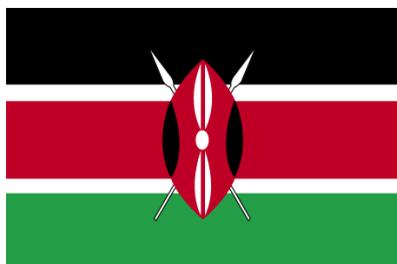


AFRICAN PEER REVIEW MECHANISM



Country Review Report of the Republic of Kenya



MAY 2006

APRM PARTICIPATING COUNTRIES AND PANEL OF EMINENT PERSONS

APRM Participating Countries

As of May 2006, the following are the APRM Participating Countries:

Algeria, Angola, Benin, Burkina Faso, Cameroon, Republic of Congo, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Malawi, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Uganda and Zambia

Sao Tome and Principe and Djibouti have also expressed their intention to accede to the APRM.

APR Panel of Eminent Persons

Amb. Bethuel Kiplagat, from Kenya, representing Eastern Africa
(Chairperson)

Dr Dorothy Njeuma, from Cameroon, representing Central Africa
(Vice Chairperson)

Dr Graca Machel, from Mozambique, representing Southern Africa
(Member, leading the Kenya Review Process)

Prof. Adebayo Adedeji, from Nigeria, representing Western Africa
(Member)

Prof. Mohammed Seghir Babès, from Algeria, representing Northern Africa
(Member)

Mme. Marie-Angelique Savané, from Senegal, representing West Africa
(Member)

Dr Chris Stals, from South Africa, representing Southern Africa
(Member)

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ACKNOWLEDGEMENTS

The APRM Panel Country Review Report on Kenya is the third of its kind, the first two being on Ghana and Rwanda.

This report could not have been produced without the contributions of many individuals and organisations. The Panel would like at this juncture to thank His Excellency Mwai Kibaki, the President of Kenya, for his leadership. In addition the Panel commends the work done by the Focal Point, the Ministry of Planning and National Development, the National Governing Council, the Kenya NEPAD Secretariat, the Technical Research Institutions and all stakeholders in Kenya who participated in the implementation of the APRM.

Our unalloyed gratitude goes to our strategic partners, the African Development Bank (AfDB), the United Nations Development Programme (UNDP) and the United Nations Economic Commission for Africa (UNECA), who have been very supportive of the APRM process since its inception. In addition to providing financial, technical and institutional support to the APRM, experts from these organisations have participated in all the APRM Missions fielded to date. The Panel also thanks the twenty- five participating countries so far for maintaining the momentum of the African revival and renaissance through aspiration for, and commitment to improved governance. Further, most of these countries have made contributions to the APRM Trust Fund, and are actively supporting implementation of the APRM at the national level. The Panel also seizes this opportunity to express its gratitude to all those partners who have made generous contributions to this Fund.

From the Secretariat, special recognition is accorded to Dr Bernard Kouassi, Executive Director; Dr. Moise Nembot, Coordinator, Democracy and Good Political Governance; Mr. Gaston Bushayija, Coordinator, Socio-Economic Development; Mr. Dalmar Jama, Research Analyst, Corporate Governance; and Ms Nana Boateng; Research Analyst, Socio-Economic Development.

They were assisted by a team of Independent Consultants (Mrs. Patricia Cisse; Dr Bernard Dasah; Dr. Afeikhen Jerome; Dr. Omotunde Johnson; Ms. Laura Nyirinkindi; and Prof. Chudi Uwazurike) and representatives of Partner Institutions (Ms. Zemenay Lakew [UNDP]); Mr. Ayodele Aderinwale [Consultant, UNDP]; Dr. Michael Mah'moud [AfDB]; Prof. Achi Atsain [Consultant, AfDB] and Dr Emmanuel Nnadozie [UNECA]) who worked steadfastly to finalise the report.

The Panel is grateful for the advances that have already been made in the quest for better governance at all levels through multi-stakeholder dialogue and participation. The Panel notes with appreciation the enthusiasm demonstrated by the various stakeholders in Kenya for the APRM process. The enthusiasm with which civil society organisations in Kenya have embraced the process, both nationally and regionally and an evolving culture of stakeholder candour, self- critiquing and engagement are highly commendable. In this respect, we acknowledge the effort of the vibrant Kenyan media

and several non-governmental organisations.

In presenting this APRM Country Report for Kenya to the Forum, we as members of the Panel of Eminent Persons do not underestimate the task that still awaits us.

Members of the Panel of Eminent Persons:-

Amb. Bethuel Kiplagat (Chairperson)

Prof. Dorothy Njeuma (Deputy Chairperson)

Dr. Graca Machel (Member Leading the Kenya Review Process)

Prof. Adebayo Adedeji

Prof. Mohammed Seghir Babès

Mrs. Marie-Angelique Savané

Dr Chris Stals

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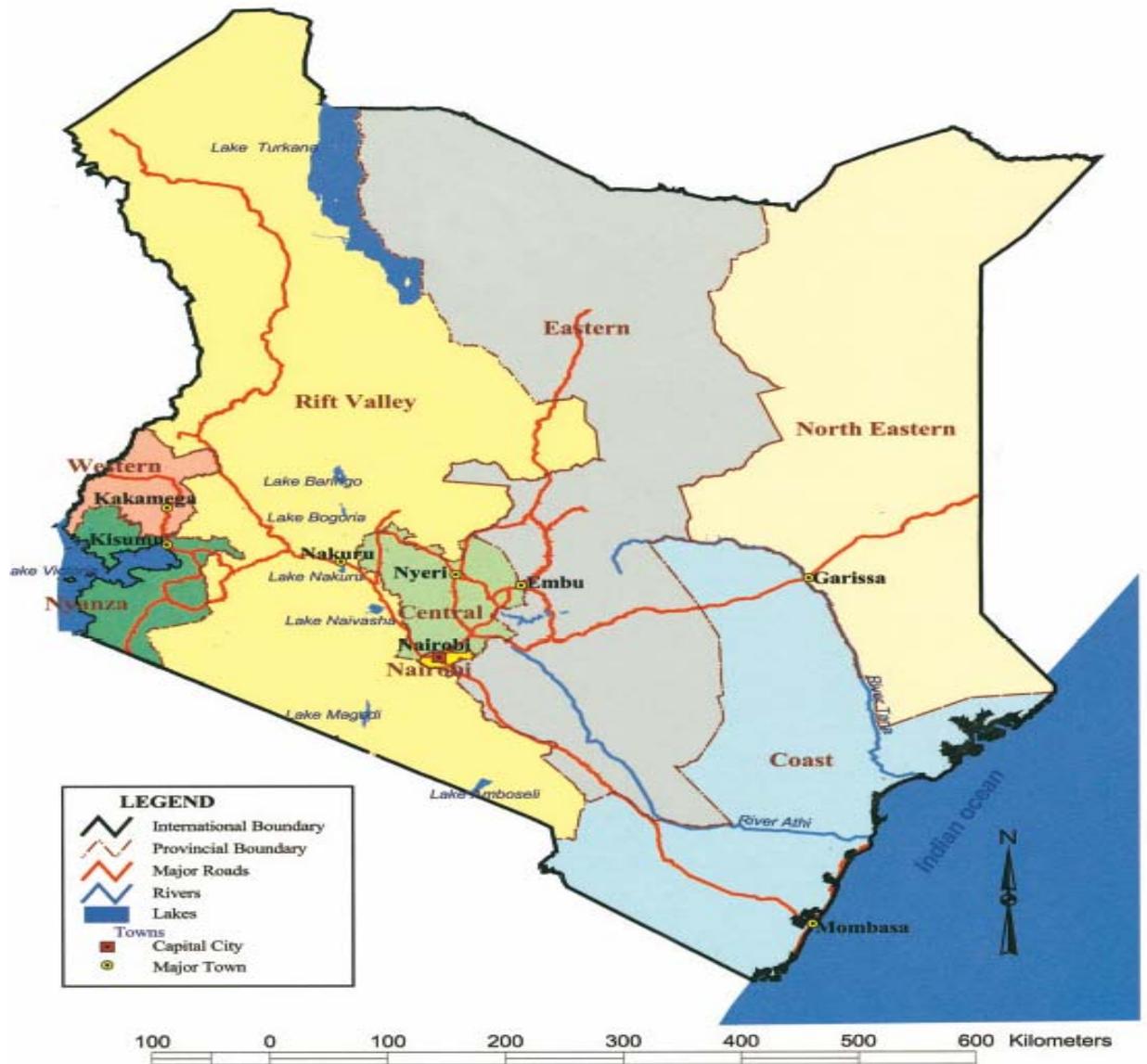
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MAP OF KENYA



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COUNTRY FACT SHEET¹

| | |
|------------------------------|--|
| Location: | Eastern Africa, bordering the Indian Ocean, between Somalia and Tanzania. Border countries: Ethiopia 861 km, Somalia 682 km, Sudan 232 km, Tanzania 769 km, Uganda 933 km |
| Area: | <i>Total:</i> 582,650 sq km <i>land:</i> 569,250 sq km; <i>water:</i> 13,400 sq km |
| Land/use: | Arable land: 8.08%; permanent crops: 0.98%; others: 90.94% (2005) |
| Population/people: | 33,829,590 (July 2005 Est.) |
| Independence: | 12 December 1963 (from United Kingdom) |
| Constitution: | 12 December 1963; amended as a Republic, 1964; reissued with amendments 1979, 1982, 1986, 1988, 1991, 1992, 1997, and 2001. Currently under review. |
| Political governance: | <i>Type of government:</i> Republic <i>President:</i> Mwai KIBAKI (since 30 December 2002) <i>Elections:</i> last held 27 December 2002 (next to be held December 2007) <i>Election results:</i> President Mwai KIBAKI elected. - <i>Percentage of vote:</i> Mwai KIBAKI 62%, Uhuru KENYATTA 30% |
| Economy: | <i>GDP purchasing power parity:</i> \$34.68 billion (2004 EST.) <i>GDP per capita:</i> US\$460 (World Bank, 2005) <i>Real GDP growth:</i> 5.8.% (2005), 4.3 % (2004) <i>GDP composition:</i> Agriculture: 19.3%; industry: 18.5%; services: 62.4% (2005) <i>Unemployment Rate:</i> 14.6 % (2004.) <i>Headline Inflation:</i> 15% (2005) |
| Budget: | <i>Revenues:</i> \$2.89 billion <i>Expenditures:</i> \$3.443 billion, including capital expenditures (2004 Est.) |
| Trade: | <i>Exports:</i> \$2.589 billion f.o.b. (2004 est.); <i>imports:</i> \$4.19 billion f.o.b. (2004 Est.); <i>Current account balance:</i> \$-459.2 million (2004 Est.) |

¹ Sourced from Central Bank of Kenya Annual Reports; Central Bureau of Statistics, Kenya; UNDP Kenya and CIA-The World FactBook

Trading partners: *Exports:* Uganda 17%, UK 10 %, Tanzania 8%, the Netherlands 8.% (2005)
Imports: United Arab Emirates 12%, USA 11%, UK 10%, South Africa 9% (2005)

External Debt: \$6.792 billion (2004 Est.)

Exchange rate: Kenyan shillings per US dollar - 76.68 (June 2005), 79.68 (June 2004)

ABBREVIATIONS AND ACRONYMS

| | |
|--------|---|
| ACEG | - African Centre for Economic Growth |
| ACP | - Africa Caribbean and Pacific |
| ACPU | - Anti-Corruption Police Unit |
| AEC | - African Economic Community |
| AFCAC | - African Civil Aviation Commission Constitution |
| AGOA | - African Growth and Opportunity Act |
| AiA | - Appropriation- in -Aid |
| AIDS | - Acquired Immune Deficiency Syndrome |
| AML | - Anti-Money Laundering |
| APRM | - African Peer Review Mechanism |
| ASAL | - Arid and Semi-Arid Lands |
| AU | - African Union |
| BFID | - Banking Fraud Investigation Department |
| BIS | - Bank for International Settlements |
| BMD | - Budget Monitoring Department |
| BOPA | - Budget Outlook Paper |
| BSA | - Bank Supervision Application |
| BSD | - Budget Supplies Department |
| BSP | - Budget Strategy Paper |
| CAG | - Controller and Auditor General |
| CBK | - Central Bank of Kenya |
| CBOs | - Community Based Organisations |
| CBS | - Central Bureau of Statistics |
| CDF | - Constituency Development Fund |
| CDS | - Central Depository System |
| CFAA | - Country Financial Accountability Assessment |
| CFT | - Combating Financing of Terrorism |
| CMA | - Capital Markets Authority |
| COMESA | - Common Market for Eastern and Southern Africa |
| COTU | - Central Organisation of Trade Unions |
| CPI | - Corruption Perception Index |
| CRM | - Country Review Mission |
| CSAR | - Country Self-Assessment Report |
| CSOs | - Civil Society Organisations |
| CSSDCA | - Conference on Security, Stability, Development and Cooperation in Africa |
| EWARN | - Early Warning and Conflict Management System |
| DC | - District Commissioner |
| DPF | - Deposit Protection Fund |
| DR | - Democratic Republic |
| DRC | - Democratic Republic of Congo |
| DSC | - Defence Staff College |

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|----------|---|
| EAC | - East African Community |
| ECK | - Electoral Commission of Kenya |
| EFM-AP | - Enhanced Financial Management Action Plan |
| EFT | - Electronic Funds Transfer |
| EMCA | - Environmental Management and Coordination Act |
| EMU | - Efficiency Monitoring Unit |
| EPZ | - Export Processing Zone |
| EPZs | - Export Processing Zones |
| ERS | - Economic Recovery Strategy |
| ERSWEC | - Economic Recovery Strategy for Wealth and Employment |
| Creation | |
| ESAAMLG | - East and Southern Africa Anti-Money Laundering Group |
| EU | - European Union |
| FATF | - Financial Action Task Force |
| FBO | - Faith-Based Organisations |
| FGD | - Focus Group Discussion |
| FGM | - Female Genital Mutilation |
| FIDA (K) | - International Federation of Women Lawyers-Kenya Section |
| FIU | - Finance Intelligence Unit |
| FPE | - Free Primary Education |
| FPK | - Family Planning Association of Kenya |
| FRC | - Financial Reporting Centre |
| FSP | - Fiscal Strategy Paper |
| FTA | - Free Trade Area |
| GDP | - Gross Domestic Product |
| GEF | - Global Environmental Facility |
| GFS | - Government Finance Statistics |
| GK | - Government of Kenya |
| HIV | - Human Immunodeficiency Virus |
| HIV/AIDS | - Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome |
| HSGIC | - Heads of State and Government Implementation Committee |
| IASB | - International Accounting Standards Board |
| IASs | - International Accounting Standards |
| IC/GLR | - International Conference on the Great Lakes Region |
| ICJ | - International Commission of Jurists |
| ICPAK | - Institute of Certified Public Accountants of Kenya |
| ICT | - Information Communication Technology |
| IDB | - Industrial Development Bank |
| IDIS | - Institute of Diplomacy and International Studies |
| IDPs | - Internally Displaced Persons |
| IEA | - Institute of Economic Affairs |
| IED | - Institute of Education and Democracy |
| IFAC | - International Federation of Accountants |
| IFMIS | - Integrated Financial Management Information System |
| IGAD | - Inter-Governmental Authority on Development |
| ILO | - International Labour Organisation |

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| IMF | - International Monetary Fund |
| IP- ERS | - Investment Programme for the Economic Recovery Strategy |
| IPC | - Investment Promotion Council |
| IRC | - International Red Cross |
| IS | - Import Substitution |
| ISAs | - International Standards on Auditing |
| KACA | - Kenya Anti-Corruption Authority |
| KACC | - Kenya Anti-Corruption Commission |
| KANCO | - Kenya Aids NGOs Consortium |
| KANU | - Kenya African National Union |
| KCB | - Kenya Commercial Bank |
| KCPE | - Kenya Certificate of Primary Education |
| KDHS | - Kenya Demographic and Health Survey |
| KEPHIS | - Kenya Plant Health Inspectorate |
| KIPPRA | - Kenya Institute for Public Policy Research and Analysis |
| KNH | - Kenyatta National Hospital |
| KNHRC | - Kenya National Human Rights Commission |
| KRA | - Kenya Revenue Authority |
| Kshs | - Kenya shillings |
| KTMM | - KIPPRA Treasury Macro Model |
| KYC | - Know Your Customer |
| LATF | - Local Authority Transfer Fund |
| LDP | - Liberal Democratic Party |
| LIPI | - Leather and Leather Products Institute |
| LTAs | - Lead Technical Agencies |
| MAC | - Monetary Affairs Committee |
| MDGs | - Millennium Development Goals |
| MIE | - Multinational Industrial Enterprises |
| MNC | - Multinational Corporations |
| MOU | - Memorandum of Understanding |
| MP | - Member of Parliament |
| MPER | - Ministerial Public Expenditure Review |
| MPND | - Ministry of Planning and National Development |
| MPs | - Members of Parliament |
| MTC | - Metallurgical Technology Centre |
| MTEF | - Medium Term Expenditure Framework |
| MWG | - Macro Working Group |
| NACC | - National Aids Control Council |
| NAK | - National Alliance of Kenya |
| NAGC | - National Governing Council |
| NARC | - National Rainbow Coalition |
| NASCO | - National Aids STDs Control Programme |
| NASSEP IV | - National Sample Survey and Evaluation Programme IV |
| NDC | - National Defence College |
| NEMA | - National Environmental Management Authority |
| NEP | - National Enquiry Point |
| NEPAD | - New Partnership for Africa's Development |

| | |
|-----------|--|
| NGOs | - Non-Governmental Organisations |
| NHIF | - National Health Insurance Fund |
| NTF | - National Task Force |
| OAU | - Organisation of African Union |
| OLF | - Oromo Liberation Front |
| PAC | - Parliamentary Accounts Committee |
| PAC | - Public Accounts Committee |
| PEM-AAP | - Public Expenditure Management Assessment and Action Plan |
| PIC | - Parliamentary Investigation Committee |
| PPP | - Public Private Sector Partnerships |
| PRSP | - Poverty Reduction Strategy Paper |
| SID | - Society for International Development |
| SME | - Small and Micro Enterprises |
| SNA | - Systems of National Accounts |
| SPLA | - Sudan Peoples Liberation Army |
| SPLM | - Sudan Peoples Liberation Movement |
| SPS | - Sanitary Phytosanitary Standards |
| STI | - Sexually Transmitted Infection |
| STIs | - Sexually Transmitted Infections |
| STR | - Suspicious Financial Transactions Report |
| TGs | - Thematic Groups |
| TI | - Transparency International |
| UN | - United Nations |
| UNDP | - United Nation Development Programme |
| UNECA | - United Nations Economic Commission for Africa |
| UNEP | - United Nations Environment Programme |
| UNHABITAT | - United Nations Human Settlements Programme |
| UNHCR | - United Nations High Commission for Refugees |
| UNICEF | - United Nations Children Fund |
| US | - United States of America |
| USA | - United States of Africa |
| VAT | - Value Added Tax |
| VCTs | - Voluntary Counselling Centres |
| WTO | - World Trade Organisation |

EXECUTIVE SUMMARY

The APR Process

In an effort to enhance the quality of governance in Africa, the Sixth Summit of the Heads of State and Government Implementation Committee (HSGIC) of the New Partnership for Africa's Development (NEPAD) held in Abuja, Nigeria, in March 2003, adopted the Memorandum of Understanding (MOU) on the African Peer Review Mechanism (APRM). It is an instrument voluntarily acceded to by member states of the African Union (AU) as a self-monitoring mechanism for African states. The mandate of the APRM is to ensure that policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance. The primary purpose of the APRM is to foster the adoption of policies, standards and practices that will lead to political stability; high economic growth; sustainable development; and accelerated sub-regional and continental economic integration through the sharing of experiences and the reinforcement of successful and best practices, including identifying deficiencies and assessing the needs of capacity building.

The APRM is open to all member states of the AU and so far, 25 member countries have voluntarily acceded to it. Prior to the Kenya Review, Country Review Missions (CRMs) had been fielded only in Ghana and Rwanda, and Ghana is now approaching the completion point of the first phase of the entire process, having been reviewed at the Third APR Forum Summit in Khartoum, Sudan in January 2006.

Kenya and the APRM

Kenya was one of the pioneer countries to accede to the APRM. Alongside nine other countries Kenya voluntarily acceded to the APRM in March 2003 in Abuja, Nigeria. Thereafter, the country constituted an Inter-Ministerial Task Force led by the Ministry of Planning and National Development, the ministry responsible for NEPAD projects and the Focal Point for the APRM Process in Kenya to map out a strategy for the implementation of the APRM in conformity with the NEPAD guidelines.

An APRM Support Mission to Kenya was conducted from 26-27 July 2004 to assess the processes and mechanisms put in place by Kenya in order to undertake its self-assessment and draft a Programme of Action (POA). The MOU on the Technical Assessment Mission and the Country Review Visit was signed between Dr. Graca Machel on behalf of the APR Forum and Hon. Prof. Peter Anyang' Nyong'o, then Minister of Planning and National Development, on behalf of the Government of the Republic of Kenya.

