

**CIVIL SOCIETY STATEMENT DURING THE PUBLIC SESSION OF THE 57<sup>TH</sup> SESSION OF  
COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS REVIEW OF KENYA**

Distinguished Chairperson, committee members ladies and gentlemen.

Thank you for the opportunity to deliver this oral statement on behalf of The Kenya Section of International Commission of Jurists, Human Dignity, Save the Children Kenya, Elizabeth Glazer Foundation and the Kenya Legal Aids Awareness Network (KELIN).

Mr. Chairperson we would like to draw to your attention to the articles 1, 2, 6 and 12 of the covenant.

Firstly, Kenya as a state party to the ICESCR committed to taking progressive steps towards achieving the full implementation of rights under this covenant. In doing so, Kenya committed to using the maximum available resources to ensure the realization of economic social and cultural rights.

Notably, within the reporting period, Kenya passed the 2010 Constitution and included in it a comprehensive section on the Bill of Rights, which reiterates and strengthens the provisions of the covenant. This Constitution specifically provides for economic and social rights and provides that these rights shall be progressive.

However, there is a concern with regard to the pace of implementation of the decisions of both national and regional courts especially on matters touching on economic, social and cultural rights. In that regard, although the government set up a taskforce on the Endorois decision from African Commission on Human and Peoples Rights, the Endorois community has continuously decried the lack of consultation by the task force. Consequently, it is unlikely that the decision will be implemented effectively in light of community dissent.

In addition, there is a lack of willingness to implement the decisions of the courts in Kenya that recommend the implementation of economic, social and cultural rights. The two thirds gender principle decision of the court has delayed its constitutional timeline and recommendation of the courts and has allowed political interference in the representation of women in Parliament. In Kenya, out of the 350 members of the National Assembly only 69 are women, making this 19 per cent of the total. This is further exacerbated by the recent appointments by the President of Cabinet Secretaries; only 5 out of the 16 recent appointments are women. This demonstrates the political unwillingness to have more women access leadership positions. Indeed, the judiciary is so far the only institution that has made efforts towards complying with the constitutional requirements and out of the 365 judicial officers, 271 are women.

Further, we would like to draw to the attention of the committee with regard to the implementation of the Truth Justice and Reconciliation Commission report on Kenya. Three years since its submission, there is no framework for its implementation especially on its recommendations regarding economic marginalization of communities in North Eastern, Nyanza, Western, North Rift, and Coast Provinces. We call upon the committee to enquire about the plans for the implementation of this report.

Consequently, we would also want to bring to the attention of the committee the challenges with regard to governance and devolved governments in Kenya. Devolution presents an excellent opportunity for the realization of economic social and cultural rights, however, the challenges of bad governance, including corruption, lack of prioritization of economic and social rights, and

inadequate planning has been the bane of the devolved structures. After six years of the promulgation of the constitution the devolved governments have no clear framework for the implementation of these rights. In addition, we express concerns with regard to the ability of the ethics and anti-corruption commission to fully deal with the corruption cases in Kenya, the government should provide this body with institutional independence and structures to fully realize its potential.

Finally, we would like to reiterate the government of Kenya's obligation to ensure non-discrimination and the need for the realization of substantive equality. There is need to remove those barriers affecting the realization of these rights but also take measures aimed at achieving equality and non-discrimination in Kenya. Specifically, we would like the government to rethink its strategies in the implementation of the prohibition of the female genital mutilation Act and the sexual offences Act. With regard to the former, there is still widespread acceptance of the practice of FGM in Kenya, the practice has now gone underground as communities have not understood the need to stop the practice and the health challenges it portends for the girls.

Further, there continues to be widespread discrimination of persons living with HIV/AIDS. Although the President launched a directive aimed at reducing stigma and discrimination especially with regard to children in schools, and which also included a directive to collect data on the status of children in schools and their guardians, this directive although noble is not without problems. The right to privacy of these children has been violated and increasingly cases of stigma and discrimination, which is currently the subject of a court case in which, the Special Rapporteur on the right to health is appearing as Amicus Curiae.

We thank you.