areas in Sururu, Likia and Teret. Under Kenya's Forest Act, no cutting, grazing, removal of forest produce or disturbance of the flora is allowed, except with the permission of the director of forestry; permission shall only be given with the object of conserving natural flora and amenities of the reserve. The lack of a comprehensive approach is illustrated by the fact that while previous governments have argued that the Ogiek threaten the forest environment and called for their eviction, nearly 60,000 hectares in the area were opened up for private use in 2001. In addition to settlers that have arrived, often through collusion with public authorities, from other parts of the country, logging companies, including Pan African Paper Mills, Raiply Timber and Timsales Ltd., are active in the area, and what used to be a vast forest and an important water reservoir has become hectares of tree stubs. According to testimonies received and site visits made by the Special Rapporteur, the Ogiek, deprived of their traditional sustainable livelihood, are now increasingly forced to become labourers at new settlers' farms to survive in the area, or leave their traditional homes and move elsewhere.

61. The right to adequate housing is also interlinked with the right to health, food, and a safe environment. The issue of logging in Mau forest illustrates the need to adopt an indivisibility

approach to the right to housing. Continuous logging in Mau forest has affected all these rights of the indigenous Ogiek community, and if not stopped, threatens to further destroy their cultural identity and the community as a whole.

62. Faced with strong local, national and international criticism from environmental organizations, the previous government announced a ban on logging in July 2001. Despite official declarations to the contrary, the Special Rapporteur himself witnessed extensive logging. If continued, this will threaten not only the livelihoods and survival of the Ogiek, but other communities relying on water from Lake Nakuru and connected streams that are drying up as a result of logging and drought.

J. Displacement – Kieni Forest

63. As a result of politically instigated clashes between 1992 and 1993, Kieni Forest was occupied by over 3,000 people – either survivors of the clashes or squatters from the area. The former government allocated them a limited space of land in the forest to carry out farming activities. Due to subsequent over-exploitation of forest resources, the former government issued a seven-day eviction notice. As a result, some of those subjected to evictions started camping along the nearby roadside whereas others moved to unknown destinations. The people found on the roadside were later approached by government officials and promised land plots in Kieni forest. The plots were to measure 100x100 feet. It was also announced that the settlement was merely a temporary solution and the population would eventually be allocated permanent land elsewhere. The received land plots, however, only measured 10x10 feet, and the people of Huruma Village have been living in Kieni Forest for over ten years under constant threat of eviction and without access to any basic services.

64. The Special Rapporteur visited Huruma Village and the Kieni Community Committee during his mission. 520 makeshift shacks of 10x10 feet are built side-by-side in rows. The shacks cannot be expanded despite the population growth. The shacks do not provide adequate protection from the cold or from leaks, and when it rains families have to share the “best” shacks. The Special Rapporteur witnessed and received testimonies about malnutrition and starvation. The population, particularly the children, shows signs of infection and disease; tuberculosis and HIV/AIDS are spreading rapidly.

65. Huruma Village has been abandoned by the authorities as far as service and assistance is concerned. According to testimonies, the population is experiencing constant harassment by forest guards. The community is not allowed to make use of the land in or around the settlement, not even to grow crops. They have to travel long distances to bury their dead. With no easy access to public transport this means that corpses are kept in the shack before a burial can take place – contrary to customs. The Special Rapporteur witnessed a recent case of a three-year old girl who had passed away a week before his visit but whose body was still lying in one of the homes.

66. Forest guards are allegedly making the community pay for using the forest for grazing animals and collecting firewood. Women, who have the main responsibility for collecting firewood, when caught with it have allegedly been subjected to sexual abuse and severe beatings by the guards. One woman was detained in the nearest town and sentenced to three months imprisonment.

67. The population in Huruma Village is living in extreme poverty, and in such an emergency situation, **the Special Rapporteur recommends that the Government establish an emergency assistance programme to ensure that immediate steps are taken to remedy this and similar situations.**

K. Land cartels and speculation in urban slum areas

68. In cities, most prominently in Nairobi, powerful individuals are involved in malpractices such as land speculation, the running of 'land cartels' and illicit land markets. Most structure owners and dwellers in slums like Kibera or Korogocho pay a fee to the local administration, including to chiefs, village elders and police officers to receive official permission to occupy structures and shelters. Practices include illegal allocation of private or public land, and contravene the law. Furthermore, they risk investments in housing by those who are not fully aware of such illegalities. The innocent and poor must be protected and practices fuelling land speculation must be curbed urgently.