A 33-member independent National African Peer Review Mechanism National Governing Council (NGC) was nominated by stakeholders and inaugurated on 25 October 2004 to preside over the APRM Process in Kenya. The NGC was given legal status through a gazette notice by the Minister.

In consultation with members of the incoming Governing Council, the APRM Task Force selected four reputable Nairobi-based local research institutions to lead the review process. Kenya submitted its self-assessment report and a draft national programme of action in August 2005 despite some organisational problems which had led to a change in the Chair of the Governing Council.

The Country Review Mission

A two-stage approach was adopted in conducting the Country Review Mission (CRM). Dr. Graca Machel, Member of the African Peer Review Panel of Eminent Persons [APR Panel] led an 18-member CRM to Kenya from 3-14 October 2005. In the course of the review mission, the CRM interacted with a diverse range of stakeholders, including the National Governing Council, civil society organisations, media, political parties, academia and faith based and human rights organisations. Others included trade unions, women and youth groups, minorities, disadvantaged groups, persons with disabilities, persons living with HIV/AIDS, and associations of journalists. The mission also met with Cabinet Ministers, Members of Parliament, Permanent Secretaries of the various Ministries, Heads of Departments, the Central Bank, the Chief Justice, the Law and Order Sector, and anti-corruption bodies. The other entities consulted included business associations, professional bodies, small and medium enterprise federations and financial institutions.

The CRM also attended provincial fora in seven provinces, namely Nairobi, Coastal, Central, North Eastern, Nyanza, Rift Valley, and Western provinces, and consulted with local authorities and a wide range of stakeholders from various districts. In Nairobi, the Team made an onsite inspection of Kibera, one of the largest slum dwellings in Kenya. Further, the mission held meetings with various development partners in Kenya.

The mission notes the visible commitment of Kenya's citizenry and leadership to the institutionalisation of democracy in the country. For this reason, Kenyans perceive the APR process as an important contributing factor in achieving the national aspiration to good governance. Therefore, at every layer of society, the people spoke on the management of their public life with candour and passion. Overall, Kenya is committed to improved governance and its people are resolute and determined to work for a better quality of life. The NGC and the APRM National Focal Point effectively and efficiently executed their duties in a spirit of partnership and commitment. The Council made commendable efforts to sensitise the public and disseminate information on the APRM so as to create awareness and ensure broad-based participation. The Kenya NGC also exercised autonomy in executing its mandate.

Moreover, the Technical Review Institutions (TRIs) chosen to undertake the exercise are credible and competent research institutions, renowned in the country and the sub-region. The TRIs have undertaken broad consultations and in-depth surveys to reflect the views of ordinary Kenyans. The four-stage methodology, comprising desk research; national sample surveys executed jointly by the Central Bureau of Statistics (CBS) and the African Centre for Economic Growth (ACEG); focal group discussions targeting special groups; and expert panel surveys, is apt and highly recommended to other countries.

Follow up- Mission to Kenya

The CRM was undertaken at the height of the debate/campaign on the constitutional referendum. In effect, the political atmosphere was both tense and expectant, the tension being an outfall of the nature, character and intensity of the political debate. The heightened tension meant that the outcome of the referendum was bound to have a significant impact on the future political direction of Kenya. The splitting of the society into two movements meant that victory by either side of the divide would be perceived as political ascendancy on the one part and an accompanying loss of face and political ground on the other. It also meant that subsequent political and social events would be viewed through this prism. A modicum of the rearrangement of the political equation was to be expected, regardless of the outcome of the referendum. To this must be added the telling effect of major outstanding and unresolved issues of land allocations and misallocations, perceptions of impunity and the challenges of an anti-corruption campaign.

In light of the foregoing, the Panel was convinced that the import of these developments needs to be properly situated to the emerging issues and demonstrate the impact of same on the political future of Kenya. Thus a three member team was raised to provide additional insight and analysis of the events and propose requisite recommendations. The team visited Kenya from 10-14 April 2006. The emerging issues include

- The conclusion and outcome of the November 21st 2005 referendum;
- The release of a number of reports including the Anglo – Leasing report; the Goldenberg report; the Ndung’u report and Akiwumi report; and the net effect of their release with respect to the issues they were supposed to address;
- The raid on the Standard Newspaper by agents of the state in March 2006

Reviewing the situation, the Panel was convinced that the developments had fundamental implications for the overall political future of Kenya. What follows below is an analysis of the issues itemised above.

The 21 November 2005 Referendum and its Aftermath

The nature of the debate and associated political activities leading to the constitutional referendum had meant that whatever the outcome, the implications for political stability would be great. The rejection of the proposed draft

constitution by 57% to 43% heightened the polarization of the nation and deepened the ethnicization of politics.

Commendably, though, is the Electoral Commission of Kenya (ECK) under the leadership of Samuel Kivuitu. The body not only exercised its independence in the conduct of the referendum, but the results were also declared 24 hour after voting took place with neither camp disputing the outcome.

As disappointing as the outcome of the referendum might have been for the government, it nonetheless respected the outcome by gracefully accepting the results of the referendum. However and predictably too, there were backlashes from this development. The President dismissed his entire Cabinet with the exception of his Attorney General and Vice President. Cabinet was only reconstituted after protracted negotiations and political horse trading. Seven of the Ministers who had campaigned against the draft were excluded from the newly reconstituted Cabinet. Reactions to the composition of the new Cabinet were swift and visceral. Several commentators expressed dismay that the cabinet although large, was unrepresentative of the ethnic diversity of the nation. As part of the fall out of the referendum and for a variety of reasons, Parliament was prorogued till March 2006. With mounting political tension, an immediate indication of a way forward on the part of the government became imperative if only to douse tension and provide some political calm.

As a response mechanism and with a view to moving the constitutional review process forward, the President appointed a committee of Eminent Persons, led by Amb. Bethuel Kiplagat, on 24 February 2006. The Committee was charged with the responsibility of facilitating the collection of views of Kenyans with respect to weaknesses, strengths, successes or failures of the constitution review process, while at the same time making proposals on the way forward.

In addition, the Committee was to identify any legal, political, social, economic, religious, governance or other issues or obstacles, whether past or present, which stood in the way and/or may stand in the way of achieving the successful completion of the process. It was to submit its report to the President by 30 May 2006. The Committee is expected to recommend a process for national healing, reconciliation and faithful dialogue, a process for resolution of contentious issues and a legislative framework to under gird the new Constitution of Kenya.

Nonetheless, members of the Orange Democratic Movement (ODM) expressed some concern on the manner in which the Committee was constituted and has set up its own constitutional review committee. The Law Society of Kenya too appointed its own committee. These developments may detract from the legitimacy of the Kiplagat Committee, and thus undermine the acceptability of its final recommendations.

The Anglo Leasing Report and Anti- Corruption

Towards the twilight of its rule, the Kanu government awarded a contract to supply

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tamper proof passports for the department of immigration to a certain Anglo-Leasing Finance Company, purportedly based in the United Kingdom. Investigators could not trace the company in the UK, yet it had been paid an initial commitment fee of Kshs 90 million and an additional Kshs 300 million out of the contract sum of Kshs 2.7 billion. The award process itself, like seventeen other high-profile security related project contracts, was executed under the rubric of special purpose finance vehicles for security contracts, and was done without any regard for due process. Although, most of these contracts began during the KANU government, its outfall has had more impact on the current government. The publication of the report on the Anglo-Leasing contracts indicted several high ranking government officials in both the previous and current governments. This heightened public demands for the NARC government to show further demonstrable commitment to its declared anti-corruption stance and orientation. Mounting and relentless public pressure saw the Minister for Finance; David Mwiraria and Minister for Constitutional Affairs, Kiraitu Murungi resign while three former Permanent Secretaries (Finance, Home Affairs, and Office of the President) have been arraigned in court. There was also public pressure for the exit of the Vice President and Minister for Home Affairs.

The Goldenberg Scandal:

The Goldenberg Commission of Inquiry was set up to examine huge payments made for the fictitious export of gold and diamonds by a certain Goldenberg International and related foreign exchange deals which were deemed to be illegal. The Commission of Inquiry undertook the investigations from February 2003 to November 2005. Its findings were handed to the President on 3 February 2006. The Commission recommended the prosecution of Kamlesh Pattni, the key architect of the scheme and the former Vice President, George Saitoti. It also called for the prosecution of 70 other people involved in the illegal export compensation scheme, which saw the Kenyan Government lose 20 billion Kenya shillings. The overall management of the recommendations of the Commission of Inquiry in an already tense political situation fuelled allegations of lack of required political will to pursue the case to its logical conclusions and additional doubts on the willingness of the government to honour its commitments on anti -corruption.

The Ndung'u Report on Land and Graft in Kenya.

The *Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land*, chaired by Paul Ndung'u and released in December 2004 by the Government Printer, Nairobi, (244 pages with two annexures running to 976 (Appendix I) and 797 (Appendix II) pages) documents the illegal and somewhat arbitrary allocation of public land by previous Kenya government officials. It is estimated that over 200,000 illegal allocations have occurred since independence in 1963. As the Commission Report pointed out, the practice of illegal land allocations increased dramatically during the late 1980s and throughout the 1990s:

Land was no longer allocated for development purposes but as political

reward and for speculation purposes ... 'land grabbing' became part and parcel of official grand corruption through which land meant for public purposes ... has been acquired by individuals and corporations (p.8).

Details are also given concerning illegal land awards made to both the Kenyatta and Moi families, as well as to a number of former ministers, MPs, judges, civil servants and military officers, with recommendations that the large majority of such awards should be revoked. More importantly and transcendental of the salacious aspects of the commission's report, its enduring value and overall strategic value is to be found in the sections which details the systematic manner and verve with which established procedures, designed to protect the public interest, were perverted to serve private and political ends.

The Akiwumi Report Revisited

The decision by the KANU Government to re-introduce the multi-party system as demanded by Kenyans opposed to the one-party system was met by organized resistance. This entailed violence directed against those classified as non-indigenous persons. These organized attacks covered parts of the Rift Valley, Western, Nyanza and Coastal provinces in 1992; and Rift Valley, Coast and Eastern Provinces in 1997. There were also endemic clashes rooted in organized banditry that targeted cattle and communication routes in North Western and Eastern parts of Kenya. Approximately 2000 people lost their lives in 1992 while another 500,000 were displaced.

The KANU Government set up a Commission to investigate these "ethnic clashes", their causes, actions of the Police and other law enforcement agencies in addressing these incidences and the efficacy of law enforcement agencies in preventing and controlling such violence. The Commission was to recommend further investigation or prosecution of perpetrators as well as ways to better prevent and control future inter-ethnic attacks.

The report confirmed the role of prominent members of the ruling party and high ranking government officials in fuelling the so-called ethnic clashes. According to the report, the Provincial Administration and the police force were complacent despite their knowledge of planned attacks. Furthermore, the Akiwumi report attributed violence in the North Eastern and Western parts of Kenya to the extreme levels of marginalization of communities in political, economic and social structures and processes. Sadly enough, the marginalization of these groups remains largely unaddressed to date.

The government did not immediately release the findings of the Akiwumi report. It took a decision of the Court to compel the Government to do so despite arguments by the Attorney General in October 2002, citing bias and the need to release it together with a government commentary on the findings.

Many people adversely mentioned in the report have neither been investigated nor prosecuted. Some have continued to serve as senior officers, Ministers, or Members of Parliament. The inability to act on the report tends to underline general public perception of impunity, while at the same time constricting the ability of people to come to terms with the past experiences of injustice and violence thus further aggravating and reinforcing polarities and suspicion.

The raid on the Standard Offices

The CRM had noted the vibrancy and diversity of civil society and the media in Kenya. Furthermore, the openness of the society and its willingness to engage were noted as specific strengths. However the report of a raid by state agents on a section of the media on 2 March 2006 raised some concerns relating to the freedom of the Press. This raid was premised on alleged instances of misreporting by the said media organization. The government Minister in charge of Internal Security took responsibility on behalf of the government, citing matters of internal security. Nonetheless, the civil society movement strongly condemned the raid and organised mass demonstrations to express its displeasure at the obvious attempt at stifling freedom of expression and freedom of the press among others.

As part of its activities and mandate the APRM follow-up mission met with relevant stakeholders including the Kenyan Media Council. The mission observed that although freedom of expression is a cherished fundamental right in Kenya, there are some provisions such as “criminal libel” under the Criminal Code, which allow state security officials to “legally” intimidate media practitioners. In addition, existing media policy requires strengthening if the interests of both the media practitioners and other stakeholders are to be effectively protected and assured.

Summary of Findings under each Thematic Area

Democracy and Political Governance

Compared to its neighbours, who are often plagued by civil unrest and insurrections, Kenya is a bastion of stability. While the country’s reputation as a peace loving nation has been successfully maintained since independence in 1963, a more than cursory examination of Kenya’s political landscape would reveal the fundamental challenges undermining the country’s quest for sustainable development. In spite of Kenya’s many strengths that have succeeded in containing outbreaks of mass violence, the country still exhibits many of the factors that have been markers of civil strife elsewhere, such as strong ethnic divisions, polarised political issues, political manipulation, rampant violence, socio-economic disparities, deepening levels of poverty and endemic corruption.

Post-independence politics have been characterised by ethnic politics, reflecting patterns of super-ordinate and subordinate ethnic relations and

inequality. A major legacy of colonialism is the inequalities between ethnic groups and between Europeans and Asians on the one hand and Africans on the other. In addition, regional inequalities between Nairobi, the former “white highlands”, Coastal, Northeast and Western Provinces were also created. To illustrate: the GDP per capita discrepancies between the various regions is very wide, as is the fact that about 45% of the country’s modern sector employment is concentrated in less than 15 towns. For a variety of reasons this inequality has remained a fundamental characteristic of postcolonial Kenya’s political economy. Unfortunately, the structural basis for difference in education models and access to various other social services between provinces and ethnic groups which had been laid by colonial rule has been continuously exploited by a power elite seeking to utilize such a legacy as a bargaining chip to maximize their party and individual political payoff.

The implication of this state of affairs for democracy and political governance in post-colonial Kenya is obvious. It has provided the ethno-regionalised basis for political power and, consequently, for economic power, reflected in the rise and dominance of a petit-bourgeoisie and distinct political elite.

Kenya has signed and ratified several international, regional and continental codes that have a bearing on democracy and human rights. The country considers itself bound by these and other international and regional protocols and instruments. However, it has thus far neglected to entrench them through legislation. A pertinent example in this regard is CEDAW, which has been ratified, whilst the Family and Domestic Violence Bill has been pending since 2002. Even where the codes and standards have been domesticated, there is a demonstrable lack of enforcement capacity.

In the main, President Kibaki’s 2002 victory was Kenya’s first taste of real democracy, and it brought with it all the joy and ecstasy of an emerging democratic and free society. The government has capitalised on this national goodwill to consolidate positive political reforms. It has opened up the democratic space and a new dispensation that ushered in several welcome institutional and policy reforms in the Civil Service, the Executive, the Legislature, the Judiciary and local government.

During the country consultations, Kenyans widely conceded that they currently enjoy a greater degree of human rights and political freedom than ever before. Corruption, while not receding, is now frankly debated in both print and electronic media. By successfully engaging non-state actors such as civil society, academia, NGOs and religious, professional and business groups, the government has managed to spur a culture of candour, self critiquing and stakeholder engagement. The decentralization model adopted by government has also made room for remarkable grass-root participation in political and economic reforms.

The political environment in which the country is currently undertaking its governance agenda serves as an instructive analytical backdrop as shown in the overview chapter. Successive post independence governments were expected to dispel the problems that had been associated with colonial rule in Kenya, such as the

colonial settlement policy, which favoured investment of resources in high potential areas at the expense of the rest of Kenya. With the passing of time, this had gone largely unaddressed, stirring up several problems. The major factors that have stoked the fires of dissension are marginalisation of regions as well as regional imbalances, competition for resources and access to them and the mobilisation of ethnic identities in political and economic power struggles. The precedent upon which these and other exclusionary government policies were built was the 1969 post-independence inaugural development paper, “*Sessional Paper Number 10 on African Socialism and its Application in Kenya*”, which divided regions along the dubious and clearly punitive colonial legacy of the enforced division between high-potential and low-potential areas. This dichotomy set the pace for subsequent economic marginalization of several regions, especially the North Eastern Province. So interlinked and correlated are the issues that they seem to have spiralled and locked into a vicious cycle.

In general, the practice of good governance is ideally based on, and guided by the existence of a sound democratic constitution that enables the government to manage the affairs of the state effectively while empowering the citizenry to participate in governance and hold the government accountable. Kenya has a constitution drafted in the colonial era, making the need for constitutional reform imperative. Several attempts at drafting and adopting a new constitution since 1993 have so far been unsuccessful.

What is clear from the observations of the CRM in this respect is the imperative that the government of Kenya proactively direct policy measures to address these pervasive manifestations of the colonial heritage; drastically reduce and possibly eliminate regional inequalities especially in the lopsided inter-provincial distribution of central government recurrent expenditures; alleviate poverty; and reduce the salience of ethnic politics. This will require an inclusive and competitive political landscape and power-sharing arrangements at the central level. It remains of paramount importance that consensus is built amongst Kenyans on national values which will foster nation building.

In light of the fore-going, an enduring mechanism to facilitate consensus building on crucial governance issues should be devised with government exercising leadership in this direction. As a corollary of the above, the political parties and other stakeholders are encouraged to design and engage in conflict resolution mechanisms to reduce factional frictions while promoting political, religious, social and ethnic tolerance.

Government, as a matter of urgency, is advised to adopt and implement redistribution and reallocation policies to enforce equitable access to, and use of land.

The adoption and implementation of various bills such as the Political Parties’ bill and HIV/AIDS Prevention and Control Bill is highly critical. In light of current events involving investigation and prosecution of high level public servants, there is a need to strengthen the Judiciary and anti-corruption bodies to make them efficient and speedy in their operations so as to restore citizen trust in public institutions.

The Kenya power elite will need to work astutely and diligently with the entire population to forge a consensus on modalities of adopting a constitution which would enjoy acceptability by all Kenyans and that seeks to advance the collective aspiration of all. In light of current developments and the degree of internal schisms, polarization, and ethnicization of political issues, the Panel recommends that a high level eminent persons group be created by the African Union to facilitate a bi-partisan resolution of the current constitutional crisis.

Economic Governance and Management

Kenya is endowed with the largest economy in East Africa and the third largest economy in Sub-Saharan Africa (SSA). Its economic performance has however been well below potential despite substantial progress in the 1960s. Real GDP fell precipitously from an annual growth rate of 7.5 % in 1971-80 through 4.5 % in 1981-90, to a mere 1% in 1997-2002 due largely to a combination of factors, including exogenous shocks such as intermittent drought and deterioration in the terms of trade, corruption, deteriorating infrastructure, weak implementation capacity and low levels of donor inflows.

Nonetheless, the new coalition government, led by President Kibaki, has demonstrated a serious intent to push forward its economic reform agenda, which has seen Kenya register positive, albeit modest, economic growth over the last three years. Real GDP growth has been positive (2.8 %, 4.3 % and 5.0 % in 2003, 2004 and 2005 respectively) even though it barely surpassed population growth, which was somewhat greater than 2 % per annum during the 2002-2005 period. The government has been taking steps to improve resource mobilization, both for the finance of government expenditure and for domestic private investment. Hence, the government has sought to expand the tax base via policies that encourage business; improve tax administration; encourage saving; enhance the efficiency of financial markets and institutions; and more generally promote financial intermediation.

The economic recovery strategy programme of the government, the policies to revitalize agriculture and to improve infrastructure and the education and health policies of the government, as well the financial sector policy reforms will all go some way towards creating the conditions for further diversification of the production structure and of exports. But there is still no direct focus on diversification as a clear objective of government policy.

On Standards and Codes, the Country Self-Assessment Report (CSAR) did not address in detail the compliance with the Standards and Codes as requested in the APRM Questionnaire. Kenyan Authorities agreed to complete a detailed assessment of each of the listed standards or codes during the country consultations.

Overall, Kenya has some economic strength, namely, reduced dependence on foreign aid, good domestic resource mobilization efforts and a vibrant agricultural export sector, especially for horticulture. However, despite noticeable progress in carrying out key reforms in economic governance and management, the country still faces

many challenges. These include implementing strong and effective anti-corruption policies, enacting anti-terrorism and money laundering laws, restructuring government expenditure and reducing the government wage bill relative to GDP. Other challenges are improving the efficiency of public sector service delivery, building new infrastructure and rehabilitating existing ones, improving water supply in most areas, maintaining sound macroeconomic policies, and implementing various structural reforms, especially in the agricultural sector, so as to reverse the slow growth in the overall economy.

