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**Ambassador Amina Chawahir Mohamed Hossain
Permanent Secretary
Ministry of Justice, National Cohesion
& Constitutional Affairs
Nairobi-Kenya**

Dear Madam,

**REF: DISRESPECT FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS LEADS TO TORTURE AND
OTHER FORMS OF VIOLENCE IN KENYA**

We, the Centre for Minority Rights Development, the World Organisation Against Torture and the undersigned Human Rights non-governmental organizations fighting torture and other cruel and inhuman or degrading treatment or punishment,¹ in light of the forthcoming examination of the national reports of Kenya at the 41st Sessions of the UN Committee Against Torture and the UN Committee on Economic, Social and Cultural Rights, wish to emphasise the strong link between disrespect for economic, social and cultural rights and the incidence of torture and other forms of violence in Kenya². Specifically, we wish to underline that Kenya's poor, excluded and other vulnerable groups are often the first and most numerous victims of violence, including torture and cruel, inhuman or degrading treatment, and that violence is often inflicted on persons for the simple fact that they demand respect for economic, social or cultural rights – their own or those of others. It is also often the case that socio-economic hardship and the iniquitous allocation of resources in Kenya contributes to inter-community competition and that this, in turn, leads all too often to inter-community violence.

The extreme violence that followed Kenya's elections in December 2007 was in large part an expression of grievances related to social and economic dissatisfaction among the Kenyan population and deep concern at the unfair distribution of resources, including land. Indeed, current data ranks Kenya as the 5th most unequal country out of 53 African states, and the 10th most unequal country in the world. The roots of the post-election violence are not, therefore, to be found in "*ancient tribal rivalries*," but rather in government policies that have not only failed to bridge the gap between Kenya's richest and poorest citizens, but have, in practice, further enriched the few at the expense of the majority. These same policies have increased the exclusion of certain marginalised communities, who have no opportunity to voice their opposition to policies and programmes that compromise their wellbeing and the enjoyment of their human rights. This exclusion, and the violence that frequently accompanies it, impedes many Kenyan's, especially women and children, from reaching their full potential.

A clear example of the failure to adequately address poverty and inequality is represented by the situation of pastoralist communities in the Northern frontier districts of Kenya. These communities have been marginalized by successive governments and continue to suffer as a result of inadequate infrastructure,

¹ These organizations met at the OMCT international seminar on, "*Addressing the Economic, Social, and Cultural root causes of violence through the UN Special Procedures system*" held in Geneva, Switzerland from 23 – 27 June 2008.

² Find the Parallel report uploaded on; <http://www2.ohchr.org/english/bodies/cescr/cescrs41.htm> entitled OMCT

including limited or even inexistent education and health facilities. The districts of Garissa, Wajir, Moyale, Mandera, Marsabit, Turkana, Isiolo and others have been left out of the development process, a fact that has been recognised by the Government on several occasions. This situation has severely affected the economies of these districts, compromised living standards and generated competition over scarce resources. As a consequence, there has been an escalation of cattle raids, tribal, inter-community, and resource-based conflicts and other forms of violence in the region. The lack of a systematic policy and structure to handle community conflicts in marginalized, semi arid and arid parts of the country has meant that human rights have often been abused, either because of the State's failure to comply with its positive obligation to protect its citizens, or because the Government has used – with impunity - unnecessary force against the populations involved, particularly in cases of disarmament of pastoralist communities.

The use of brutal force by the state apparatus has not only been evident in rural districts such as Mt. Elgon, but also in urban areas, where it is often justified in terms of cracking down on illegal vigilante groups, quelling disturbances by civil society, or even as operations against suspected criminal gangs who are themselves often engaged in exploiting the poor.

In turn, the impact of violence and the reality of living in constant insecurity can be such that many individuals or communities are unable to enjoy fully their economic, social and cultural rights: they fear sending their children to school, travelling to visit health facilities, fetching water or gathering firewood. Traditional occupations like pastoralism, cultivation and trading are important sources of employment and income for many communities, however pervasive violence means that these activities are associated with a high degree of risk. Violence, or the threat of violence, thus compromises the rights to work in safe conditions and to an adequate standard of living. Similarly, high levels of violence and the insecurity they generate can paralyse communities living in informal settlements in Kenya's urban centres.