69. According to research done under the Government/UN-Habitat Collaborative Slum Upgrading Programme on rents in informal settlements, owning structures in slum areas is a highly lucrative and exploitative business. No maintenance, improvement of structures or provision of basic services is required. Given the irregularity of the market, there is a virtual absence of accountability of structure owners. According to information received by the Special Rapporteur, some shack owners collect revenues from over 1,000 shacks. Public officials are allegedly some of the biggest shack owners. Thus not only collect rent from shack tenants but also forcibly evict those who are too poor to pay, or those who major shack owners and land cartels wish to displace. Ordinary slum dwellers thus find themselves at the mercy of such powerful actors and their agents.

L. Evictions and demolitions

70. The Special Rapporteur has continuously stressed the need for governments to stop forced evictions, and where evictions are necessary, to strictly apply human rights standards in carrying them out. Forced evictions and relocation have a fundamental impact on the lives and livelihoods of people affected, particularly on the very poor who are often the main targets of such practices. Recent planned large-scale evictions and demolitions in Kenya clearly illustrate the need for coordination, consultation and respect for existing human rights obligations.

71. During previous regimes, land and house allocation was frequently used as a means to reward those loyal to the Government and to ensure such loyalty in the future. Also, during past decades, informal settlements have been growing in slum areas, near railway and power lines, and on land earmarked for road reserves intended for road bypasses. The new Government has clearly declared that it intends to address previous mismanagement and illegal allocations. It also has an ambitious plan to clear settlements within 100 feet of either side of the railway line, under power lines and on road reserve land.

72. In late 2003, the Ministry of Housing initiated evictions and demolition of structures on road reserves. The affected structures mainly belonged to the affluent and were perceived as land received through the patronage of the former regime, and the evictions met with limited opposition. In early January 2004, the Kenya Railways Corporation and the Kenya Power and

Lightning Corporation issued eviction notices for those staying on land reserved for their use. Nairobi City Council, acting on the directions of the Ministry of Local Government issued 48-hour eviction notices for those living on structures on City Council land. Whereas the Ministry of Housing had initially targeted the affluent, the evictions and demolitions moved to slum areas, mainly Kibera. On 8 February, 2,000 structures were demolished and thousands of people were left homeless. The Special Rapporteur has tried to investigate the fate of those evicted but there are no records to show their current whereabouts.

73. Additional evictions in Kibera were announced in the week following the Special Rapporteur's visit. According to information received from non-governmental sources, over 150,000 people would have been rendered homeless by the evictions and 17,600 structures would have been destroyed. An estimated 330,000 people living in Kibera would be affected, including by displacement. According to the Government, these figures are exaggerated estimates, although the Special Rapporteur has not received any alternative official estimates.

74. While the Special Rapporteur does not necessarily argue with the announced underlying reasons for evictions and demolitions, he strongly opposes their implementation without the provision of adequate alternative solutions, which would only worsen conditions in slum areas and other informal settlements. It should also be noted that the occupation of the land in question has been on-going for decades with the knowledge and consent of previous governments and that according to testimonies and other information received, people occupying plots near the railway line have paid a fee to Kenya Railways Cooperation to receive "official permission" to live there.

75. The announcement created fear and confusion among inhabitants of affected areas. The confusion was reportedly increased by an announcement made on 29 February by the Minister of Roads, Public Works and Housing at a rally in Kibera, that upon the directives of the President, demolitions on road reserves, near railway and power lines, and on public land were going to be suspended, pending the identification of suitable alternative relocation areas. However, the announcement was subsequently withdrawn with the clarification that the suspension did not apply to demolitions and evictions from road reserves.

76. A complaint was eventually filed against the Kenya Railways Cooperation in the High Court. A court order was initially issued on 27 February 2004 allowing for a ten-day suspension of the evictions. On 8 March the High Court ordered that the evictions be further postponed until 30 March 2004 and that the Kenya Railways Cooperation and the plaintiffs were to negotiate a possible time frame.