HIV/AIDS, which emerged as a public health issue in Kenya in 1984, has had a devastating effect on the economy. In addition to more than 1.5 million deaths attributed to the disease, which left more than one million children orphaned, the long-term impact of the pandemic on Kenya's workforce has been severe.

Stakeholders everywhere agreed that parliamentary oversight of the annual budgets had not been working as smoothly and effectively as envisaged in the Constitution. Hence, the need to strengthen the parliamentary oversight committees by reducing delays in reporting to the committees, enhancing the power of Parliament to have its recommendations implemented, and addressing Parliament's shortage of qualified support staff.

Despite current reforms to strengthen transparency and accountability in financial management and improve fiscal discipline, many problems persist. These include: payment arrears; delays in project implementation; extra-budgetary expenditures; unpredictability in resource flows; and tracking of aid flows.

Challenges are also noted regarding regional integration. Kenya is a member of the resuscitated East African Community (EAC), the Inter-Governmental Authority on Development (IGAD) and the Common Market for Eastern and Southern Africa (COMESA). The short-term to medium-term effects of tariff harmonization in the EAC may adversely affect customs revenue receipts as well as producers in Tanzania and Uganda, raising the issue of whether some compensation scheme may be useful to smooth the adjustment process. It is also necessary to address the issue of rationalization, with a view to designing a strategy to avoid, or to cope with, possible policy conflicts between EAC, IGAD and COMESA over the medium-term.

The Panel recommends that Kenya complete a detailed principle-by-principle or article-by-article assessments of each standard or code listed in the APRM Questionnaire, and address the underlying deficiencies where compliance is incomplete. Other recommendations are the design of a comprehensive policy directed squarely at the issue of diversification of the domestic production structure and of exports; and appropriate steps by Parliament to effectively perform its oversight role in the budgetary and planning areas by recruiting qualified staff, and providing for appropriate technology and library facilities.

Corporate Governance

Corporate governance has become a dominant theme and an essential component of sustainable private sector development. It provides the basis for sustainable economic growth and employment generation. In Kenya, awareness of Corporate Governance principles is growing and is disseminated by institutions such as the Nairobi Stock Exchange (NSE), the Capital Markets Authority (CMA), the Institute of Certified Public Accountants (ICPAK) and the Kenya Chapter of the Association of Chartered Certified Accountants (ACCA), among others.

In February 2005, a total of 115,544 companies were registered in Kenya under the Companies Act, of which approximately 5000 companies were public companies, 2760 companies were foreign owned and 48 were listed on the Nairobi Stock Exchange (NSE). The main trading and business firms in Kenya are sole proprietorships, partnerships, cooperatives, registered private or public companies under the Companies Act (1962) and branch offices of multinationals or foreign conglomerates.

Kenya has signed, ratified, and adopted a number of instruments embodying internationally accepted standards and codes, amongst which the most significant are the Principles of Corporate Governance (OECD and Commonwealth), International Accounting Standards (IAS) and the International Standards on Auditing (ISA). However, there is weak enforcement of codes and standards in Kenya, as the capacity of some regulators and supervisors is constrained. Moreover, there is a need to apply corporate governance standards and principles beyond the larger companies. Furthermore, in the insurance sub-sector, there is a need not only to ratify the Principles of Insurance Supervision and Regulations, but also to establish an Insurance Regulatory Authority, which would put in place proper legal and regulatory mechanisms to regulate the industry.

Major amendments to laws relating to companies, investments, partnerships and insolvency are needed in Kenya as many outdated laws inherited from the colonial era, including the Companies Act (1962), are still in place. Moreover, while the introduction of special courts, such as commercial courts, has helped to speed up legal matters, the Kenya court system is still regarded as slow and inefficient. There is also the need to build capacity in the Judiciary, *inter alia*, by recruiting more judges.

Improvement in public service delivery is a key issue in Kenya. Service delivery has been especially poor in the areas of business registration and licensing, commercial dispute resolution, access to land and customs and trade facilitation.

Kenya is making concerted efforts to implement its privatization programme. Despite some apparent success in the earlier privatizations, such as Kenya Airways, a key concern for the Kenyan public was the politicization of the process and the apparent fear that foreigners will purchase strategic enterprises cheaply. Parliament only passed the privatization bill in late 2004. The recent initial public offer of KenGen attests to the potential of stimulating private domestic investment through

privatisation, if it is properly handled.

Under the new Investment Act of 2005, the government has instituted clear measures geared towards reducing the number of procedures and time required to register a business. Other noticeable improvements include the establishment of a Working Committee on Regulatory Reforms for Business Activity in Kenya, as well as the Governance, Justice, Law & Order Sector (GJLOS) Reform Programme. The Working Committee on Regulatory Reforms is responsible for the abolition of 35 licenses and the simplification of four licenses under Phase I of its reform process. The GJLOS reform programme targets improved public service delivery in key sectors such as the police, provincial administrations, public prosecution staff, community service offices and the Judiciary. Nevertheless, business licensing and public service delivery still remain critical impediments to doing business in Kenya.

Access to finance for small business is also a critical area in need of improvement. Small and medium-sized enterprises (SMEs) and small-scale farmers often have to resort to microfinance institutions and, in the worst cases, moneylenders for their financing needs. The microfinance industry has a high cost of financing as current laws do not allow for the pooling of funds for lending purposes. There is also no clear legal framework for operation of Micro Finance Institutions (MFIs) in Kenya. A Micro Finance Bill is under formulation but has not yet been passed into law.

Corporate Social Responsibility (CSR) and care for the environment are still in infancy in Kenya. There is no formal framework to allow for communities to interact with corporations and allied businesses so as to initiate projects that could be beneficial to communities. Laws regulating the environment are adequate, but there is a need to empower and build capacity at the National Environment Management Authority (NEMA), especially in bolstering NEMA's enforcement capability.

Kenyan laws generally protect the rights of business stakeholders, including suppliers, creditors and communities in which businesses operate. But enforcement capacities are lacking and the Judiciary is perceived as lenient towards businesses that do not fully adhere to regulations. Employee protection under the labour laws has also not been vigorously pursued by the Inspectorate Unit of the Ministry of Labour.

In sum, Kenya has achieved significant progress in the development of codes of Good Corporate Governance. Nonetheless, weak governance exacerbated by extensive corruption, escalating insecurity and poor infrastructure remains at the core of Kenya's national challenges. For example, according to the 2004 World Bank Investment Climate Survey of Kenya, firms lose almost 10% of sales per year due to power outages and almost a third of firms reported criminal acts of theft or arson. These factors continue to undermine private sector activities resulting in reduced investment levels and deterioration of economic and social indicators.

Poverty and inequality also show worrisome trends. Nonetheless, Kenya's macroeconomic management has been relatively strong in recent years, with inflation rates and fiscal deficits within their targets. The challenge is translating these

achievements into economic growth. Elsewhere, it has been indicated that corruption may cost Kenya up to 2% in economic growth. In addition to curtailing corruption, Kenya has to take steps to promote efficient and sustainable corporations that contribute to the welfare of the society by creating wealth, employment and confronting emerging global challenges with a view to achieving sustainable development.

The main Panel recommendations are for Kenya to improve the investment climate and restore Kenya's competitiveness by significantly developing infrastructure; reducing the costs of doing business, and eliminating insecurity in the country; updating the legal and regulatory framework and enforcing implementation of laws and regulations; enhancing the capacities of professional and government supervisory institutions; and promoting MSE and SME activities by easing business registration, improving access to finance and boosting industrial activities in urban and rural areas

Socio-economic Development

The pursuit of socio-economic development has long been the cornerstone of public policy in Kenya, although the strategy and focus have varied over the past four decades. After several years in the doldrums, Kenya is making great efforts to implement far-reaching reforms needed to stimulate economic growth under the *Investment Programme for the Economic Recovery Strategy for Wealth and Employment Creation (IP-ERS) 2003-2007*. This is being done in an open spirit of consultation and partnership, and within the framework of popular participation in order to ensure national ownership.

Some notable benefits are being derived from this strategy. On the social front, free primary education has been introduced, dramatically increasing enrolment, increased allocations for IP-ERS priority programmes have been put in place, as have been fiduciary controls, which are being strengthened to ensure that future spending covers intended areas. In late 2004, the government launched a results-based management approach for the public sector on the theme "Results for Kenyans." Under this new framework, ministries and parastatals are signing performance management contracts to help strengthen the monitoring and delivery of services. The new government, in collaboration with UN-HABITAT, has also mainstreamed slum upgrading to improve the livelihoods of people living in slums and informal settlements within the urban areas of Kenya.

Kenya has adopted/ratified all the standards and codes listed in the APRM Questionnaire in this thematic area. This is highly commendable. However, the process of domestication of ratified instruments was not disclosed in the CSAR.

The recent turnaround has been gradual, and the government is building a better environment for development results to occur. It is not surprising, therefore, that economic growth has rebounded from very low levels, albeit confined to a few sectors, such as tourism, horticulture, services, and manufacturing.

All these notwithstanding, there are still some deficiencies which Kenya has to contend with. The primary drivers for growth, the investment and savings ratio relative to GDP, and export and import growth remain low. Higher economic growth is essential if the country is to turn around its deteriorating indicators of human well-being, including cutting poverty levels in half from 1990 levels by 2015. The incidence of absolute poverty remains high, as the number of poor has increased from 12.5 million in 1997 to 15 million in 2005. An alarming 56% of the population lives in absolute poverty. The 2003 Millennium Development Goals (MDGs) progress report and the recently concluded needs assessment for Kenya show clearly that with the exception of primary education and HIV/AIDS, the country is not likely to meet the MDG targets.

The HIV/AIDS pandemic has been a major constraint on the socio-economic development of Kenya. As a response, government declared HIV/AIDS a national disaster, culminating in the setting up of a Cabinet Committee on HIV/AIDS chaired by the President as well as establishing a National AIDS Control Council. Government also developed a Strategic Plan on HIV/AIDS around the five pillars of prevention and advocacy, treatment, mitigation of the socio-economic effects of HIV/AIDS, monitoring and evaluation, and management and coordination. This was followed by a strategic plan to mainstream gender into the Kenya National HIV/AIDS strategic plan 2000 - 2005. As a result, the infection rate has dropped significantly, treatment has become increasingly available and mitigation programmes are being implemented.

A general conclusion that seems to emerge from this discourse is that Kenya has initiated and implemented programmes aimed at enhancing its socio-economic development. However, several problems persist, including increasing poverty, a high unemployment rate especially among the youth, poor infrastructure, lack of credit facilities and inadequate access to markets. Despite numerous accomplishments in gender mainstreaming, disparities still persist due to unequal accessibility to productive resources, social attitudes, harmful cultural practices, unequal educational attainment and low participation of women in decision making processes, both on the political and economic fronts. A clear evidence of gender marginalization in the country is that women remain vastly under-represented in Cabinet, Parliament and in local leadership institutions. They occupy only 11.54 % of Cabinet positions [3/26] and 8.12 % [18 out of 222] of the seats in the National Assembly.

The main Panel recommendations are for the Government of Kenya to accelerate the adoption and implementation of a sustainable bottom-up planning system to encourage participatory development, as well as the implementation of the following programmes for alleviating poverty: *the Social Action Fund, the Slum Upgrading Programme and Low Cost Housing and the Vulnerability Programme*. In particular, it is important to consider providing alternative education models appropriate for children of nomadic groups with the involvement of stakeholders; and Parliament is advised to enact into law the Affirmative Action Bill, the National Gender and Development Bill, the Equality Bill, the Domestic Violence (Family Protection) Bill,

and the Gender and Development Policy Bill.

Over-arching Issues

There are areas of deficiencies or shortcomings in the Kenyan system, which are of a recurring or cross-cutting nature. These are identified in more than one of the thematic areas. The more general problems, which are seemingly interlinked, may require a holistic and perhaps more urgent approach because of the wider impact they have on the quality of governance in all areas of activity.

The overarching issues identified in the report are:

- managing diversity in nation building;
- implementation gaps; constitutional reform and consensus building;
- corruption;
- poverty and wealth distribution;
- land;
- gender inequality;
- youth unemployment and
- Transformative leadership.

The following section of this report will elucidate on some of the over arching issues highlighted above. .

Implementation Gaps

Important reform programmes such as the Government, Justice, Law and Order sector wide coordination framework and the Economic Recovery Strategy for Wealth and Employment Creation (ERS) 2003-2007 are crucial in ensuring development and good governance. A frequently encountered problem and perceivably the greatest challenge to Kenya's democracy is the poor implementation of government policies and programmes. Though Kenya is well serviced with a body of laws, programmes, commissions and agencies that should provide for good governance, these policies and programmes have so far been poorly implemented. For instance, the Second MDG Status Report for Kenya 2005 indicates that the completion rate for major development projects is as low as 3 %.

Perhaps as a response mechanism, the Kenyan government has developed performance evaluation contracts for public servants under the 'Results for Kenya' strategy. To complement and further strengthen this initiative, the Authorities are advised to conduct a comprehensive survey of implementation problems throughout the government and the public sector, with a view to characterising the nature and the sources of the problems and their incidence, and to design strategies and actions to address these underlying problems.

Kenya needs an invigorated Executive working with a reform-oriented Parliament and Judiciary to raise the bar of implementation. The media as well as the

political parties need to be stakeholders in examining achievements as well as impediments at the policy implementation level. Ignoring them or treating them as foes will be counterproductive. The encouragement of citizen/stakeholder responsibility to place a demand on the government's obligation to fulfil its mandate will foster accountability and action on the part of government much faster than apathy and inertia in civic-minded citizens. Coherent linkages and harmonisation need to be forged between national and local levels, and there is need for feedback mechanisms to be established.

Land

Kenya is faced with landlessness on a large scale and with recurrent land disputes among individuals and between communities. This is a legacy from colonial times, which has not been addressed. As a result, the land question has manifested itself in many ways, including fragmentation, breakdowns in land administration, disparities in land ownership, and poverty. This has also resulted in environmental, social, economic and political problems including deterioration in land quality, squatting and landlessness, disinheritance of some groups and individuals, urban squalor, under-utilization and abandonment of agricultural land, tenure insecurity and conflict.

Kenya currently does not have a clearly defined or codified National Land Policy in place. The result is a very complex land management and administration system. To address this anomaly, the Government of Kenya recently embarked on the formulation of a National Land Policy through a widely consultative process. It is hoped that through this policy, the government will ensure that all land is put into productive use on a sustainable and equitable basis. The authorities should expedite the passing into law and implementation of this policy. In addition, there are far reaching implications of the Akiwumi and Ndung'u Reports that impact on land and must be addressed.

The Constitution

Kenya's current constitution is a colonial-era charter written in 1963 without input from Kenyan citizens when the country won its independence from Britain. Several amendments have been made to the document but there is wide agreement that it is outmoded. Expectedly, the quest for a new constitution has been caught up in the politics of the day. Predictably, the constitutional review process has amplified and animated high levels of political posturing and discord. More often than not, aggregate national interests have been traded off for the narrow interests of politicians and other decision makers.

The campaign for the constitution stirred up political and ethnic as well as other rivalries. The final outcome of the referendum left the country more divided than it had been prior to the exercise. From all indications, it is obvious that the challenge in Kenya is beyond the mere adoption of a new constitution. The challenge remains that of resolving the following contentious issues: the nature and character of Executive powers, devolution of power, constitutional provisions for religious courts, and the

mode of transition to the new constitution. These issues, among others, cannot be resolved by simple technicalities or constitutional legalese, but will require a modicum of political sagacity to evolve necessary political solutions. Current prognosis suggests that a carefully managed mediatory and conciliatory intervention under the aegis of the African Union may prove crucial in facilitating the much needed political compromise and solution in resolving these issues and minimise loss of face by the different power centres and factions. The sustainability of the proposed outcome will be hinged on the ability to devise a win-win formula while simultaneously responding to the collective aspirations of a highly divided society.

Corruption

Kenya has had, and continues to have, a significant and debilitating problem of corruption. Decades of endemic corruption have fundamentally perverted cultural values, with looters being admired as "tycoons," and honest public servants derided as failures. The current government has shown a demonstrable commitment and will to curtail corruption, corrupt practices and other acts of malfeasance, particularly among public office holders. Having been elected on a platform of zero tolerance for corruption, the NARC government has taken a variety of measures to root out corruption from the public sector and jumpstart the economy. It has put in place extensive legal instruments, as well as investigative and enforcement machinery to combat corruption. To date, the government has established the Kenya Anti-Corruption Commission (KACC), special anti-corruption courts and enacted the Anti-Corruption and Economic Crimes Act.

In recent times, the government has found the courage and will to prosecute a number of serving members of the Cabinet that have been accused of corrupt practices. However, these decisions have been taken at a cost. So much so that the efforts at prosecuting allegedly corrupt public officers have shaken and weakened the NARC government. Commendable as current efforts of the government are, sustained vigour and strong political commitment and uncompromising leadership in Parliament, the Judiciary and the Executive will be crucial in stemming the weaknesses in the Kenyan economy and removing this formidable barrier to development. Sustained pressure on the anti-corruption campaign will enhance public values and rejuvenate the reform agenda that marked the last elections.

Commitment on the part of government must be complemented by a similar determination on the part of the Kenyan civil society movement, in particular the media. By so doing, the basis for the restoration of public trust and confidence in institutions of government and the entire governance process may be restored. There is also need to direct attention at the capacity needs with regard to the prosecution of the huge number of corruption cases that are currently ongoing and anticipated.

Leadership

Transformational leadership recognizes the need for dramatic change in a society. Transformative leadership entails not simply directing change but managing it in a

way that ensures broad ownership, legitimacy and self-directed sustenance and replication of change in all associated systems.

In the case of Kenya this may entail stimulating patriotism among the populace in a direction towards national interest and away from narrow individual and group interests. Such leadership must display conviction, take stands on difficult issues, and articulate a compelling and an appealing vision of a future that accommodates the needs of all Kenyans. Its standards must be high and its optimism inspiring, focusing attention on what needs to be done.

Kenya needs transformational leadership, not only at the helm of government affairs, critical though this is, but leadership at all levels, including Parliament, the Executive and Judiciary, business, political parties, religious organisations, non-governmental organisations and other facets of Kenyans' life in order to achieve common values and national goals.

Conclusion

In summary, the key highlights of strengths and challenges in governance and socio-economic development in Kenya are:

Strengths

- A well-developed human resource base that is well engaged in development activities, highly motivated and outspoken on public affairs;
- A vibrant and diverse civil society including religious bodies, NGOs and media;
- Numerous credible and well-renowned institutions such as the University of Nairobi, Business and Research Associations and the Nairobi Stock Exchange;
- A political environment that allows for open political debate;
- A resilient economy that is less dependent on donors than in many other African countries;
- An established decentralised funding mechanism for local development;
- Hospitality towards refugees and migrants that has manifested itself for many decades;
- A bastion of stability, compared to its neighbours;
- The vibrancy of the media, both print and electronic;
- A vibrant agricultural export sector, especially for horticulture; and the
- Adoption and ratification of numerous codes of corporate governance and socio-economic development.

Challenges

- An inability to address the colonial legacy, and the need to set a political agenda for real and strong national unity;

- Historical imbalances in the channelling of resources and development programmes to certain regions in Kenya, which has perpetuated regional and ethnic inequalities;
- The delay in promulgating a new constitution in spite of the Boma draft being the product of the most extensive constitutional consultations in Africa's history;
- The absence of broad-based and inclusive political parties, cutting across the racial and ethnic divides and anchored on a truly national agenda;
- The lack of confidence and trust in public institutions coupled with pervasive corruption despite the substantive legal and institutional frameworks instituted to curtail it;
- The high incidence of poverty and pervasive unemployment, especially for youth;
- The under-representation of women in key positions of leadership at all tiers of government and the private sector;
- The lack of efficient public sector service delivery and enforcement mechanisms as well as the weak implementation of policies and programmes;
- The ineffectiveness of the Parliamentary Oversight Committees;
- The limited access to finance for small business; and the
- Low probability of meeting MDG goals with the exception of universal primary education and fall in HIV/AIDS rates.

There is also a need for a healing of the nation. The process of national healing and reconciliation is unlikely to proceed as long as society is still polarized. In addition, without also addressing past crimes, corruption, marginalization and poverty, it is unlikely that reconciliation can be achieved.

CHAPTER ONE

1. INTRODUCTION

‘The mandate of the African Peer Review Mechanism is to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Economic and Corporate Governance. The APRM is the mutually agreed instrument for self-monitoring by the participating governments.’

NEPAD/HSGIC/03-2003/APRM/MOU/Annex II

1.1 THE APRM AND ITS PROCESSES

In an effort to enhance the quality of governance in Africa, the Sixth Summit of the Heads of State and Government Implementation Committee (HSGIC) of the New Partnership for Africa’s Development (NEPAD) held in Abuja, Nigeria, in March 2003 adopted the Memorandum of Understanding (MOU) on the African Peer Review Mechanism (APRM). The HSGIC also adopted the Declaration on Democracy, Political, Economic and Corporate Governance, which had been endorsed earlier at the inaugural Summit of the African Union (AU), held in Durban, South Africa, in July 2002. In addition, the Heads of State and Government adopted the main documents that outline the core principles, processes and objectives of the APRM, including the *APRM Base Document*, the *APRM Organisation and Processes* document (O& P Document), and the document on *Objectives, Standards, Criteria and Indicators for the APRM* (OSCI Document).