Women and children are particularly vulnerable to the impact of violence upon the enjoyment of their economic, social and cultural rights. For example, conflict and violence typically disrupt and undermine the provision of, access to and quality of education. In some cases these can also cause children serious psychological harm. Teachers and pupils not only stay at home for fear of attacks, but also suffer high levels of trauma due to the pressure of constant fear, particularly in the aftermath of inter-community violence. Parents too face trauma, and keep their children out of school if they fear that their safety is at risk. Furthermore, the forced closure of schools is a phenomenon long present in areas affected by inter-community violence. In addition to the impact of conflict on education, natural disaster have taken their toll as regards access, enrolment, retention and drop out rates of children in marginalized areas. Within the period of 2005/6 in Garissa, in North Eastern Kenya, 13 schools closed because of lack of water and in a secondary school in the same region, none of the expected 40 pupils turned up for Form 1. Similarly, schools were transformed into dormitories for displaced people in Northern Kenya during the floods of November/December 2006. Rehabilitating them in time for the new school year in 2007 and helping the displaced find refuge were challenges for the communities.

Given the severity of existing conditions, we strongly urge the Kenyan Government to take into consideration and systematically address the causal links between the failure to respect economic, social and cultural rights, and poverty, inequality, discrimination and violence. This is particularly pressing as in the case regarding marginalized and minority populations in both Kenya's urban and rural areas.

With this in mind, and with the desire to support the Government of Kenya in eradicating torture and other forms of violence that are linked to the denial of economic, social and cultural rights, we, the undersigned human rights NGOs, call upon the Kenyan state to:

1. Undertake institutional reforms and, in particular, review the country's Constitution. This revised Constitution should see the integration of economic, social and cultural rights in order to promote equal enjoyment of and access to education, health care, political rights and representation and the equal pay for equal work principle. It should adequately address issues of property and land rights, ensure that customary law is consistent with international human rights standards, and recognise the rights of minority and indigenous populations.

2. Undertake affirmative action for groups and regions that have long experienced marginalization and discrimination in terms of economic growth and distribution. This should be seen from the perspective of the proposed institutional reforms that should recognise and mainstream the interests of marginalized minorities, persons with disabilities, and the victims of calamities and historical injustices in their new frameworks. These reforms should, among other things, provide for the equitable distribution of resources and take firm and decisive steps to address and end corruption and associated crimes, including the system of political patronage that sees land and other resources allocated to individuals and communities in exchange for political support.
3. Professionalize key sectors, and the security sector in particular. In Kenya, this sector, which plays a crucial role in every democratic nation, should be trained in conflict resolution and should be held accountable for the implementation of the very laws it stands for. This must see – imperatively - the eradication of the use of brutal force, torture and other forms of cruel, inhuman or degrading treatment or punishment against civilians.
4. Finalise the establishment of the Truth, Justice, and Reconciliation Commission, among other transitional justice mechanisms. This Commission must not only address Kenya's post-electoral violence, but also support the attempt to document human rights abuses carried out since independence and make recommendations concerning reparations to victims, as well as suggest reforms to help prevent future abuses or violations.
5. Finalise and adopt the National Policy on Peace-building and Conflict Management of 2005-6, which will provide a framework for addressing security issues such as those in Mount Elgon and elsewhere, and end the reactive and crisis-driven approach to conflict management and resolution.

- African Centre for Treatment and Rehabilitation of Torture Victims (ACTV), Uganda
- Bangladesh Indigenous Peoples Forum, Bangladesh
- Bulgarian Helsinki Committee, Bulgaria
- Centre Libanais des Droit Humains (CLDH), Lebanon
- Centre for Minority Rights Development (CEMIRIDE), Kenya
- Fundación Desarrollo y Paz (FUNDEPAZ), Colombia
- Global Justice Brazil, Brazil
- Jananeethi Insitutue, India
- Movement for the Survival of the Ogoni People (MOSOP), Nigeria
- Mozambican League for Human Rights, Mozambique
- Philippine Alliance of Human Rights Advocates (PAHRA), Philippines
- Psychosocial Attention Center (CAPS), Peru
- Red por los Derechos de la Infancia en México (Mexican Child Rights Network), Mexico
- Rencontre pour la Paix et les Droits de l'Homme (RPDH), Congo-Brazzaville
- World Organisation Against Torture (OMCT), Switzerland

With regards,

On behalf of the afore mentioned Human Rights NGO's

YOBO RUTIN
Executive Director
CENTRE FOR MINORITY RIGHTS DEVELOPMENT