77. On 16 March, the Special Rapporteur addressed a letter to the Government of Kenya, in which he drew attention to the negative impact on the poorest and already marginalized groups of society. He also underlined that forced evictions need to be seen in light of the expressed commitment of the Government to address the growing slums in urban areas, particularly in Nairobi, and of its cooperation with UN-Habitat in this respect. The Special Rapporteur reiterated that in order for slum-upgrading to achieve its ends, it must be done with a city or country-wide strategy and action plan based on consultation and participation, to identify geographical housing alternatives, which would enable those relocated to sustain their livelihoods.

78. In a reply dated 11 May 2004, the Government informed the Special Rapporteur that it intended to “sensitize all citizens and stakeholders on procedures for evictions”. In the meantime, due to local, national and international pressure, the Government has announced a temporary halt of evictions. The reason given was that although the decision to evict was irreversible, the Government is working on a more organized and systematic plan for its implementation.

79. Despite the temporary halt in evictions, the Special Rapporteur wishes to express his concern that the Government is not respecting the human rights of those affected by these evictions. The situation illustrates the need for the Government to comply with procedures stipulated by the UN Committee on Economic, Social and Cultural Rights in its General Comment no. 7 on the right to adequate housing: forced evictions (1997), which reads that:

“15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out an eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”

80. Authorities have only focused on prior notice, which in itself is an inadequate measure in accordance with the above procedure. The Special Rapporteur was not made aware of any attempts by authorities to identify, protect and provide redress those affected by demolition of houses, which includes people from the poorest segments of society.

81. Reportedly the Government also intends to remove communities from forest lands. Thus the current practice has created a great deal of insecurity amongst poor Kenyans, including internally displaced people, forest dwellers, indigenous peoples such as the Ogiek, and slum dwellers. This is affecting the credibility of the Government in the eyes of its own people and the international community.

III. Conclusions and Recommendations

82. Whereas it is positive that the Government is committed to the establishment of clear policies on a number of previously neglected areas such as water, housing, and gender, the Special Rapporteur is concerned that emerging policies are not fully based upon the human rights obligations of Kenya, nor on ground reality. **Whereas the Special Rapporteur has attempted to incorporate some recommendations throughout his report, he would like to conclude by submitting the following additional general recommendations.**

- a) **It is essential that there is full incorporation of the human rights perspective, including a clear commitment to non-discrimination and gender equality, at all levels of governance, policy-making and implementation. The integration of human rights perspectives in to sectoral policies, housing and slum-upgrading programmes, the constitutional and legal framework, as well as the application of human rights sensitive indicators would be a first step towards the implementation of international human rights standards and the realization of relevant Millennium Development Goals.**
- b) **The Special Rapporteur recommends that the Government further review existing programmes as well as policies and laws being developed, to orient them towards the poorest, vulnerable or marginalized segments of the population, such as indigenous peoples, persons living with HIV/AIDS, disabled persons, the Watta community¹⁹, and other former or current destitute pastoralists, and forest dwellers. The Special Rapporteur recommends that the Government establish an emergency assistance programme, for extreme cases of humanitarian crisis, such as the community in Huruma village in Kieni forest, who are being denied the right adequate housing.**
- c) **A comprehensive approach needs to be adopted to address the issues of forced evictions, security of tenure, legalization of informal settlements and slum-upgrading, and to ensure close consultation with those affected at the planning stage and with respect for the right to participation in decision-making in these areas. With respect to evictions, the Government should immediately put into practice the procedure called for under General Comment no. 7 of the Committee on Economic, Social and Cultural Rights. There is need for a clear evictions policy and specific legislation in this regard, such as a National Act on Evictions. In the meantime, an absolute moratorium on forced evictions should be implemented. United Nations agencies and programmes, as well as the donor community, is encouraged to play a more active role in ensuring that international human rights law is respected in slum-upgrading schemes and other development programmes, including processes that may lead to forced evictions.**
- d) **Human rights education, particularly on economic, social and cultural rights, should be improved. The Special Rapporteur is encouraged by the establishment of the National Human Rights Commission, and recommends that its capacity to undertake training and awareness-raising activities to this end be strengthened. A particularly useful model which could be considered for cities and provinces of Kenya is the “Human Rights Cities” initiative developed by the People’s Movement for Human Rights Education (PDHRE) and currently being jointly coordinated by PDHRE and UNDP.**
- e) **The Government must give particular attention to existing inequalities when elaborating policies and strategies in order to ensure that women’s rights are fully recognized. Although the Ministry of Gender has an essential role to play, the gender dimension is crosscutting and all ministries need to become more involved and sensitized.**