The APRM is an instrument voluntarily acceded to by member states of the AU as a self-monitoring mechanism for African states. The mandate of the APRM is to ensure that policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance. The primary purpose of the APRM is to foster the adoption of policies, standards and practices that lead to political stability; high economic growth; sustainable development; and accelerated sub-regional and continental economic integration through the sharing of experiences and the reinforcement of successful and best practices, including identifying deficiencies and assessing the needs of capacity building.

The APRM is open to all member states of the AU, and so far 25 member countries have voluntarily acceded, as indicated in Box 1.1. Accession entails undertaking to submit to periodic peer reviews, as well as to facilitate such reviews, and to be guided by agreed parameters for good political and economic governance, socio-economic development and corporate governance.

This is a Confidential Working Document of the APRM and Should not be Quoted or Published Until the Review Process is Complete and The Country Report Released in its Final Form

Box 1.1 The APRM Progress Report

The APRM, widely heralded as the jewel in NEPAD's crown, is a non-adversarial learning process among peers that relies heavily on mutual trust among the states involved in the review, as well as shared confidence in the process. It is a commitment to African governance standards and the tool for implementing the codes and standards enshrined in the Declaration on Democracy, Political, Economic and Corporate Governance.

National ownership and leadership by the participating countries are essential to the effectiveness of the APRM process. This includes leadership in ensuring consistency with existing national processes, such as the Poverty Reduction Strategy Papers (PRSP), other poverty reduction strategies, the Medium-Term Expenditure Framework (MTEF), National Human Rights Action Plans, Strategies for Millennium Development Goals (MDGs), ongoing institutional reforms, and other relevant governance and socio-economic development strategies, programmes and projects.

Twenty-five member countries of the AU have so far voluntarily acceded to the APRM. Algeria, Burkina Faso, Cameroon, the Democratic Republic of Congo, Ethiopia, Gabon, Ghana, Kenya, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, South Africa and Uganda were the first sixteen countries to accede to the APRM. Benin and Egypt signed the MOU of accession at the Extraordinary Summit of the AU held in Sirte, Libya, in February 2004. In July 2004, Angola, Lesotho, Malawi, Sierra Leone and Tanzania acceded during the AU Summit in Addis Ababa, Ethiopia. Two more countries- Sudan and Zambia- acceded at the 4th APR Forum Summit, which took place in Khartoum, Sudan in January 2006.

Ghana, Kenya, Mauritius and Rwanda were the first countries in which reviews were launched. So far, Country Review Missions have been fielded in Ghana, Rwanda and Kenya, and Ghana has been peer reviewed at the APR Forum Summit in Khartoum, Sudan.

The APRM process consists of five interrelated stages, which are defined in the *APRM Base Document*. They are briefly described below.

Stage One is the preparatory phase, both at the level of the APRM Secretariat and at the national level. Under the direction of the APR Panel, the APR Secretariat forwards to the country to be reviewed a questionnaire covering the four focus areas of the APRM. The country conducts a self-assessment exercise on the basis of the questionnaire, and with the assistance, if necessary, of the APR Secretariat and/or relevant partner institutions. Having completed the self-assessment, the country formulates a preliminary Programme of Action (POA) that builds on existing policies, programmes and projects. Both the

Country Self-Assessment Report (CSAR) and the preliminary POA are submitted to the APR Secretariat. During the same period, the APR Secretariat develops a background document on the country. This is done through desk research and gathering available current and pertinent information on the governance and development status of the country in the four assessment areas.

Stage Two is the country review visit. Under the leadership of the APR Panel, the Country Review Mission (CRM) visits the country concerned. Its priority order of business is to carry out the widest possible consultations with the government, officials, political parties, parliamentarians and representatives of civil society organisations, including the media, academia, trade unions, business and professional bodies. The main objectives are to:

- *Learn about the perspectives of the different stakeholders on governance in the country;*
- *Clarify the issues identified in the Issues Paper that were not taken into account in the country's preliminary POA; and*
- *Build consensus on how these could be addressed.*

It is instructive to note that the country mainly plays a facilitating role during the visit, ensuring that the CRM is able to carry out its review smoothly. The CRM is given full access to all sources of information and stakeholders, as provided for in the MOU for Technical Assessment and the Country Review Visit signed by the country and the APRM.

During **Stage Three**, the CRM's report is drafted. It is informed by the background document and Issues Paper prepared by the APR Secretariat, as well as by the information derived from both official and unofficial sources during the wide-ranging consultation with stakeholders during the review visit.

The draft report:

- *Considers the applicable political, economic and corporate governance and socio-economic development commitments made in the preliminary POA;*
- *Identifies any remaining weaknesses; and*
- *Recommends further actions to be included in the final POA.*

The draft report needs to be clear on the specific actions required in instances where outstanding issues are identified. It is first discussed with the government concerned to ensure the accuracy of the information. The government is given an opportunity to react to the CRM's findings and put forward its own view on how the shortcomings can be rectified. These responses by the government are appended to the CRM's report. At this stage, the country finalises its POA, taking into account the conclusions and recommendations of the draft report.

Stage Four begins when the CRM's final report and the country's final POA are sent to the APR Secretariat and the APR Panel. The Panel then submits them to the APR Forum of participating Heads of State as well as to the government under review for consideration and formulation of actions deemed necessary in accordance with the Forum's mandate. If the country shows a demonstrable will to rectify the identified shortcomings, it will be incumbent upon participating governments to provide assistance to the extent they can, as well as to urge donor governments and agencies to come to the assistance of that country.

Stage Five is the final stage of the APR process. Six months after the report has been considered by the Heads of State and the governments of the participating member countries the report is formally and publicly tabled in key regional and sub-regional structures. These include the Regional Economic Community to which the country belongs, the Pan-African Parliament, the African Commission on Human and Peoples' Rights, the envisaged Peace and Security Council, and the Economic, Social and Cultural Council (ECOSOCC) of the AU.

The time-line for these processes is expected to vary considerably among countries, depending on each country's specificities. The anticipated duration of each peer review from the start of Stage One to the end of Stage Four is between six and nine months.

This country report marks the third phase of the APR process in Kenya. It presents the findings of the CRM to Kenya, as well as Panel recommendations. The report is structured in seven chapters. Apart from this introductory section and the overview, the subsequent four chapters evaluate developments and outstanding challenges in the four APRM focus areas (Democracy and Political Governance; Economic Governance and Management; Corporate Governance; and Socio-Economic Development). Chapter 7 contains a discussion of the overarching issues, which are considered as critical due to their impact on governance and require immediate and urgent attention.

1.2 THE IMPLEMENTATION OF THE APRM PROCESS IN KENYA

Kenya was one of the pioneer countries to accede to the APRM. Alongside Ghana and Rwanda, Kenya voluntarily acceded to the APRM in March 2003 in Abuja, Nigeria. The country designated the Ministry of Planning and National Development, already responsible for NEPAD projects, as the Focal Point for the APRM process in Kenya as soon as cabinet gave its approval for launching the peer review process.

Thereafter, the Ministry constituted an Inter-Ministerial Task Force chaired by Mr. David S. O. Nalo, the Permanent Secretary, to map out a strategy for the implementation of the APRM in Kenya in conformity with the APRM guidelines. The task force comprised key ministries and institutions concerned

with the thematic areas of the APRM and included officials from Planning, Finance, Justice and Constitutional Affairs, Foreign Affairs, the Central Bureau of Statistics and the Office of the President. It was subsequently enlarged to include representatives from the private sector, civil society groups, academia, and faith-based organisations. By June 2004, the task force had prepared the road-map for the APR process in Kenya.

On 14 July 2004, the Task Force organised the First National Stakeholders Consultative Forum on the implementation of the APRM in Kenya at the Kenya School of Monetary Studies, to sensitize the public, and to discuss and domesticate the questionnaire. The Consultative Forum was attended by about six hundred delegates from diverse backgrounds. The Second National Stakeholders Forum was held on 21 July 2004 to finalise the domestication of the APRM questionnaire, elect convenors and propose members of the National APR Governing Council. It elected eight (8) people to serve as the National Governing Council (NGC) of the APRM, the independent body that was to direct the APR process in Kenya – two (2) each for the four thematic areas.

In addition, seven (7) slots were allotted to key line Ministries and relevant entities such as the Electoral Commission to provide backstopping advice on relevant projects and programmes. Further, the Minister for Planning who was entitled to nominate up to four (4) members to represent any under-represented groups nominated two (2) members, one of whom was a Member of Parliament. The membership of the NGC was brought to twenty-five (25) with the addition of a member from each of the four lead technical institutions (selected at a later stage) and four thematic convenors as non-voting members.

Dr. Graca Machel, Member of the APR Panel led an APRM Support Mission to Kenya from 26 -27 July 2004 to assess the processes and mechanisms put in place by Kenya to undertake its self-assessment and draft Programme of Action. The Country Support Mission consulted widely with civil society groups, the media, business associations, parliamentarians, religious leaders, youth and women groups, and commended the progress made so far.

It recommended an expansion of the membership of the NGC to include more civil society members, and this led to the addition of 8 members from the umbrella NGO Organisation to the NGC, bringing total NGC membership to 33, comprising 25 voting and 8 technical non-voting members (LTAs and Convenors). The Memorandum of Understanding on the Technical Assessment Mission and the Country Review Visit was signed on 27 July 2004 between Dr. Graca Machel on behalf of the APR Forum and Hon. Prof. Peter Anyang' Nyong'o, then Minister of Planning and National Development, on behalf of the Government of the Republic of Kenya.

The APRM Task Force, in consultations with members of the incoming Governing Council, thereafter selected four reputable Nairobi-based local research institutions to lead the review process. The selected technical agencies

were as follows:

- African Centre for Economic Growth (ACEG), Nairobi: Democracy and Political Governance;
- Kenya Institute of Public Policy Research and Analysis (KIPPRA), Nairobi: Economic Governance and Management;
- Institute for Development Studies (IDS), University of Nairobi: Socio-Economic Development; and
- The Centre for Corporate Governance, Nairobi: Corporate Governance

The 33-member NGC was inaugurated in October 2004 and given legal status through a gazette notice by the Minister of Planning and National Development for a period of one year, or until the completion of the national APR Process. The members, who were expected to serve on part-time basis, were to be paid honoraria and expenses commensurate with duties undertaken as Council members for executing APRM activities. The Inter-Ministerial Task Force was to be phased out and it was expected to hand over the national mandate on the APRM to the NGC. The NEPAD Kenya Secretariat had a distinct function to provide secretarial support to the APR process and worked very closely with the NGC and other structures. It housed support staff dedicated to the APRM who worked on a continuous basis and were supervised in day-to-day management by the Secretariat.

The NGC elected Mrs. Grace Akumu from the NGO Council, which, as indicted above, comprised eight (8) of the thirty-three (33) members on the NGC, as Chairperson of the NGC. In February 2005, the NGC, with assistance from the Ministry of Planning, successfully negotiated funding from a consortium of donors, which included the Government of Kenya, which, until this point, had funded the entire APRM process in Kenya. The funding was based essentially on the road map for the implementation of the APRM that had been inherited from the interim Task Force.

Subsequently, the NGC became increasingly fractious, with some members pre-occupied with matters of finance rather than the APRM self-assessment exercise. This caused inordinate delay in the execution of the national process.

A second APR Mission, led by Dr. Graca Machel, was fielded to Kenya from 13-15 July 2005 to follow up on the national process and resolve emerging issues that were delaying the national process. Consequently, the Minister of Planning, exercising his powers, de-gazetted three members of the NGC, including the Chairperson, in order to advance and expedite the national process. Rev. Japheth Gathaka (also a civil society leader) was elected

Chairperson of the NGC and the self-assessment process proceeded in earnest.

Despite the foregoing, Kenya was able to produce a self-assessment report that was candid, objective and technically sound as well as a product of broad based consultations. Kenya submitted its self-assessment report and a draft national programme of action to the APRM Secretariat in August 2005, notwithstanding the organisational problems elaborated upon in Box 1.2.

Box 1.2 Organisational Challenges with Kenya APRM Implementation

The National Structure for the implementation of the APRM presented some challenges and organisational problems, which are outlined below for peer learning:

- *The NGC inherited a road map that had already been prepared by the Task Force and this was the basis for financing. The inability to re-negotiate the activities for the implementation of the APRM in Kenya, to an extent, eroded the mandate of NGC;*
- *The TRIs and Convenors who were tasked with the execution of the technical aspects of the self-assessment were members of the NGC. While this helped to keep all the parties up to date on relevant issues, it also meant that the TRIs and Convenors, though non-voting, were somewhat players and umpires on the same game. In addition, the TRIs and Convenors were paid from the national APRM Trust Fund to support the execution of the questionnaire and other technical aspects of the review. This led to discontent among some members of the NGC who were not tasked with any of the technical aspects of the review.*
- *The NGC was alleged to have held a number of meetings (up to eight) without making any appreciable progress in the self-assessment process, yet they collected honoraria for these meetings. The lesson for newly acceding countries is that in case honoraria is to be paid to members of the Governing Council, it is advisable that the sum is nominal and the frequency and purpose of meetings is pre-determined so as not to drain funds without actual progress on the ground;*
- *There was a tendency for stakeholders in the NGC to champion the interest of their constituencies within the NGC rather than building consensus for the common good. The NGO Council, for example, with eight members in the NGC, was able to elect the chairperson from amongst them and in many cases, these members were alleged to have gained advantage in deliberations due to their numerical advantage;*
- *The various structures, Ministry as Focal Point, NGC, National Secretariat, TRIs, Convenors; Finance Committee etc presented some challenges relating to coordination and appropriate reporting lines. The National Secretariat seemed to have responded more to the ministry that created it than to the NGC. This was further compounded by the fact that the Permanent Secretary in the Ministry of National Planning was also the Chair of the Finance Committee in charge of disbursement of funds; and*
- *Granting of legal status through a gazette notice gives the gazetting Minister discretion to revoke the legal status or life of the NGC. While gazetting offers government a practical and simple modality to institutionalize the APRM, nonetheless it may be liable to abuse. A framework that guarantees the existence and independence of the NGC for follow up activities even after the review process is clearly desirable.*

1.3 THE COUNTRY REVIEW MISSION (CRM)

Dr. Graca Machel, Member of the African Peer Review Panel of Eminent Persons [APR Panel] led the CRM to Kenya from 3 - 14 October 2005. The 18-member team who are nationals of eleven member states of the African Union, comprised the following: members of the APR Secretariat, experts from the Strategic Partner Institutions (ADB, ECA and UNDP) as well as independent experts in the four APRM thematic areas – namely, Democracy and Political Governance (DGPG); Economic Governance and Management (EGM); Corporate Governance (CG) and Socio-Economic Development (SED) as indicated below.

APRM Secretariat:

Dr Graca Machel (Member of the APRM Panel of Eminent Persons); Dr Bernard Kouassi (Executive Director); Dr. Moise Nembot (Coordinator: Democracy and Political Governance); Gaston M. Bushayija (Coordinator: Socio-Economic Development; and Mr Dalmar Jama (Research Analyst: Corporate Governance).

Partner institutions:

Mr Seward M. Cooper (Chief Counsel, Governance Legal Department, African Development Bank); Dr. Michael Mah'moud (Senior Advisor, African Development Bank); Dr. Abdul-Nashiru Issahaku, (Senior Governance Expert, African Development Bank); Prof. Achi Atsain, (Consultant, African Development Bank and Former Minister for Labour, Republic of Ivory Coast); Ms Zemenay Lakew (Senior Programme Coordinator, AU-NEPAD Support Unit, United Nations Development Programme); and Dr Emmanuel Nnadozie (Senior Economic Affairs Officer, United Nations Economic Commission for Africa).

Independent technical consultants for APR Secretariat

Democracy and Political Governance – Mr. Ayodele Aderinwale (Executive Director, Africa Leadership Forum, Ota, Nigeria); Prof. Chudi Uwazurike (North Academic Centre City College, City University of New York, New York); and Ms. Laura Nyirinkindi (Director, Pro Initiatives Agency, Kampala, Uganda).

Economic Governance and Management – Dr Afeikhena T. Jerome (Consultant, Department of Economics, University of Ibadan, Nigeria); and Dr Omotunde Johnson (Consultant on Economic Issues and former International Monetary Fund Resident Representative in Ghana).

Corporate Governance – Mrs. Patricia Cisse (Managing Partner, Africa Investment and Business Advisers (AFIBA), Fann Mermoz, Dakar, Senegal).

Socio-Economic Development – Dr. Bernard Z. Dasah (CEO, Bendas Consultants, Ottawa, Ontario, Canada).

In line with the APRM mandate, the CRM accomplished the following tasks:

- Discussed extensively the Issues Paper compiled by the APRM Secretariat in conjunction with partner institutions;
- Evaluated the draft POA submitted by the country, and made suggestions as appropriate;
- Ascertained as far as possible that the assessment process executed by Kenya was technically competent, credible and free of political manipulation; and
- Built consensus with stakeholders on the remaining issues or challenges, and the steps that needed to be taken to address them.

1.4. ACTIVITIES UNDERTAKEN DURING THE CRM

The Country Review Mission was facilitated by Kenya's APRM National Governing Council (NGC), the NEPAD Secretariat in Kenya, as well as the APR Secretariat.

In the course of the review mission, the CRM interacted with a diverse range of stakeholders including the National Governing Council, civil society organisations, media, political parties, academia, and faith based and human rights organisations. Others were trade unions, women and youth organisations, minorities, disadvantaged groups, persons with disabilities, persons living with HIV/AIDS, and associations of journalists. The Team also met with Cabinet Ministers, Members of Parliament, and Permanent Secretaries of the various Ministries, Heads of Departments, The Central Bank, The Chief Justice, Law and Order Sector and anti corruption bodies. Other entities consulted included business associations, professional bodies, small and medium enterprise federations and financial institutions. In furtherance of its consultations, the CRM also held meetings with the various development partners in Kenya.

The CRM organised provincial fora in seven provinces to touch the reality and get a better understanding on various governance issues. The team visited Nairobi, Coastal, Central, North Eastern, Nyanza, Rift Valley, and Western provinces and consulted with local authorities and a wide range of stakeholders from various districts. In Nairobi, the team made an onsite inspection of Kibera, perhaps the largest slum in Africa.

During the consultations, the mandate and purpose of the CRM were explained. Areas of demonstrable achievement by the Kenyan government and people were highlighted. Thereafter stakeholders were invited to provide

additional views on selected issues as well as to suggest additional programmes of action to address identified governance gaps.

In a meeting with His Excellency, Hon. Mwai Kibaki, President of the Republic of Kenya at State House, Dr Machel commended the visible commitment of Kenya's leadership. She thereafter gave an overview of the emerging and key issues that had arisen in the course of deliberations with the various stakeholders engaged by the CRT and out of the Kenya Self Assessment report. President Kibaki welcomed the APRM process and emphasised Kenya's commitment to the implementation of the outcome. He noted the key role of the APRM as being instrumental in enhancing good governance. He also underscored the fact that the NARC government had initiated reforms in the area of governance in its three years in power. While noting that most of the governance problems in Kenya are already well known, the President urged the CRM to focus on formulating concrete and applicable solutions to identified challenges in the report. He reiterated that the government genuinely wanted to solve Kenya's problems and that the recommendations of the CRM and the APR Panel would be implemented.

A wrap-up session was held between the CRM, National Governing Council and the APRM National Commission members to summarize the country review exercise. Dr. Machel extended the CRM's appreciation to the Government and people of Kenya for their warm hospitality, openness and commitment to the APRM process. She commended the remarkable work being done by Kenya in several areas and at diverse levels of society.

The role of the National Governing council, NEPAD Kenya, and the Minister of Planning and Development were specially commended for spearheading the successful implementation of the review exercise. Dr Machel outlined the subsequent stages of the APRM after the CRM and promised that a report would be delivered to the Government of Kenya as expeditiously as possible.

In the main, the CRM was a success. Kenya is committed to improved governance and the populace is resolute in achieving a better quality of life. They look to the APR process as an important mechanism in achieving the national aspiration of good governance and socio-economic development. The CRM is satisfied as to the autonomy and independence given to the Kenya Governing Council in executing its mandate. The Council has also made commendable efforts to sensitise and disseminate information on the APRM to create ownership and ensure broad-based participation.

The TRIs chosen to undertake the exercise are credible and competent research institutions, renowned in the country or the sub-region, on the continent and some internationally. The TRIs have undertaken broad consultations and in-depth surveys to reflect the views of ordinary Kenyans. The four-stage methodology comprising desk research; national sample surveys executed jointly by the Central Bureau of Statistics (CBS) and the African Centre for

Economic Growth (ACEG); focal group discussions targeting special groups; and expert panel opinion, is apt and highly recommended to other countries. Detailed results of the findings were presented in a clear and objective manner.

The CSAR submitted by Kenya meets the AU's requirements of professionalism and credibility. The Panel therefore notes with admiration the high quality of the report, which is a forthright and candid assessment of the country's governance situation. Nonetheless, while the analysis in the report cannot be faulted, some of the resultant recommendations and programme of action could be strengthened and made more focussed, and this preoccupied the APR Secretariat and the subsequent review mission to Kenya.

Kenya is, in fact, a model of best practice in organizing the review process, which received high-level political support evidenced by the personal contributions to this process by His Excellency the President and the Cabinet despite the teething problems.

A Background Chapter followed by the findings of the CRM in the four focus areas of the APRM (Democracy and Good Political Governance; Economic Governance and Management; Corporate Governance; and Socio-Economic Development) are presented in the next five chapters. Chapters Three to Five, appraise Kenya's position with respect to the APRM standards and codes in each thematic area. Each chapter then discusses the progress and challenges in achieving the general objectives of the APRM Questionnaire. The discussion of each objective starts with a brief summary of Kenya's self-assessment. This is followed by a summary of the discussions the CRM had with stakeholders both at the national and provincial levels; the issues discussed having been motivated by the background and Country Self-Assessment Report (CSAR).

There are a number of areas in policy-making where resolute action by the authorities will greatly improve governance. Each objective thus ends with recommendations by the APR Panel on some of the governance issues that arose, supplementing actions that the authorities themselves are taking or envisaging. For each recommendation, the authority/authorities in Kenya, which the Panel believes most competent to undertake the tasks, are identified. Since one of the objectives of the APRM is disseminating best practices across the continent, Kenya's best practices are also flagged in boxes in each chapter.

CHAPTER TWO

2. BACKGROUND

2.1 OVERVIEW

Kenya's Independence on December 12, 1963 from the United Kingdom was a momentous occasion, but her character as a peace loving country was secured with the conciliatory gestures of and emphasis on nation building by its first President, Jomo Kenyatta, who ruled Kenya from the time she gained independence to 1978. He steered the country to development and regional stability, much of which Kenyans are still benefiting from to date.

Kenya, aptly labelled the Island of Peace, lies on Africa's east coast and straddles the equator nestling between Somalia, Ethiopia, Sudan, Uganda, Tanzania and the Indian Ocean. A major destination point for trade and tourism in the region, Kenya is renowned for its beauty and diversity of unique natural resources, wildlife, cultures, skills and talents worldwide. However, Kenya's neighbours in the region have been plagued by civil insurrections and even international wars on their frontiers. These include incidents such as the war between Uganda and Tanzania in 1979, the war in the Great Lakes Region that has involved Rwanda and Uganda, the long-running civil war in Sudan, and the various internal wars fought by groups in Uganda against various successive governments. Nonetheless, Kenya has remained politically stable within its borders without incidence of armed rebellion against it from within or without.

Kenya is endowed with numerous ethnic groups from the three major groups: the Bantus, Nilotes and Cushites. Numerically, the five major groups are the Kikuyu, Luo, Luhya, Kalenjin and Akamba. There are racial minorities in Kenya which include Europeans, Arabs and Asians, as well as Somalis and Nubians. Since 1975, *Kiswahili* has been one of the two official languages in Kenya, the other being English.

The stability of Kenya as a nation has contributed to its prominence in the region and its neutrality and willingness to aid other states enables Kenya to often act as a mediator, ally and advisor in many respects. Kenya has brokered several peace initiatives in the region. In 1985, Kenya negotiated the Nairobi agreement between the Government of Uganda and the National Resistance Army, led by Yoweri Museveni now Uganda's President. A Peace Agreement was signed between the Transitional National Government of Somalia and opposition factions after talks were held in Kenya in 2001. Continuous peace talks championed by Kenya on the political future of Somalia culminated in a binding Peace Agreement and the establishment of a central Somalia Government in January 2004.

This success was replicated in the mediation of several cease-fire

agreements between the Sudanese warring factions. Through the auspices of IGAD, Kenya skilfully and effectively negotiated a Comprehensive Peace Agreement between the Sudan Peoples Liberation Movement /Army and the Government of Sudan in January 2005.

There exist several other initiatives and goodwill gestures by Kenya aimed at promoting peace and security in the region. A National Counter Terrorism Centre that will serve the region was opened on 27 January 2004. Kenya has also been instrumental in the Nairobi Protocol for the Prevention, Control and Proliferation of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, which it signed in December 2004. The Secretariat that coordinates the Nairobi protocol is based in Kenya.

Kenya has also participated in UN peacekeeping operations to an impressive degree and ranks 6th out of the 90 countries that contribute military and civilian police to UN operations.² It has participated in regional and international peacekeeping missions to Mozambique, Liberia, the former Yugoslavia, Western Sahara, Iraq, Kuwait and Chad amongst others.

These noble acts were consolidated by Kenya receiving refugees fleeing from natural or man-made disasters from diverse countries in Africa. Approximately 240,000 refugees are currently hosted in Kenya.³ In the main, these comprise people who fled from Somalia, Sudan, Rwanda, Burundi, Uganda, Mozambique, Tanzania, Eritrea, Democratic Republic of Congo, Central African Republic and Ethiopia at one point or another. Kenya historically had generous refugee policies that allowed for easy integration of refugees into the communities near them, although the growing numbers has placed a great burden on the nation, with the UNHCR helping to ease the constraints by meeting some of the needs of the refugees.

The centrality of Kenya in Africa's governance agenda and as a regional and international hub has endeared it to the international community. Apart from being host to the United Nations Environment Programme (UNEP), the only specialised UN agency with headquarters in Africa, no less than 26 UN agencies, funds and programmes operate in the country. Major international organisations such as the International Commission of Jurists and Transparency International also have local chapters and affiliates in Kenya, with the former having been established in 1959.

2.2 POLITICAL DEVELOPMENTS

The colonial history of Kenya dates back to the Berlin Conference of 1885, when the Europeans partitioned East Africa and Britain colonised Kenya. In

² <http://www.un.int/kenya/peacekeeping.htm>

³ <http://www.who.int/disasters/rep/8817.pdf>

1895, the U.K. Government established the East African Protectorate and, soon after, opened the fertile highlands to white settlers. The settlers were allowed a voice in government even before Kenya was officially made a colony of the United Kingdom in 1920, while Africans were prohibited from direct political participation until 1944.

From October 1952 to December 1959, Kenya was under a state of emergency arising from the "Mau Mau" rebellion against British colonial rule. During this period, African participation in the political process increased rapidly. The first direct elections for Africans to the Legislative Council took place in 1957. Kenya became independent on December 12, 1963. Jomo Kenyatta, a member of the large Kikuyu ethnic group and head of the Kenya African National Union (KANU), became Kenya's first president.

A small but significant leftist opposition party, the Kenya People's Union (KPU), was formed in 1966, led by Jaramogi Oginga Odinga, a former vice president and Luo elder. The KPU was banned and its leader detained after political unrest related to Kenyatta's visit to Nyanza Province. No new opposition parties were formed after 1969 until 1992, and KANU became the sole political party.

The first decade of independence was thus characterised by disputes among ethnic groups (especially between the Kikuyu and the Luo), by economic growth and diversification, and the end of European predominance. Many Europeans (numbering about 55,000 in 1962) and Asians voluntarily left the country. The years from 1963 to 1968 were eventful; boundary disputes with Somalia resulted in sporadic fighting. In 1969, Tom Mboya, a leading government official and a potential successor to Kenyatta, was assassinated.

After President Kenyatta's death in August 1978, Vice President Daniel arap Moi succeeded him as president. In 1982, the National Assembly, through a constitutional amendment, entrenched KANU as the sole party, thus rendering Kenya a one party state. Throughout the 1980s, the government consolidated power in the presidency, rejecting demands for democratization and suppressing opposition. Economic conditions worsened by 1991 especially after the pullout of crucial financial institutions such as the Paris club of donors and the World Bank.

Bowing to pressure from donors and Kenyans, Parliament passed a constitutional amendment legalizing multiparty democracy in December 1991. By early 1992, several new parties had been formed. President Moi was re-elected president in 1992 after Kenya's first multiparty election in 26 years. Since 1992, the country has undergone several reform initiatives under a democratic dispensation that has seen political organisations and civil society participate in reshaping the political governance discourse. Parliamentary reforms in November 1997 expanded political rights and the number of political parties grew rapidly. President Moi won re-election in the December 1997

elections, and his KANU Party retained its parliamentary majority by winning 109 out of 122 seats.

Bound under the constitution to retire, President Moi nominated Uhuru Kenyatta, son of Kenya's first President, as KANU candidate for the 2002 presidential elections. Hon Mwai Kibaki, who had run against President Moi in 1992 and 1997 and once a vice president in the Kanu government, was the National Rainbow Coalition (NARC) candidate and the most prominent of the four opposition candidates. The elections, although not free of irregularities, were the most credible multiparty elections since independence, and resulted in a significant opposition victory. Hon. Kibaki was elected president with 62 % of the vote, and his 15-party coalition, NARC, won 59 of the parliamentary seats. In December 2002, President Moi, in a display of statesmanship stepped down from power following the defeat of KANU, and President Mwai Kibaki, as the leader of the winning coalition party NARC, assumed leadership.

A key feature of Kenyan politics has been coalition building. The genesis and composition of political parties illustrate a pattern of regional alliances and ethnic coloration that have since dominated party politics in Kenya.

Prior to the first elections two political parties, namely the Kenya African National Union (KANU) and the rival Kenya African Democratic Union (KADU), had dominated the political landscape. The latter representing a coalition of small tribes was formed to dilute Kikuyu/Luo dominance and therefore promoted a federal form of government to counter the centralised power model of KANU. Recognising the overwhelming support of KANU, KADU dissolved itself and joined KANU in 1964, effectively rendering Kenya a one-party state. Within the party various tendencies grew and waned. The then Vice-President Oginga Odinga led a breakaway group to form the Kenya People's Union, which was subjected to increasing levels of suppression until it was banned and he was detained after the assassination of Mboya in 1969.

In his twilight years, Jomo Kenyatta became increasingly autocratic with measured restrictions on freedom of expression of dissenting views both from within KANU and from outside the ruling elite. After his death in 1978, the presidency passed to Daniel Arap Moi, a Kalenjin. In 1980 he succeeded in persuading Odinga to return to the KANU fold.

Once in government KANU initially reached out to embrace a wide range of interests and to bring these under the umbrella of the organisation. The tendency shifted, however, to increasing levels of intolerance of dissent. This was evidenced in 1982 by the expulsion from the party of senior leaders who had countenanced the formation of a new political party, and then by the amending of the constitution to establish Kenya as a one party state. One of the immediate results of this was an air force initiated revolt to overthrow the government but this was swiftly suppressed by the army. The 1980s were characterised by purges from KANU, suppression of opposing leaders, and attempts to define

opposition in tribal and ethnic terms.

KANU in 1992 and 1997-won two elections in Kenya despite facing a major challenge from the opposition parties, greatly due to the splintered nature of the opposition camp. Coalition building in this context became an important strategy in overcoming the KANU government for the opposition. In 2001, KANU formed a coalition with the National Democratic Party (NDP) in order to gain the numeric advantage over the badly splintered opposition. However, the installation of Uhuru Kenyatta as the presidential candidate of KANU led to the defection of NDP and some KANU individuals under the newly formed Liberal Democratic Party, and these two parties teamed up with the National Alliance of Kenya (NAK).

Prior to the 2002 election, the opposition parties in Kenya required a political and electoral coalition to be able to muster the required constitutional majority to defeat KANU, which had formed the government from independence. A Memorandum of Understanding (MOU) was agreed between the leading opposition parties, the National Alliance Party of Kenya (NAK) and the Liberal Democratic Party (LDP). The coalition was formed and subsequently fielded political candidates both for the presidential and the parliamentary elections under the banner of the Rainbow Alliance or the National Rainbow Coalition (NARC).

The MOU stated clearly that *“the purpose of the coalition is to contest the forthcoming general election and upon being elected by Kenyans to form, as equal partners, a GOVERNMENT OF NATIONAL UNITY in the Republic of Kenya...”*

In the MOU, the new coalition or NARC agreed to *“ensure and achieve the full and effective completion of the constitutional REFORM PROCESS in the Republic of Kenya within the first 100 days on assuming office.* For purposes of analysis, it is significant, to note that the entire document or MOU, which formed the core of a new government was predicated on the government positions that would go to the main proponents or protagonists of the agenda of the political parties in the coalition. There was limited information or agreement as to which direction or ideology would drive policy formulation and implementation processes. Neither was there an indication that there would be any other document that would clarify the position of the coalition on those matters. Specifically, the coalition document focussed on sharing of top government positions on a 50/50 basis between the two political parties forming the coalition. The coalition agreement provided for the new role of a strong Prime Minister while weakening the role of President.

Deducible from the above is the fact that the coalition government, like most political coalitions in Africa, was built merely on the possibilities for maximizing the payoffs to individual politicians and political leaders. The case

of the coalition government in Kenya illustrates clearly some of the critical challenges that coalition governments encounter in bringing into reality the promises and or potentials of their coalitions. This is further aggravated when, in the long run, signatories of the coalition document, or representatives of the groups who are forming such coalitions cannot, or are unable to attain and or maximize their personal payoffs from the outcomes of such coalitions.

Since they signed such documents on behalf of their groups and as such have the confidence of their groups, they usually retain enough influence to be able to convince members of their groups that the other coalition partners have failed to meet their obligations as contained in such documents. In such a situation, it is to be expected that inability to realize or meet expectations would often be met with very stiff resistance that seeks to torpedo current arrangements. That has been the soft underbelly and the Achilles' heel of most political coalitions in Africa, and Kenya exhibits a similar predilection.

In effect, one might argue that it appears that the interface of political dynamics in the governance process in Africa at times does not take into consideration the collective interests of Africa's peoples, and that what is obtained or being negotiated is often individual interest presented as collective interest. While institutions such as political organisations are meant to provide the platform to enable people or groups to negotiate their interests and then put them up as collective interest within ideological standpoints, such political arrangements and the reasoning behind such arrangements have often only provided the platform for a few individuals to define or translate their personal interests as the group interest.

The only point of convergence among Kenyan Political elite is around their economic pursuits. For instance, all members of Parliament are united in approving mileage increases for themselves from Kshs. 85 to Ksh 115 per kilometre. They equally upped their fixed mileage payment from Ksh 247,000 to Ksh 336,000 for the first 350 kilometres. Backdated to June 2005, these will cost Kenyans Ksh 550 million (Ministers and MPs will rake in Ksh 325 million and ksh 230 million respectively). The Catholic Episcopal conference through its chairman noted, "It is difficult to understand the arrogance of demanding even more pay and allowances in the country that is wracked with famine, disease and poverty.

2.3 OVERVIEW OF MACROECONOMIC PERFORMANCE

The Kenyan economy has experienced bouts of growth followed by downturns and stagnation since attaining independence in 1963. Immediately after independence, the economy registered a GDP growth averaging 6.5% between 1964 and 1971. The oil shocks of the early 1970s, the collapse of East African Community and other external factors caused a marked slowdown in growth in this decade. The "coffee - boom" induced growth in 1976 and 1977. The economy stabilised in the 1980s with GDP growth around 5% being recorded, except in the 1984 drought year. However, in 1989, growth started to decline as

a result of poor weather, regional conflict and an influx of refugees, a global recession that lowered demand for Kenya's traditional exports, coupled with short term dislocations caused by structural adjustment and inadequate macroeconomic management and political uncertainty.

Over the last 10 years, GDP growth in Kenya has witnessed a decline (CBK: 2004). Nevertheless growth has rebounded in recent years reaching 4.3 % in 2004 and 5 % in 2005. The sectoral performance has been very uneven and disappointingly low in all sectors of the economy except tourism. In agriculture, droughts, increased costs of inputs combined with lower producer prices of major export crops were contributory factors to the anaemic growth rate.

In the industrial sector, rapid growth has been hampered by high input prices and declining productivity, stagnant technology, and poor physical infrastructure. The economy remains highly vulnerable to both external and internal shocks, including the vagaries of primary commodity exports and weather, as well as policy weaknesses, especially in terms of clarity, transparency and consistency.

The increasingly prudent monetary policies have enabled Kenya to move toward low inflation, stable exchange rates for the shilling, and low nominal interest rates while maintaining positive real interest rates. Inflation in recent years has been relatively low, declining from about 46 % in 1993 to 6.6 % in 2003. Unfortunately, it has proved difficult to maintain the stringency of economic policy; in 2003/04, for example, reserve requirements were lowered, raising monetary growth (by 13 % instead of an initially planned 7 %) in an attempt to foster economic recovery. In consequence, economic growth (at 2.1 %) did rise above projections, but so did inflation.

The government has made serious efforts to reduce Kenya's debt to a sustainable level. The Debt/GDP ratio, which was well over 100 % in 1993, had been reduced to 36 % by end-2002/03. The debt strategy of the government is expected to maintain the external debt ratio below 36 % in the next few years while the domestic debt ratio is expected to decline to 20.8 % in 2006/07, in keeping with the objective of leaving greater room for private sector borrowing from domestic financial markets.

Unemployment rates, especially among the youth, have been high and increasing in the last decade, reaching about 25 % in urban areas. Indeed unemployment seems to be growing most rapidly among high school graduates. The inexorable increase in unemployment has contributed to the seemingly high rates of poverty at 56 % of the population, and income inequality even by international standards.

Kenya currently ranks among the top ten most unequal countries in the world, and is fifth in Africa.⁴ The current inequality has a distinct rural and female face, as rural women and children are hardest hit. Statistics recently released by the United Nations indicate that under-five mortality (per 1000 live births) in 2003 was 117 in rural areas and 93 in urban areas, HIV/AIDS prevalence was 10.05 % in rural areas and 5.6 % in urban areas, and access to drinking water was 43.5 % in rural areas as compared to 89.7 in urban areas. 82 % of the poor live in rural areas, while the figure is 18 % in urban areas.

The income distribution by regions in Kenya also shows that the top 10 % of households command about 43 % on average of total income while the bottom 10 % accounts for less than 1 % on average in rural areas. The literacy rate by regions also shows that 93.4 % of females in North Eastern had no education as at 2003 compared to 2.6 % in Central province.

This gross inequality has led to poverty, insecurity, crime, social unrest and has undermined overall economic growth and development in the country. The crime rate in Kenya rose by 51 % between 1994 and 2000. Insecurity of persons and property and a weak justice, law and order system pose the greatest threats to investment – both local and foreign and thus the ability of the nation to generate wealth. The 2003 MDG progress report and the recently concluded needs assessment for Kenya show clearly that with the exception of primary education and the fight against HIV/AIDS, the country is not likely to meet the MDG targets.

2.4 GEO-POLITICS, ETHNICITY AND STRUGGLES FOR POWERS IN KENYA

Colonial rule spawned asymmetrical development in Kenya. The colonial settlement policy favoured the investment of resources in high potential areas that had ample rainfall and fertile lands. These covered Central Kenya, the highlands in the Rift Valley and parts of Western Kenya, which benefited the Kikuyus, Merus, some of the Kamba people, the Kisiis, the Nandis and the Luhyas. Thus, the colonial government focussed on developing infrastructure and social services in these areas at the expense of the rest of Kenya, and this underdevelopment remains largely unaddressed in formal policies or practice.

At independence, these differentiated approaches generated severe regional imbalances and inequalities. The independence government entrenched these imbalances and the asymmetrical development that buttressed them through Sessional Paper Number 10, *African Socialism and its Application to Planning*

⁴ Pulling Apart: Facts and Figures on Inequality in Kenya Society for International Development 2004

*in Kenya*⁵, which stressed that government resources would go to the areas where they would earn the highest return. These regional imbalances and the inter-ethnic inequalities in incomes that they hint at are central to a proper understanding of Kenya's politics, and the angry and often violent arguments over the sharing and use of land and other resources that it engenders.

After the departure of the British colonial administration, a few ethnic groups managed to amass significant portions of land in the former "white highlands", entrenching their dominance of commercial agriculture and hence development in the economic sector and, consequently, in other key areas such as service delivery. The Central and Western Province districts that are endowed with a larger concentration of high to medium potential land reflect for example the highest adult literacy rates in Kenya,⁶ confirming that the early institutionalisation of quality education in these areas gave the regions an added advantage.

Postcolonial governments have also done very little to rectify the inherently problematic administrative system inherited from the British. The adoption of the uneven administrative policy by postcolonial governments reinforced state neglect in certain areas, with implications for the regional development of the country due to unequal concentration of resources.

For example, it was not until 1997 that the North Eastern Province was relieved of the yoke of administration under emergency laws. This lays a basis for charges of historic marginalisation against certain geographically and ethnically aligned communities that were left out of the mainstream development process.