- f) The Government should consider the establishment of a tribunal on informal human settlements as a quasi-judicial body. The tribunal could be instituted under a relevant statute, such as the ‘Government Lands Act’, to provide remedies to the intractable problem of allocation of public land by the administration and authorities through illegal and irregular practices, including land speculation and land grabbing. Such a tribunal should be empowered to investigate and determine the validity and merit of claims to property rights by settlers, and be guided by principles of equality and non-discrimination. It should stipulate conditions for granting security of tenure over public land to deserving settlers and to ensure that public land remains a common use resource.**
- g) The Government could approach the OHCHR Technical Cooperation Programme and other institutions for assistance in the development and implementation of human rights programmes and action plans.**
- h) The authorities should enhance their cooperation with United Nations agencies and international institutions, in particular UN-Habitat and OHCHR, to adopt and integrate human rights in developing indicators and benchmarks for implementing and monitoring MDGs.²⁰ The Government is also encouraged to work in partnership with NGOs and other civil society organizations proposing alternative development plans.**

Notes

¹ Organisation for Economic Cooperation and Development (OECD), African Outlook – Country Study: Kenya, 2003, page 186.

² HIC-Housing and Land Rights Committee, Report of the Habitat International Coalition (HIC), Fact Finding Mission to Kenya on The Right to Adequate Housing, 2001, page 5.

³ Community federations and city upgrading: the work of Pamoja Trust and Muungano in Kenya, “Environment and Urbanization” Volume 16, Number 1, April 2004. It should be noted that the figures with respect to the number of inhabitants in Kibera vary significantly from one source to another.

⁴ HIC-Housing and Land Rights Committee, Report of the Habitat International Coalition (HIC), Fact Finding Mission to Kenya on The Right to Adequate Housing, 2001, page 13.

⁵ Central Bureau of Statistics “Geographic Dimensions of Well-Being in Kenya: Where are the poor? From districts to locations”, 1999

⁶ Millennium Development Goals – Progress Report for Kenya, Government of Kenya, Ministry of Planning and National Development & United Nations, Kenya, 2003, page 10.

⁷ The Challenge of Slums: Global report on Human Settlements 2003, UN-Habitat.

⁸ Kenya: Grappling with the burden of expanding slums in Nairobi, IRIN NEWS, UN Office for the Coordination of Humanitarian Affairs on www.irinnews.org

⁹ See also the joint statement on MDGs adopted by CESCR and the special rapporteurs on economic, social and cultural rights (in E/2003/22-E/C.12/2002/13)

¹⁰ Human Rights Watch, *Double Standards: Women's Property Violations in Kenya*, Vol. 15, No. 5 (A), March 2003

¹¹ UN-Habitat, *Rights and Reality – Are women's equal rights to land, housing and property implemented in East Africa?*, April 2002, page 159-171

¹² Human Rights Watch, *Double Standards: Women's Property Violations in Kenya*, Vol. 15, No. 5 (A), March 2003, page 16

¹³ Mazingira Institute, *Questionnaire on Women and Adequate Housing: The Case of Kenya*, Nairobi, November 2002, page 9

¹⁴ Commission on Human Rights resolution 2003/22, *Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing*, operative paragraph 5

¹⁵ Kothari, Miloon. Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, in accordance with Commission resolution 2002/49. Commission on Human Rights. (Fifty-ninth Session. E/CN.4/2003/55).

¹⁶ United Disabled Persons of Kenya (UDPK), *Land and Housing Rights for Persons with Disabilities (PWDs): Submission to Civic and Community Sector Forums Nairobi*. Thursday 12 February, 2004. Mazingira Institute.

¹⁷ See report from the African Regional Civil Society Consultation on Women and Adequate Housing on <http://www.ohchr.org/english/issues/housing/docs/nairobi> or on www.unhabitat.org

¹⁸ Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa", adopted by the African Commission on Human and Peoples' Rights at its 28th extra-ordinary session, page 8.

¹⁹ For relevant steps to be followed see the General Recommendation of the Committee on the Elimination of All Forms of Racial Discrimination No. 29 on Article 1(1) regarding descent (2002)

²⁰ See also the joint statement on MDGs adopted by CESCR and the special rapporteurs on economic, social and cultural rights (in E/2003/22-E/C.12/2002/13) and the 2003 report of the Special Rapporteur, UN document E/CN.4/2003/5, paras. 51-62.