A statistical mapping of regional distribution of a few development indicators as presented in Table 2 is informative as it highlights the disparities that characterize Kenya. A cursory examination of the table reveals the deplorable performance of North Eastern Province relative to other Provinces on all counts. For example, only 0.6 and 3.2 % of households have access to piped water and electricity respectively, compared with 24 and 33.2 % for Nairobi Province.

Table 2.1: Regional Distribution of Select Socio-Economic Development Indicators in Kenya in 2003

| Province | % High Potential Land | % of households with Piped water in | % of households with Access to electricity | Gross primary school enrolment rate in | Number of Doctors | Total Number of Courts |
|----------|-----------------------|-------------------------------------|--|--|-------------------|------------------------|
|----------|-----------------------|-------------------------------------|--|--|-------------------|------------------------|

⁵ *African Socialism and its Application to Planning in Kenya*, Sessional Paper No 10, Government Printer, 1966.

⁶ UNDP Fourth Human Development Report for Kenya, 2005 and SID Pulling Apart: Facts and Figures on Inequality in Kenya, 2004)

| | | the house | | % | | |
|---------------|----|-----------|------|-------|-----|----|
| Nairobi | 24 | 33.2 | 71.4 | 52.0 | | 6 |
| Central | 69 | 11.8 | 19.2 | 106.0 | 190 | 20 |
| Coast | 5 | 8.1 | 19.3 | 71.0 | 39 | 11 |
| Eastern | 3 | 4.1 | 6.9 | 96.9 | 147 | 19 |
| North Eastern | - | 0.6 | 3.2 | 17.8 | 9 | 2 |
| Nyanza | 97 | 0.6 | 5.1 | 94.0 | 165 | 18 |
| Rift Valley | 18 | 4.5 | 10.5 | 88.3 | 197 | 18 |
| Western | 90 | 1.3 | 1.6 | 93.3 | 83 | 11 |

Source: Adapted from Society for International Development (2004) "Pulling apart facts and figures on inequality in Kenya."

2.4.1 The case of North Eastern Kenya

The Northern 'Frontier' Districts were demarcated to form a buffer zone against Somalia and Ethiopia and remained neglected for a long time. The Northern Frontier Districts comprised Isiolo, Moyale and Marsabit and the current North Eastern Province, which covers Wajir, Mandera, Ijara and Garissa districts. The majority ethnic group in this region are Somalis. The colonial government in Kenya passed legislation that in effect suppressed the civil liberties of the inhabitants of the Northern Frontier district. These included the Outlying Districts Act, Preservation of Public Security Act, the Special Districts (Administration) Act, the Stock Theft and Produce Act.

Postcolonial governments of Kenya did not deliver the Northern Frontier Districts from the yoke of colonial oppressive laws. Following the opening up of political space in Kenya in 1960, the Northern Province Peoples Progressive Party, a largely Somali political party, agitated for self-determination. Indications of a preference by the Somalis to secede and join Somalia were rebuffed in the pre-independence negotiations at Lancaster House by both Britain and Kenya, leading to insurrection in Kenya by Somalis, referred to as the *shifita* war.⁷ In reaction, in 1966 the North Eastern Province and Contiguous Districts Regulations, made under the Preservation of Public Security Act and pursuant to the Provisions of Section 127 of the Constitution, were passed effecting emergency law in North Eastern Province. Tana River and Lamu district were also ruled under emergency conditions from 1966.

The effect was a closed district policy insulating the districts of Northern Kenya from mainstream Kenya. Emergency rule was to create an oppressive environment for the people of Northern Kenya and to disadvantage them immensely in the protection of their civil liberties and socio-economic development, and its impact is still felt to date. The North Eastern Province remains the most underdeveloped in the country in the provision of basic infrastructure, social services, and human resources.

⁷ AI Hassan Commissioner, Constitution of Kenya Review Commission **North Eastern Province & The Constitutional Review Process : Lessons from History** <www.kenyaconstitution.org/docs/09d002.htm>

2.4.2 Other challenges faced in the regions.

Land

Land evokes considerable emotions in Kenya. Historical grievances over land deprivation by the colonial rulers have been carried over through successive governments, and the current administration has witnessed fresh land based conflicts in its maiden term. The Masai lands are a potential source of conflict over tensions that have existed since these lands were taken away by the colonial government and allocated to white settlers. In 2005, demonstrations occurred over demands for compensation by the Masai. In the same year there were reported clashes between Masai and white ranchers in Laikipia.

No less aggrieved are the Coastal Province people who still rue the loss of a 10-mile coastal strip, nor those who were evicted from forests, only for political heavyweights to appropriate their lands. The individual appropriation of communal lands has distorted user rights over water and pasture for communities that hold customary tenure and use land collectively.

In addition, land is owned disproportionately by private individuals, corporations and entities, such that the most of land in Kenya is held by a minority. Estimates by the Kenya Land Alliance indicate that more than half of the arable land in the country is in the hands of only 20 % of the population. Due to a culture of political corruption and mismanagement, large tracts of land were allocated to politically connected individuals and leaders in the 1980s and 1990s, sometimes at the expense of communities. A handful of prominent Kenyan families and a residual class of white settlers are among the biggest landowners in the country, owning large tracts of land.

Water

Disputes over water usage also threaten the peace of some communities, aggravating ethnic hostilities such as the Masai/Kikuyu conflicts in Maai Mahiu that occurred in January 2005 in the Rift Valley over the use of River Ewaso Kedong, resulting in the death of 16 people. In December 2001, clashes occurred over river and land rights in South East Kenya between Orma pastoralists and Pokoma farmers in Tana River District. Other clashes have been noted in Kwanza between the Pokot and Bukusu people in 2005.

Regional differences in resource allocation and development have fed the politicisation and manipulation of ethnic identities to extreme measures. There are perceptions that the tribe from which an incumbent president comes is entitled to, and does benefit from this privilege in terms of accessing employment, education and leadership opportunities. It is perceived that politics is regarded by leaders as a means to access resources, opportunities and development through wielding of decision - making power, especially in resource allocation. To achieve this, ethnicity is used as a tool to rally around

and to raise critical consensus and numbers needed for impact.

Inevitably, conflict relating to politics is bound to become structured along ethnic lines in the absence of remedial government interventions. This is borne out in the series of ethnic clashes that occurred post and pre-election 1992, and in 1997 that are further elaborated in the Akiwumi Report.

The influence of ethnicity has manifested itself in the higher echelons of power to the detriment of objectivity in the governance agenda. A party, cabinet or legislature that is formulated along partisan issues as opposed to ideological disposition is not very well placed to propound good governance issues. This is no more apparent in Kenya than in the current political developments in the constitutional making process, which has seen parties, cabinet and parliament split in a manner that is detrimental to collective responsibility and consolidation of ideological concepts.

2.5 THE CONSTITUTIONAL REVIEW PROCESS

Kenya's current constitution is a colonial-era charter that was written in 1963 without input from Kenyan citizens. Most Kenyans agree that it is outmoded. Due to several amendments to the current constitution and certain gaps and anomalies in constitutional protections, the majority of Kenyans sought to entrench fundamental rights and freedoms in the constitution as well as address various outstanding issues for different interest groups.

The clamour for a new constitution commenced in the run-up to the first multi-party elections in 1992, when civil society, academics, politicians, the opposition, and several members of the public mounted a campaign for constitutional reform. Although key reforms were initiated in 1997, it was not until 2002, when the current government came to power, that Kenya moved closer towards achieving this dream. The government promised a new constitution within the first 100 days in office, but could not deliver due to persistent wrangling within the Cabinet.

Former President Moi appointed a Constitution of Kenya Review Commission (CKRC), a body charged with writing a new constitution under the leadership of Yash Ghai, a respected academic. Further, a National Constitution Conference (NCC) comprising 629 delegates, including all 224 members of Parliament was convened at Bomas of Kenya. By 2002, the Constitution of Kenya Review Commission had compiled and submitted the views of the public on the proposed new constitution known as the 'Bomas Draft'. Soon after, presidential and parliamentary elections were held, which ushered in the NARC government. Two more drafts emerged from the deliberations at Bomas, but due to the tensions that were beginning to fracture the NARC coalition, there was failure to garner consensus.

The draft constitution is largely an alteration of the Bomas Draft that was

adopted by delegates at the National Constitutional Conference. The Bomas Draft provided for a split executive (executive president and prime minister) which was contentious and a parliamentary system of government. It is against this background that a reconstituted parliamentary committee in 2004 proceeded to amend the Draft Constitution legally via the Constitution of Kenya (Amendment) law before handing it to the Attorney-General, Amos Wako, a move which greatly displeased the LDP and KANU MPs.

A source of controversy in addition to the position of the Prime Minister was the preference of some for the Bomas draft constitutional provisions on decentralisation, which clipped the central government powers more than the draft constitution presented to Kenya for the November 2005 referendum. Presidential powers currently exercised under the constitution are seen as highly centralised despite decentralised governance. The Executive is viewed as threatening the independence of Parliament since the President can unilaterally dissolve Parliament at any point.

Other wide powers of the President include the appointment of senior officials such as the High Court and Court of Appeal judges, the Chief Justice and the Public Service Commission. The subordination of Parliament to the Executive in law making and parliamentary oversight functions; the failure of the Executive to heed Parliamentary recommendations; Executive interference in appointments to the Judiciary, do not conform to the accepted norms of democracy and are a source of disquiet in certain segments of Kenyan society. The traditional democratic notion of checks and balances is seen as a safety net that can best ensure that government organs work in a perfect equilibrium to deliver to the citizen an acceptable governance package.

The constitutional reform process should ideally provide a forum for all Kenyans to collectively determine the contours of their political landscape through a participatory process. However, due to the fallout over power sharing modalities by the different coalition constituents and differences over the constitutional agenda, NARC has formed new alliances, although not eliminating its old allies. This has precipitated an acrimonious and adversarial engagement of the key political parties, with far reaching implications for nation building and the progress and collective output of Cabinet and Parliament.

In 2003, divergences were noted in the positions of NARC, the LDP, and the NAK over a number of constitutional issues, leading to a breakdown of engagement. In 2004, NAK disengaged from the Constitutional Conference. Currently, a lot of dissension arises out of claims by the LDP that the Bomas Constitution is a bona fide expression of the majority's political aspirations, with NAK firmly extolling the virtues of the current draft constitution. The referendum in November 2005 itself was the grand finale to the fallout of the former allied parties. The constitutional debate divided the government, with several cabinet ministers opposing the document and others taking a neutral stance.

Groups that were traditionally omitted from the development process and its benefits view the constitutional reform process as a legitimate means by which they can ensure that the decision-making mechanisms facilitate the redistribution of resources in their favour. In this context, opposing discourses or positions are seen as a threat and counter- strategies adopt partisan nuances. Ethnic alignments feature in the support base of the sides to the referendum that has been set to determine the adoption of the draft constitution.

The draft constitution was rejected in the first ever plebiscite held in the nation's history on November 21, 2005, with 57% of the population voting "no" and 43% voting "yes", bringing to a climax a decade and a half of political agitation for a new constitution. The draft constitution gained widespread support only in Central Province, dominated by the country's largest ethnic group, the Kikuyus, which is also the home of the President. In all the other seven provinces the majority voted against the draft. The referendum process was characterised by excessive campaigning for and against the draft, some of which ended up in violence and loss of lives.

The "no" vote on a new constitution seems to beget larger consequences than originally feared. Two days after the no-vote in the referendum, President Kibaki made the drastic move of firing his entire Cabinet and proroguing parliament. Seven ministers of his ruling Rainbow Coalition (NARC) had been highly profiled "no" campaigners, while others had stood behind the President's "yes" recommendation to voters. A new cabinet was sworn in a day after three nominees refused to accept their appointments as ministers.

In reality, the disagreement over the draft constitution does not reflect a rejection of the entire constitution or major parts of it, but rather only a few issues in the Constitution are in contention. Further negotiation over these outstanding areas would be crucial in eliminating hostilities and building the much needed consensus in the constitutional process. The build up of political tensions and animosities has greatly polarised the nation's key leaders and the electorate, and runs the risk of clouding the real substantive issues that originally drove the reform processes. At the end of the day, it is crucial that the governance issues are clearly enunciated and decided upon in a unifying manner, in order to do away with the battle marks of dissension and keep sight of the importance of institutionalizing constitutionalism and good governance. The politicization and manipulation of ethnicity to divide and weaken the opposition will best be defused by addressing structural issues.

2.6 MAJOR CONSTRAINTS IN ATTAINING GOOD GOVERNANCE

While Kenya under KANU rule must be credited for keeping Kenya together as one entity when some of its neighbours in the region were facing internal fragmentation, a cross cutting issue that characterised this period was divisive

governance in its broadest sense. There was therefore deep-seated disillusionment among the public, and hence a very high price tag in terms of expectations put on the new government. This divisiveness took many forms, such as political and social exclusion, weak or lack of involvement and participation in the decision making process. The immediate challenge for the new government was how to consolidate the people's diverse aspirations and expectations into a shared vision and national objectives. In this sense, the biggest promise, and at the same time challenge, that NARC faced when it came into power was to rebuild the bridges of national unity that had been broken as a result of the use of diversity as a tool for political manipulation.

The NARC government came in to power amidst a lot of public goodwill as Kenyans rallied around leaders who had valiantly fought for political change in Kenya. In a bid to shake off any images of complicity in the past, particularly in the area of corruption, government has undertaken several reforms in key sectors and at diverse levels of governance. However, coalition-building strategies for the NARC government saw members of the previous government come on board, including those perceived as corrupt. The public, which was eager to purge all past corrupt leaders from power, viewed this as creating an environment of impunity, especially when non-prosecution followed findings of commissions and other judicial bodies.

New incidents of corruption are alleged by observers. In February 2005, the Permanent Secretary for Governance and Ethics, John Githongo, resigned and alleged new incidences of corruption. The Law Society of Kenya has accused the Current Vice President, Attorney General, and Finance Minister of graft.

Widespread corruption in Kenya has exacerbated the economic crisis in Kenya, as money lost through corruption is a cost to the taxpayer and a loss to the national coffers. Investors have been discouraged by the high cost of corruption when attempting to start up enterprises, as it reduces cost effectiveness. Non-monetary forms of corruption such as influence peddling and nepotism eliminate rules of fair play and tamper with the competence, integrity and output of government. The existence of corruption in government ministries and departments, parastatals, corporations, the Judiciary and local authorities poses a daunting challenge for government. The old and largely corrupt civil service bureaucracy is still very much in place, which carries significant implications for the effective implementation of new anti-corruption measures.

In the 1980s and 1990s Kenya's economy declined to an alarming extent due to misrule, and Kenya is yet to recover from the after effects to-date. It is estimated that an alarming 56% of the population currently live in absolute poverty. Poverty in Kenya is also quite structured, with certain regions being disproportionately affected due to the regional imbalances that exist in Kenya with women, youth and vulnerable groups being disproportionately affected. The elimination of government subsidies under Structural Adjustment stringencies precipitated a fall in the living standards of many Kenyans, who

were unable to access appropriate health and social services. Income and social inequalities are pervasive, and access, or the lack thereof, to land, basic services and infrastructure reflects disparities between the rich and the poor. Despite the presence of multinational corporations in the country and investments in key sectors, brisk trade in horticulture, tea and coffee, the gains are not filtering down to the majority of Kenyans.

In addition, Kenya straddles the conflict prone zone that includes countries such as Somalia, Ethiopia, the Sudan and Northern Uganda, which fact has increased its vulnerability to illegal cross border arms trade. The easy flow and accessibility of arms and narcotics has precipitated a rise in banditry that flourishes under the potent combination of low government surveillance and poverty in these regions. The insecurity in these areas is aggravated by poverty, poor infrastructure and services to promote economic and social activities that will divert the community from illegal activities and protect the vulnerable from being victimised by the militias. The right of Kenyans to live without fear of violence has also been compromised in urban areas given the high incidence of violent crime.

All these factors have created deep-seated frustrations in the affected groups, who view government as distant and uncaring of the fate of the ordinary people. A breakdown of communication has evolved over the years between government and the public, and this has been exacerbated by public addresses that degenerate into mud-slinging matches. There is a lack of trust in state institutions, in the Executive, Legislature and Judiciary, leading to non-reliance on these institutions and more reliance on self-help mechanisms by the people, although these measures are too often inadequate to address their needs.

The government has not been successful in effectively communicating current developments and constraints faced in policy implementation, leaving the public to speculate on its motives, agenda and progress. There is a disconnect between national and regional processes, as well as ministry to ministry relations in terms of coordination, information flow, policy design and implementation. Parties, on their part, have failed to engage their constituent members and their electorate on substantive development and conceptual issues. This has resulted in an alienation of citizen's stakeholder responsibilities.

Kenya's conformity with the Democracy and Political Governance thematic focus of the APRM continues to be constrained by a combination of three major factors, vis the legacy of its colonial inheritance, exploitative predilection of its power elite as well as a demonstrable inability to forge a power elite consensus. National transformation requires a clear consensus around shared political values that will under gird the development framework.

The country's democratic development and related attempts to establish transparency, ethics and accountability as core principles of political governance continue to be hampered by the fallouts from this rather

asphyxiating combination of deficits, thus making fundamental structural changes in the country's social relations and patterns of class and ethnic-based domination appear difficult. What appears to have happened has been the substitution of an ever-expanding and ethnic-based petit-bourgeoisie for an expatriate one. Going beyond and liberating itself from this colonial inheritance remains a major challenge not only to democracy and political governance but also to the country's quest for sustainable growth and development.

Kenya has unfortunately remained vulnerable to elite factors and factions; a need has emerged over the years to initiate a process capable of operationalising emerging paradigms, concepts and new attitudes as a means of increasing the capacity of the country to make appreciable progress and impact in the years ahead. In practical terms, it is imperative that a strategic framework informs Kenya's preparedness for the challenges ahead within a framework of elite consensus and solidarity on issues of socio-economic development, integration, security and stability, democratization and human rights.

2.7 MARKING MILESTONES IN KENYA'S PROGRESS

Under KANU leadership, Kenya registered some notable achievements including the reform of the civil service and the establishment of anti-corruption agencies. The adult literacy rate in Kenya was at an impressive level of 82 % as of 2000⁸. President Moi played a lead role in mediation peace talks for Somalia and Sudan which continued well past his term of presidency under his work with the Moi Peace Institute. However, by 2002, KANU rule had become more associated with political patronage, corruption and mismanagement, as well as economic and social debilitation. Although the opening up of political space improved slightly, the enjoyment of civil and political rights, economic and social rights remained illusory.

Expectancy and a fresh lease of vibrancy were infused into the fabric of Kenyan society with the advent of the NARC administration. The NARC coalition as a peoples' movement was seen as holding the promise of a Kenya that transcended ethno-politics. NARC gave a strong sense of ownership and offered an alternative platform for participation to the larger groups that had been excluded for a long time from the Kenyan political scene. The NARC Government was thus elected on a platform of reform and a promise for better governance. The overriding theme of the NARC manifesto, launched in November 2002, was "Democracy and Empowerment".

At the earliest opportunity, President Kibaki called for reconciliation of all groups and requested all to focus on re-building Kenya.⁹ The thrust of the new administration was to build a culture of transparency and accountability in

⁸ UNICEF <<http://www.unicef.org.infobycountry/kenyahtml>.

⁹ The Nation, 'New President Spells out His Vision 31 December 2002

public office and adherence to the rule of law. At the heart of President Kibaki's political manifesto are, among others, the restoration of the economy, the rebuilding of social infrastructure, job creation, the eradication of corruption and poverty, the promotion of constitutional reform and educational attainment by all Kenyans through the provision of free education. The manifesto spelt out the focus of the new government on such areas as strengthening governance, reforming the public sector and investing in human capital, particularly the poor and vulnerable groups or communities.

True to the presidential pledges, the first two years of NARC rule have seen fundamental policy and institutional changes geared towards the attainment of its goals. The constitutional reform processes that were initiated while NARC was still the major opposition party have continued to progress, although not without major challenges, nor without controversies. Universal primary education as of January 2003 made the right to education a reality for Kenyan children. Kenya is taking giant strides in implementing far-reaching reform programmes needed to kick-start economic growth under the Economic Recovery Strategy for Wealth and Employment Creation (ERS) 2003-2007 which is widely hailed as a progressive and long-term planning framework that will promote the restoration of Kenya's economic and financial systems and its standing in the region.

Having been elected on a platform of zero tolerance to corruption and economic development, the NARC government has taken a variety of measures to root out corruption from the public sector and jumpstart the economy. Key reforms to wipe out graft in Kenya have been established. Government has heightened its fight against corruption through a number of laws and the establishment of anti corruption mechanisms at the Executive, Legislative and Judicial levels and under decentralisation since 2003. This is important, as the struggle against corruption requires increased government oversight and the capacity and commitment to conduct investigations and prosecutions. Kenya was the first country in the world to sign the Convention against Corruption, signalling winds of change against impunity. Reforms in the judiciary and the civil service are also geared to rectifying anomalies in the recruitment, appointment and retention of personnel in service delivery and policy implementation.

The enjoyment of civil and political rights by the majority of Kenyans has improved since 2003. Press freedom is guaranteed and reflected in the openness with which public debates and issues are reported on without fear of unlawful state censorship. Individuals have a right to join political associations of their choice and to air and promote their beliefs. Political parties and pressure groups in Kenya are allowed to carry out their operations freely, and this has spurred an environment of public debate and freedom of opinion and belief. Pressure groups have been instrumental in carrying out formal and informal civic education among various target groups, conducting advocacy activities and lobbying the authorities for change.

Civil society organisations (CSOs) have been given space to operate as partners in development and advocacy, and some CSO leaders have been co-opted into government. The presence of CSOs on important governance bodies such as the National Anti-Corruption Steering Committee and the Governance, Justice, Law and Order Sector is an indication of government's dedication to ensuring transparency and accountability through continuous monitoring mechanisms. A strong women's lobby has emerged to promote the women's agenda in the constitutional reform process with the aim of improving the visibility and numeric advantage of women in parliament.

Decentralisation is an innovation that ensures governance is grassroots based and brings service delivery mechanisms closer to the people, allowing for capacity building of communities through customised projects. The participation and inclusion of the communities under decentralisation has been facilitated through innovative laws such as the Constituency Development Fund Act and the Local Authority Transfer Fund Act, which promote pro-poor identification and implementation of development projects at the local level.

It is noteworthy that during the years in which donor groups isolated Kenya from funding programmes, Kenya forged coping mechanisms for its fiscal base through alternative resource mobilisation policies. There is sufficient evidence that the resurgence of the economy is under way because of changes in the governance and regulatory environment that could spur growth. Since NARC took power in 2003, the economy has recovered from sluggish growth of 0.2 % in 2002 to 1.8 % in 2003, rising to 4.3 % in 2004. The projected growth rate is 7 % in 2007. Currently, Kenya is still largely self-sustaining although it does receive budgetary support from development partners. To illustrate this, the 2005 /06 Budget deliberately left out budget support from bilateral partners in an effort to promote internal self-reliance and resource mobilisation.¹⁰ Despite the related challenges to this approach, by adopting this measure, Kenya increases its ability to have domestically driven economic growth and development, and to focus on priority areas aimed at accelerating development for the country.

Kenya's role under the NARC administration in pacifying her warring neighbours and bolstering regional conflict resolution mechanisms is notably outstanding. Best practices endorsed by Kenya at this regional level provide a useful basis for Kenya to emulate in the domestic arena in order to provide an enabling environment in which human rights and democracy flourish. Within Kenya itself, traditional means of dispute resolutions have been employed to alleviate inter and intra-tribal conflict, and alternative dispute resolution is extolled for its conciliatory approach. A key strategy in consolidating Kenya's gains through the decades is to keep sight of the nation's aspirations of unity, peace and progress in the midst of the rich diversity Kenya is blessed with.

¹⁰ Republic of Kenya 'Budget Speech for the Fiscal Year 2005/2006' 1st July to 30th June

CHAPTER THREE

3. DEMOCRACY AND POLITICAL GOVERNANCE

3.1 Overview

Kenya gained Independence on December 12, 1963 from the United Kingdom. President Jomo Kenyatta ruled Kenya under KANU from 1963 to 1978, first as Prime Minister and then as President. On his demise in August 1978, President Daniel arap Moi took over leadership of KANU and the government until 2003. The government of President Moi legalized the one party political system and became increasingly intolerant of political dissent, leading to calls for change by leading elites, civil society and politicians. KANU opened up the democratic space in 1991, and multiparty presidential and parliamentary elections were held in 1992, 1997 and 2002. In December 2002 President Kibaki under the NARC alliance assumed the mantle of leadership of the country.

Kenya blossomed as the regional treasure in the 1970s and 1980s, emerging as the strongest economy in the East Africa Region. However, due to oppressive governance systems and rampant corruption, the economy deteriorated. This led to worsening conditions in the civil, political, economic and social rights of Kenyans. The widespread poverty and lack of substantive government institutions to foster the welfare of the ordinary citizen resulted in low standards of living for the majority of Kenyans and increased erosion of the rights of Kenyans as politically repressive practices and policies were adopted by government, such as the one party system, stifling freedom of the Press and civil society activity, denial of freedom of assembly, and state sanctioned violence in the form of police brutality and militia groups hired to terrorise opponents of the state.

Chapter two captures the political history of Kenya comprehensively. The colonial administrative policy that led to financial and socio-economic investments largely in the high and medium potential lands at the expense of other regions in the country have left their mark on Kenyan society to date. Social and economic disparity is the major feature of Kenya's development landscape. Ethnicity is related to geographical placement, given the historical settlement of tribes in specific or periodic locations. Thus, regional imbalance in development coincides with ethnic identities accounting for the current dissatisfaction in several Kenyan communities. Since the pre-independence formulae of relating potential to eligibility for investment was not redressed by subsequent governments, marginalisation and vulnerability are pronounced in certain disadvantaged areas. This explains to a certain extent the country's preoccupation with, and the dominance of ethnic identities and discourses manifest in the public life and governance of Kenya. Disparities in Kenya are transcendental of ethnic identity and divisions. Other groups that are

socially and economically disenfranchised include persons with disabilities, pastoralists, hunter-gatherers, people living with AIDS (PLWA), widows, orphans and street children.

The NARC government was seen as a bridge that would unite the deeply divided society that Kenya was by 2002. A combination of internal and external pressures compelled KANU to undertake a range of economic and political reforms including opening up of political space, establishment of the Kenya Anti-Corruption Authority and launching of the constitutional review process. Upon assumption of power, the new government sought to consolidate these reforms. Unfortunately it is hampered by its inability to implement the reforms effectively.

Kenya has a long tradition as an open society, and this is reflected in the quality of debates, the engagement of civil society and the freedom of the Press, which is used to maximum advantage. Thus the poor and the marginalised have always found the space to express their views, although not with equal measures of success and exposure. There is also a discernable distrust of leaders and institutions, which deters the communities and public from engaging in civic activities to their full potential. Thus the creation of Constituency Development Committees, the local authority transfer funds and Constituency Development Fund have not always produced the desired results.

The following section of the report elaborates the country situational analysis in the pillar of Democracy and Political Governance, starting with adherence to internationally accepted norms and practises that are enshrined in APRM principles and indicators for good governance. This is followed by an elaboration of the CRM's assessment of the country situation based on actual site visits, consultative discussions and independent assessments. At the end of the mission findings under each objective, recommendations are proposed for priority action areas in order to address some of the emerging issues that have been identified in the CSAR or observed in the CRM.

3.2. IMPLEMENTATION OF CODES AND STANDARDS

i. Summary of the Country Self-Assessment Report (CSAR)

The CSAR indicates that Kenya has signed several international, regional and continental codes. These relate to children and women's rights, refugees rights, civil, political and economic, social and cultural rights among others. An international agreement entered into by Kenya, even after ratification, is domesticated after the enactment of an incorporating law by Parliament. The Constitution has sought to implement most of the human rights obligations of Kenya, including civil and political rights. A number of laws, policies and mechanisms were set up to implement the codes. However, Kenya has not yet comprehensively translated its international commitments into domestic laws, particularly the codes and standards dealing with the rights of women, children,

refugees and migrant workers.

ii. Findings of the CRM

The CRM ascertained that Kenya had ratified the under listed instruments that have a bearing on democracy and human rights. The country considers itself bound by these and other international and regional protocols and instruments. The current Government has since 2003 made an effort to sign more international instruments and ratified a few others. The treaties signed and ratified by Kenya to date include:

- *The International Covenant on Civil and Political Rights;*
- *The International Covenant on Economic, Social and Cultural Rights;*
- *The Charter of the United Nations (all objectives);*
- *The Constitutive Act Convention of the African Union;*
- *The NEPAD Framework Documents;*
- *The African Charter on Human and People's Rights;*
- *The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;*
- *The Statute of the International Criminal Court;*
- *The Convention against Corruption;*
- *The International Convention on the Elimination of All forms of Racial Discrimination;*
- *The Optional Protocol to the Convention on the Rights of the child on the Involvement of Children in Armed Conflict;*
- *The Optional Protocol to the Convention on the Rights of the child on the Sale of Children, Child Prostitution and Child Pornography;*
- *The African charter on the Rights and Welfare of the Child;*
- *The Optional Protocol to the Convention on the Rights of the child on the Involvement of Children in Armed Conflict;*
- *The OAU Refugee Convention;*
- *The Convention Relating to the Status of Refugees;*
- *The Protocol Relating to The Convention on the Right of the Child;*
- *World Conference on Human Rights; and*
- *The Convention on the Elimination of All Forms of Discrimination Against Women*

Other outstanding conventions yet to be signed and/or ratified by Kenya include

- *The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment-(not signed or ratified);*
- *The Geneva Convention Relative to the Protection of Civilian*

Persons in Time of War-(not signed or ratified);

- *The Convention on the Political Rights of Women- (not Signed or ratified);*
- *The Protocol on the Rights of Women in Africa –(signed December 17, 2003, not ratified);*
- *The AU Convention on Preventing and Combating Corruption (signed December 17th- 2003 , not ratified);*
- *The AU Peace and Security Protocol (signed July 7th, 2003, not ratified); and*
- *The Convention for the Protection of Rights of Migrant Workers-(not signed or ratified).*

The CRM observed that although Kenya had signed and/or ratified some of the above instruments, it had not yet entrenched them through legislation. In particular, although Kenya had signed on to CEDAW, the Family and Domestic Violence Bill has not been enacted and remains pending since 2002. .

Even where the codes and standards have been domesticated, there is a demonstrable lack of enforcement capacity.

Even though the Government has put in place institutions to conduct civic education, the CRM observed low levels of awareness of existing laws and the rights of citizens. Stakeholders and members of the civil society did not seem aware of the laws that were being debated in parliament, or what stage anticipated laws had reached, for example the Bill on Family and Domestic Violence, the law regulating Micro Finance and the Refugees Bill.

The CRM was unable to verify Kenya's adherence to reporting timelines under the relevant treaty monitoring bodies due to its inability to meet with the relevant government officials.

iii. Recommendations

The Panel recommends that:

- The Government of Kenya sign and ratify the outstanding international instruments including the Convention on the Protection of all Migrant Workers and their Families [*Parliament*].
- The Parliament of Kenya pass all laws reflecting the international norms and standards acceded to by the Government soon after ratification [*Parliament*].

- The Kenyan National Human Rights Commission and CSOs conduct civic education for the citizenry with a view to entrenching its oversight role and inculcating stakeholder consciousness and responsibility [*Kenyan National Human Rights Commission and CSOs*].

3.3 ASSESSMENT OF KEY APRM OBJECTIVES

3.3.1 OBJECTIVE ONE: TO PREVENT AND REDUCE INTRA AND INTERSTATE CONFLICTS

i. Summary of the CSAR

Internal Conflicts

The CSAR acknowledges that internal conflict is rife in Kenya. The report identifies several strands of conflicts, mostly interconnected and feeding on each other. However, politically induced conflict, which is basically an outfall of competition and struggle for power often provides the basis for a politicisation of ethnic differences, abuse of political power and authority, existence of militias in political parties, and limited opportunities for effective political participation.

According to the CSAR, resource based conflicts occur in most cases over the politicization of land ownership and land rights, arbitrary allocation of community land, scarcity of land for pasture and crop farming, struggle for access to and use of water resources, and depletion of limited water. The CSAR identified additional cases of conflict between government and communities arising from land use for public purposes by government, and from forceful removals from ‘environmentally protected areas’ by government.

Economic inequalities, which coincide with regional inequalities, also generate conflicts that are further aggravated by a weak state capacity to manage or prevent them. The weak surveillance system is, according to the CSAR, part of the legacy of weak governance, which has considerably reduced the ability of the state to provide public security and safety as a social good. This has resulted in a huge security void, especially in far-flung areas where communities have resorted to accumulating small arms (an outfall of conflict situations in neighbouring countries such as Somalia), for use in banditry and cattle rustling, etc.

Although Kenya is said to maintain a generally peaceful relationship with its neighbours, the CSAR nonetheless acknowledges the existence of cross border banditry, external support for insurgency and conflict over shared resources. Additional sources of interstate conflicts include maltreatment of Kenyan

migrant workers, who are threatened with repatriation in other countries as well as kin-country cross border issues.

ii. Findings of the CRM

Kenya has maintained stable relations with its neighbours and has, in spite of the above-mentioned problems, maintained its reputation as an island of peace within a troubled region. It has offered assistance in diplomatic resolution of conflict, shared its resources and opened its borders to refugees fleeing violence and disaster in other African states, as shown in Box 3.1.

Best Practice

Box 3.1: Kenya as an Island and Haven of Peace for the Region

Kenya has been a rock of stability in the region, negotiating peace agreements between factions of its warring neighbours. Peace talks were brokered by Kenya between the warring factions of Somalia, which signed a peace agreement in January 2004, allowing the Transitional National Government of Somalia to be formally recognised as the central government. Kenya also helped Sudan realize peace through the signing of the Comprehensive Peace Agreement between the Sudan People's Liberation Movement /Army and the Government of Sudan in January 2005.

For over three decades, Kenya has also hosted victims of warfare fleeing their countries from many countries including Somalia, Sudan, Rwanda, Burundi, Uganda, Mozambique, Tanzania, Ethiopia, Eritrea, Democratic Republic of Congo and the Central African Republic.

The series of consultations with various stakeholders confirm the CSAR observation that Kenya is a deeply divided society with a range of latent and manifest internal conflicts. Regional inequalities characterised the country prior to independence and seem to have become a fixture on the political and socio-economic landscape of the country. Inequality is indelibly stamped on the country's major ethnic groups and is reflected in the limited opportunities for development of the majority of Kenyans. Inevitably, vying for scarce resources and opportunities has insidiously taken on ethnic proportions.

Inequitable allocation of public resources has provided an ethnic platform for elites in political competition based on the promise of political power as a means of delivering a share of the national wealth to their ethnic groups. The politicisation of ethnicity is a tool that politicians have wielded to the detriment of unification, nation building and peace building in Kenya. There appears to be nothing preventing political leaders from exploiting existing opportunities in their jockeying for power. It is noteworthy that stakeholders in Northern Kenya and other disadvantaged regions are aware of the culpability of the leaders from their region. Stakeholders expressed disappointment over the inability and/or

unwillingness of the over forty parliamentarians representing them to secure additional resource allocation from the central government for the region. Stakeholders insist that the parliamentarians from their regions have not adequately represented their collective interest at the centre.

At various stakeholders meetings in Nairobi, Embu and Garissa, the refrain is the same. The communities seek to be considered as part of the mainstream, and want basic infrastructure and investments that will provide viable economic and social opportunities for their youth, hopefully to discourage them from banditry, drug trafficking (particularly in Mira), and the accompanying violence.

The problems of the neglected regions evidently transcend the mere maintenance of law and order; they are also about inclusion and engagement; about increasing opportunities; and about maintenance of group and cultural identities, absent politically generated baggage of artificial prejudices. Nowhere was this more evident during the consultations than during the various meetings with marginalized groups. Marginalization is not the creation of the current government. The status quo is a legacy of the colonial segregationist policies that divided Kenya into arable and profitable regions viz a viz ‘difficult areas,’ which were accordingly given preferential and discriminatory treatment respectively. This system of marginalisation has continued through the successive administrations since Kenya attained independence. Dividends of the democratic transition notwithstanding, communities in these regions can be said to have been only partially mobilized, and the state has not sufficiently penetrated these areas.

A growing source of disquiet among residents in the Northern Province is the perceived lack of action on the part of government in the various violent clashes and conflicts that have resulted in deaths. Several communities, particularly in Northern and North Eastern Kenya, provide their own security through communal militias and home guards. Instructively, these regions share borders with Kenya’s often troubled and unstable neighbours, and are consequently corridors for the traffic in small arms. Predictably, conflicts in these areas are more often than not very violent in nature, involving the use of guns. Inevitably, these conflicts are often beyond the capacity of traditional conflict resolution mechanisms. As a result, lack of appropriate and adequate law enforcement has led to increasing lawlessness in the private sphere and a rise in the incidence of private militias.

Private militias are the bane of any centrally organised government. That they exist is attributed to state laxity, ineptitude or complicity. Whatever the state dispensation, the result is impunity for the perpetrators, lawlessness in society and vulnerability and insecurity in the nation. Lawlessness undermines democracy where freedom is restricted in the face of often-violent sanctions, limiting the free expression of opinions and belief, and restricting freedom of

association or movement by individuals or organised groups. The absence of the rule of law is anathema to democracy and good governance.

A response mechanism of the government has been to deploy soldiers and police to these areas. However, the communities often resent the presence of these representatives of the state as they argue this cannot solve their problems. With little or no road networks, effective security surveillance and mobility are hampered. In other instances, stakeholders complain of vulnerability to abuse from government security forces, citing breaches of rights and inhumane treatment.

Stakeholders claim that female and male detainees are often kept in the same police cell in the North Eastern Province. In Isiolo district, four army barracks were reported by stakeholders to constitute a large army presence that caused social instability and physical insecurity especially for women.

In instances where the NARC government has taken steps to respond to some of the demands of the communities, the intended beneficiaries are often unaware. There is a distinct alienation of the people from the state as the frontiers of engagement and participation are limited. Ordinary citizens lack access to information, which limits participation. Information is the oxygen of democracy, and in contrast, communication gaps preserve and reinforce community prejudices.

During the consultations with marginalized groups, there was a clearly discernible feeling of unjust treatment, lack of equity, and a palpable sense of neglect, bitterness, anger, apathy, and alienation. Stakeholders complained about the continued disregard for their cultural identities as evidenced in a series of derogatory and insensitive political remarks about them and their region particularly at the higher political levels. These feelings were expressed often strongly and in unambiguous terms by the stakeholders. While the youth representatives were given to extremism in language and conduct, the elderly were emotional but firm about their agenda, desires and nationalism. One of the senior stakeholders seemed to sum up the overall desire and expectations of the marginalised groups when he said: *“I am Kenyan and I want to be treated like other Kenyans, and do not want to be discriminated against needlessly.”*

Consultations with stakeholders suggest that the overarching conflict in Kenya now is political. The current political conflict is largely a result of the collapse of a coalition consensus, which seems to have precipitated serious power struggles and a contest for supremacy among the dominant factions of the political parties. Although on the surface, the cause of disagreement appears to be the shaping of the constitutive and regulative rules, an analysis of the current political situation reveals a very different picture. At the heart of the conflict and disagreement is a power struggle fuelled more by a perceived feeling of betrayal by sections of the NARC coalition following the failure to honour the spirit and letter of the Memorandum of Understanding believed to have been

signed in 2000 by all parties within the NARC.

During the consultations, it was suggested that there was a struggle to reconstruct the basis of the coalitions and political alliances, which are in a state of flux currently. In the process, there has emerged a descent into pejorative, highly provocative and inciting utterances, particularly highlighted in the mass media. Some media houses, *Citizens Radio* in particular, are dedicated to rousing ethnic hostilities without sanctions being levied against them. These developments seem to have provided the basis for rousing previously latent divisions and sources of conflict within Kenya while generating new conflicts and perpetuating old ones at the same time.

Old tensions that had sporadically surfaced in the former government have been articulated and acted out in harmful ways. Conflicts relating to land use and deprivation (e.g. Masai lands), water usage, economic and political power struggles, have all tied in to the ethnic resentments that have for long simmered in Kenya, with negative repercussions. The ethnic based clashes evidenced in various parts of Kenya are an indication that mechanisms to address root causes of dissension are needed in the immediate future to avoid escalation into greater conflict.

ii. Recommendations

The Panel recommends the following:

- Government and political parties are encouraged to design and engage conflict resolution mechanisms to reduce factional frictions, build consensus on crucial national issues, defuse ethnic tension and promote tolerance [*Government, Political Leaders and Political Parties*].
- Government to take immediate legal and administrative steps to remove all forms of discrimination prevailing in Kenya society [*Attorney General, the Judiciary and the Kenya National Human Rights Commission*]
- Government to establish a strong and enduring framework for the management of diversity. [*Government of Kenya*].
- Existing conflict management mechanisms be reviewed and strengthened. [*Ministry of Justice and Constitutional Affairs, CSOs and Traditional Cultural Dispute Resolution Institutions*].
- The land issue be addressed with greater political determination that goes beyond a merely legalistic approach. Government, as a matter of urgency, to adopt and implement redistribution and reallocation policies to enforce equitable access to, and

use of land [*Government of Kenya*].

- The Media Council and other Media regulating bodies be legally empowered to sanction irresponsible media organizations and professionals [*Government of Kenya*].
- The Parliamentary Commission is encouraged to set up an information desk and other coordinating mechanisms to facilitate a mutually beneficial engagement between the Parliament, the Media and the Public in general [*Parliamentary Commission*].
- In addition to the special Presidential Initiative, Government to ensure that communities in the North Eastern Province and other identified disadvantaged areas benefit from a multi dimensional range of affirmative action programmes [*Government of Kenya*].
- To check human rights transgressions of law enforcement officers. Citizens be sensitized about their rights to seek redress against such abuses and law enforcement agencies to undertake human rights training programmes for their staff [*Kenya National Human Rights Commission and Law Enforcement Agencies*].

3.1.2 OBJECTIVE 2: TO REACH CONSTITUTIONAL DEMOCRACY, INCLUDING PERIODIC POLITICAL COMPETITIONS AND OPPORTUNITY FOR CHOICE, RULE OF LAW, CITIZEN'S RIGHTS AND SUPREMACY OF THE CONSTITUTION

i. Summary of the CSAR

The Electoral System

The CSAR pointed out that following the transition to multi-party democracy the ability of the Electoral Commission to effectively and efficiently manage the electoral process has continuously been constrained by lack of requisite capacity. The report further pointed out that, capacity constraints notwithstanding, there have been improved security and transparency in voter registration, voting and counting processes. This is further complemented by equitable allocation of airtime on the national broadcast media, high voter turnout and non-interference of politicians and the provincial administration in the electoral management process.

Although the CSAR cited incidences of corruption, violence, tribalism and nepotism, manipulation of voters and other administrative hitches, it pointed out that the 2002 elections were generally considered free and fair by observers.

Rule of Law and Supremacy of the Constitution

The CSAR noted the establishment of watchdog institutions such as the Kenya National Human Rights Commission. However, it also recognized the capacity limitations on the part of legal institutions and law enforcement agencies. The report also identified corrupt practices, low performance, lack of accountability, over centralisation, and biased application of the law, as impediments to the effective enforcement of law and order. Consequently, crime and political violence in both rural and urban areas had increased tremendously in recent times.

Decentralisation and Quality of Governance:

Describing the current efforts at decentralization, the CSAR observes that the current Provincial Administrative system is headed by Presidentially-appointed Provincial Commissioners. In practice this has meant that the central government retains more political power than it has devolved. Local Authorities seem more accountable to the government, through the Ministry of Local Government, than to the electorate.

The Ministry's control is exercised through town clerks, who are seconded to the Local Authorities from the Ministry, and the fact that mayors are not elected directly also makes them more answerable to councillors than to local residents. The situation is further aggravated by the election of councillors that often have limited education. Instances of corrupt practices and non-delivery of service abound in the councils.

Citizen Participation

The Local Authority Transfer Fund Act of 1999 enjoins the involvement of local communities in determining priority action programmes. However, participation at the local level has not been broad based, service delivery for basic needs is inadequate, and local government procedures do not fully provide for or facilitate equitable resource distribution.

ii. Findings of the CRM

1. Political competition

The Mission found that the democratic space had increased remarkably during the last two years. Political parties are registered as societies under the current Kenya Societies Act, which empowers the Registrar to process applications, and issue a certificate of registration based on criteria not explicitly defined in the Act.

Under this Act, a political party is registered as a Society, without any

restriction of ethnic, age, tribal, racial, gender, regional, linguistic or religious affiliation. This discretionary regulatory environment allows for the creation of political parties based on ethnic or regional affiliations that characterize the political landscape of the country. In the last election, of the forty-eight political parties in Kenya, only nine won parliamentary seats. The exegesis of coalitions in order to maximize the political pay offs has meant that effectively there are only five political groupings represented in Parliament.

Kenya's political parties are regional, ethnic based and poorly institutionalized. Arguably, they can be described as mere electoral vehicles for "political entrepreneurs."¹¹ They have been quite erratic since the 1992 elections: some parties disappeared, others appeared, and continuity in party structures, labels and names is highly unpredictable. Prior to the referendum, the ruling coalition was an alliance of the National Alliance of Kenya (NAK), and the Liberal Democratic Party (LDP). Each party is in turn a coalition of a number of ethno-regional parties or factions.

The result of the 1997 election confirmed the regional bias and ethnic composition of parties. At the end of that election, the National Alliance of Kenya (comprising Ford Kenya, The Democratic Party and the Social Democratic Party) had parliamentary seats concentrated in Central Kenya and Nairobi Province. The Liberal Democratic Party (*constituting the National Democratic Party and the 2002 KANU splinter faction*) and the Kenya African National Union had their support base in Nyanza province and the Rift Valley Province.¹²

The CSAR analyses electoral violence as both politically and ethnically based, but does not adequately demonstrate how politics, ethnicity and resource allocation actually play out in such conflict. Though there are usually episodes of violence throughout the country during elections, there are some clearly vulnerable and risk prone areas that are more disproportionately affected. These are usually on the borderlands at the inter-face of opposing ethnic groups: These include the Maasai/Kisii borderlands; the Luhya/Kalenjin borderlands; the Luo/Kalenjin borderlands; the Kikuyu settled areas of the Rift Valley and cosmopolitan areas of the Coast Province. In 1992 and 1997, these were the most volatile scenes of political violence.¹³ Given this configuration, some of the most serious electoral violence is predictable, and hence preventable, based on past trends and patterns.

¹¹ The term is from Mainwaring, S, and T. Scully, Building Democratic Institutions: Party Systems in Latin America

¹² See APRM Background Paper, Electoral data from the Electoral Commission of Kenya(ECK)1998

¹³ APRM Background Paper.

While the Registrar has powers to regulate the actions of political parties, in practice, he hardly acts even when activities of certain parties threaten national cohesion. For instance, political leaders have openly declared their parties to have been formed to facilitate ascension to power of their ethnic groups or to defend their interest against other groups yet they have been allowed to continue existing. There is no legislation governing internal electoral process within parties. This is left to Party constitutions. In practice, it is the core leader and inner supporters who determine the electoral framework.

On paper, all parties have party structures ranging from the national level up to locations. While this gives an impression of an existing hierarchy at operational level, most local branches are essentially inefficient. They only become alive during the election periods when proximity to these branches can determine whether one gets a party ticket or not. In essence, the majority of political parties are one-person outfits; they lack resources and operational offices. Leaders run them more or less like private companies. The core decisions flow from the top, and are communicated to “members” in most cases through newspapers. Moreover, whereas KANU has an existing branch leadership, and the Liberal Democratic Party (LDP) is in the process of constituting branch leadership, NARC has no such structures.

Internal democracy within the political parties is also lacking. The main problems revolve around the lack of a visionary program-oriented and organized leadership. The major “parties” such as *KANU*, *DP*, *FORD Kenya*, *Ford People*, *NDP*, *SDP*, *Safina* have not conducted free, fair and peaceful internal elections to the satisfaction of their members (few maintain any register that one can use to verify membership) and the general public.

While the Ruling NAK faction argues that the structure in place constitutes a Government of National Unity, it has failed to demonstrate the program of National Unity around which these actors are uniting. The net effect has been the near collapse of their “party structures” and a total absence of policy positions. It is common to find a “party” characterized by several factions backing differentiated positions with respect to core national issues wherein they would have been expected to evolve a collective stand.

The foregoing arguably explains the current inclination of political actors to form entities and openly declare them as vanguards of ethnic interest. This more or less explains the continued increase in numbers of political parties from 27 in 1997 to 51 by the 2002 general elections as ethnic and economic entrepreneurs seek to carve space for themselves. More than 30 other applications are pending registration at the office of the Registrar of Societies. This situation has engendered the emergence of Multi-partism characterized by the multiplicity of political entities that continue to fragment over leadership wrangles as opposed to pluralism. The latter by inference is rooted in the horizontal class differentiation and maturity of social infrastructure that allows citizens to anchor their socio-political and economic organizations at different sites and to articulate interests

from the same. This situation continues to spawn the phenomenon of grand “parties” that are registered to host other “parties” in a bid to win power. After NARC, a similar entity has emerged in the name of the Orange Democratic Movement. This brings together LDP and the Uhuru Kenyatta faction of KANU. This phenomenon allows a situation where a single individual leader can effectively head two parties. For instance the same person is the chairperson of NARC and NPK. Ordinary citizens can also belong to the Umbrella “party” and another headed by the “leader” of their preference.

In addition, Kenya’s electoral system has in-built weaknesses and inherent inequities that have been widely reviewed. These have had significant ramifications for citizenship rights and political choices. The first is the variation in constituency sizes. The biggest constituency (Embakasi in Nairobi) is over twenty times bigger (in terms of its electorate) than the smallest one (Samburu East). Secondly, even though the constitution specifies the criteria to be used in delimiting constituencies, the Electoral Commission has not taken steps to inform Kenyans how and why it has created particular constituencies. Thus, though 21 new constituencies were created just before the 1997 elections, the public is unaware of the formula or criteria used in their creation. This led to speculation that politics was the over-riding consideration.

2. Enforcement of the Rule of Law

The CSAR has identified non-implementation of the rule of law by the Judiciary and the police. Judicial independence has two dimensions: institutional independence and the autonomy of the individual judge as he or she presides over a case. Although the Constitution sought to provide for independence of the Judiciary, the vetting processes in the nomination and appointment of judges are vulnerable to executive influence. The promotion of judges through the ranks to the level of the Court of Appeal carries political overtones and compromises the neutrality of judges because of the mode of appointment into the Judicial Service Commission.

On a positive note, judges have job security and their salaries are a charge on the Consolidated Fund.¹⁴ Nonetheless, the competence of the bench is limited because of the lack of technical assistance to individual judges in the areas of research support, recording of court proceedings and career development (training and refresher courses). In deciding cases, magistrates and judges often have to conduct their own research and often times rely solely on the research done by litigants.

There is a perceptible loss of public confidence in the rule of law as currently applied and the government’s ability to deal decisively with the

¹⁴ Background Paper, DGPG Kenya.

enforcement of the law. Incidences were cited during the consultations with stakeholders in which prominent government officials either disobeyed courts orders or expressed an intention to disobey them. Non-enforcement of sanctions levied against such disregard is fostering an emerging culture of impunity. . Such a development goes beyond the authority and independence of the judiciary, and strikes at the heart of the mandate and rule of law. This distrust has also bred individuals' resort to self- help initiatives, where communities employ their own private militias to protect or enforce rights, or prefer to use traditional mechanisms to resolve disputes rather than file cases before formal courts.

3. Constitutional Reform

Constitutional reform is quite topical in Kenya, and the debate and arguments over the form and content of the constitution have been somewhat acrimonious. Some of the more contentious issues include the nature and extent of executive power; a choice between parliamentary or presidential systems of government; the appropriate unit of devolution; the choice between a bicameral and a unicameral legislature; the appropriate electoral system and constitutional provision for religious courts.

The polarized nature of the constitutional debate and its entanglement in Kenya's ethnically driven politics, the complex constitutional issues that in the first place gave rise to the need for reform will need to be resolved in an enduring manner. These relate largely to regional disparities and the marginalisation of certain regions that have crystallized into the current competition for political power.

Presidential powers exercised under the current constitution are seen as highly centralised despite decentralised governance. The Executive is viewed as threatening the independence of Parliament since the President can unilaterally dissolve Parliament at any point. Other wide powers of the President include the appointment of senior officials such as High Court and Court of Appeal members, the Chief Justice and the Public Service Commission.

The subordination of Parliament to the Executive in law making and parliamentary oversight functions; the failure of the Executive to heed Parliamentary recommendations; Executive interference in appointments to the Judiciary, do not conform to the accepted norms of democracy and are a source of disquiet among certain segments of Kenya. The traditional democratic notion of checks and balances is seen as a safety net that can best ensure that government organs work in a perfect equilibrium to deliver equitable service to the citizen. .

Consultations with stakeholders have highlighted public scepticism relating to the management and completion of the constitutional reform process.

The debate over the need for a constitutional provision for faith-based courts has sparked off religious tensions in Kenya. Kenyans of Islamic persuasion argue that there are historical reasons for including Kadhi's courts in the constitution, especially given that the establishment of these courts in parts of Kenya preceded British colonial rule. In contrast, they argue, the inclusion of Christian courts in the Draft Constitution is highly controversial to the Muslim community and a potential source of conflict. The government bases the inclusion of Christian courts in the proposed constitution on equal treatment of all religions. Muslim clerics met by the APRM contend that this viewpoint ignores the historical reasons for which Kadhi courts were included in the initial Constitution of Kenya or trends in constitutional law and practice, where treatment of certain interest groups is varied. For historical reasons, Kadhis' courts were included in the current Constitution as part of the independence bargain. To scrap these courts from the Constitution, they argue, would, in effect, deny Muslims in Kenya a religious institution and right that they have come to cherish over 40 years of independence. On the other hand, Muslim clerics argued, if Christian courts are removed from the proposed draft, Christians may not be able to make the same argument.

Other issues which are unsolved in the current Constitution include: an unpopular, prefecture system of administration that decentralized but did not democratize executive powers to the rural areas; a weak and ineffectual system of local government routinely subject to central government ministerial diktat under the Local Government Act in which central government held sway but local units operated relatively autonomously, thus establishing two tiers of government: national and local; and weak protection of human rights, frequent abuse of such rights and a hostile judicial attitude to human rights litigation

4. Decentralization

The Government of Kenya has long maintained a rhetorical commitment to decentralisation. The country attained independence with a constitution that emphasised a devolved system of government. Prior to independence, local governments were quite vibrant, providing a range of important services such as education, health, roads, water and housing. However this changed drastically over the next decade, with local authorities losing most of their functions and attendant sources of revenue through re-centralisation.

Decentralisation has since been replaced by "de-concentration" of central government functions with ministries establishing a presence at the lower levels of provinces, districts, divisions and locations. These local ministry outposts run parallel with the provincial governments, which though their mandate is administrative, are often key players in coordinating local level activities.

The legal framework governing decentralisation is the national Constitution and the Local Government Act, Chapter 265, of the Laws of Kenya, enacted in 1977.

The Local Government Act confers enormous powers on the Minister for Local Government. In principle, the minister can create, amalgamate or alter the territorial limits of local authorities, dissolve an insolvent local authority or elevate the status of such an authority. Furthermore, the Local Government Act empowers the minister to determine the number of councillors elected to each local authority and their eligibility to vote or to contest in the local government elections. In effect, the minister exercises more control over recruitment to local government councils than do local residents.

The limited scope for policymaking and financial decision-making by local governments has reduced their credibility and appeal. Unsurprisingly, many councils consist of individuals with limited formal education and low political exposure and experience. Local councils in Kenya are usually characterised by indebtedness arising from overspending and bad spending decisions (usually over-employment at the lower cadres to satisfy the councillors' need to reward electorates), and disposal of council property (land and buildings) to themselves with little regard for public service.

Local authorities have increasingly assumed the character of appendages of the central government though the requirement of local participation in development of Local Authority Service Delivery Plans (LASDAPs), which is a precondition for local authorities to receive a block grant from the central government under the Local Authority Transfer Fund (LATF), has resulted in slight improvements.

Administratively, a powerful parallel government exists in the form of the provincial administrators, who wield more authority than elected officials in spite of a perceptible absence of a legal framework governing provincial administration, except with respect to its lowest ranks (chiefs and the administration police). The provincial administration is an important actor in development: NGOs and bilateral programmes operating in the rural areas, for example, are required to register with the district commissioner. The coordinating role of provincial administration is accompanied by a security role. The Administration Police Act establishes a local police force controlled by the district administration. Thus, through the provincial administration, the central government is able to exercise invasive powers of control down to the local level.

Management of Resources at Decentralised Levels

Decentralization initiatives of the government have focused on Local Government reforms to enable local authorities to improve service

delivery and create the investment climate that will lead to poverty alleviation. In this context, the government has disbursed several billions of Kenyan shillings through the Local Authority Transfer Fund, the Road Maintenance Levy Fund, AIDs, School Bursary and the Constituency Development Funds (CDFs) among others.

These mechanisms represent an attempt by the Government to localise financial planning and management as well as service delivery right down to the community level. The involvement of MPs in designing and prioritising these funds in conjunction with a cross sectional representation of the community is part of the service delivery structure.

CDFs were appreciated by stakeholders as user-friendly mechanisms that are able to fix small things that government would otherwise not prioritise. It is also easier for local authorities to access funds from CDF than directly from central government.

These initiatives, though aimed at accelerating the breadth and depth of service delivery at the local level, have not been accompanied with measures and actions for effective decentralization and the necessary capacity building to manage these resources. A common refrain in all the provinces visited was that the Constituency Development funds and projects undertaken do not reflect community priorities. Clearly, the activities of the committee and the decisions taken, however well intentioned or implemented are not appreciated by the community when accompanied by little or no consultation, or lack of information about ongoing activities. Stakeholders in the provinces pointed out that they were not informed about the arrival of funds, and that this hampered their involvement in the implementation and monitoring of development projects in their community.

The inclusion of MPs on the committee required to undertake projects that benefit a widespread cross-section of the community, regardless of political affiliations, has been a source of unease. It does not necessarily have to, but other stakeholders are apprehensive that it does pose a conflict of interest, especially since the committee members are nominated by the MPs. One MP certainly voiced her fears and reluctance to work with members of the opposition who had undermined her during the elections, since the hostility was likely to affect the progress of the committees.

In the provinces, it was opined that MPs sometimes compromised the neutral application and assignment of the funds to areas or projects where the MP has a large support base. This fund is vulnerable to political manipulation and patronage, and may be easily seen as the spoils of victory for the dominant political parties in power. Several stakeholders called for the removal of MPs from the committees.

In North Eastern province, the CRM was informed that stakeholders were not involved at the local level in the decision making process and in identifying their priorities and programmes. Local councils are reluctant to consult stakeholders, and accountability of local authorities towards the community could be improved. For instance in Garissa the pastoralists sought to be consulted by local authorities about direct export mechanisms for their livestock to other countries, and not through Nairobi. In the case of the LATF structures, stakeholders alleged that councillors allocated funds without any participatory consultations.

Furthermore, it seems that in some districts the local government has weak capacity to manage the immense resources transferred to the local authority. In Embu, stakeholders emphasized the limited capacity of the councillors to manage the funds. Councillors are not well educated and therefore hardly able to interpret an audit report. Parliamentarians dominate the committees and the distribution of funds is based on political allegiance.

iii. Recommendations:

The Panel recommends the following:

The challenge of decentralisation be a major focus of devolution as part of the constitutional reform agenda.

- Parliament is encouraged to speed up the adoption of the Political Parties Bill, which prohibits the registration of political parties based on ethnic, age, tribal, religious or regional membership [*Parliament*].
- Government and the Judicial Service Commission as well as GJLOS to embark on enhancing the capacity of the Judiciary through the continuous training of personnel, provision of research facilities, improvement of information and communications technology and setting up performance-based contracts for the Judiciary [*Ministry of Justice, GJLOS*].
- Government to coordinate reform efforts of the Civil Service Reform Unit at the Vice- Presidency, and the Public Service Commission to ensure coherence and effectiveness [*Government of Kenya*].
- Local authorities with CSOs to conduct sensitization campaigns on LATF and CDF funds. The campaigns may focus on the structures, management, implementation and monitoring mechanisms of the funds [*Local Authorities and CSOs*].
- The role of Members of Parliament in the CDF and CDCs be limited to raising/disbursing and monitoring the flow of funds under the authority of committees. More transparency is required in the appointment of the committee members,

through elections, to ensure full participation of the communities [Government of Kenya].

3.1.3 OBJECTIVE 3: TO PROMOTE AND PROTECT ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND CIVIL AND POLITICAL RIGHTS AS ENSHRINED IN AFRICAN AND INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

i. Summary of the Country Self-Assessment Report (CSAR)

Political and Civil Rights

Various Civil and Political rights are stipulated in the Bill of Rights contained in the Constitution, with the derogation of fundamental freedoms being accepted only in situations of war. The CSAR observes that the degree of respect for the Bill of Rights since independence has been low, and freedom of association, speech, assembly and the Press, and the rights to legal representation, land and property ownership were particularly restrained. Although civil and political rights under the one party governance system were limited, the 1990s ushered in political pluralism and improved the situation. The NARC government has demonstrated greater respect for rights and liberties than the previous KANU governments, although incidences of sporadic disruption of lawful political meetings and the violent dispersal of peaceful demonstrations directed against government favoured positions, such as constitutional reform, have occurred.

Economic, Social and Cultural Rights

Regarding economic, social and cultural rights, the CSAR pointed out that the current Constitution is conspicuously silent on rights to health, education, food, healthcare, a clean and safe environment, preservation of cultural heritage, leisure and entertainment to mention but a few. Clamours by citizen groups for the inclusion of these rights contributed to their being incorporated in the draft Constitution. Governments since independence attempted to provide economic and social services, although this has declined drastically since the implementation of the Structural Adjustment Programmes, the reduction or elimination of government subsidies and the introduction of user fees in the delivery of services. This pushed government into providing only law and order services, leading to difficulties for citizens in meeting the full range of economic social and cultural rights, given the high incidence of poverty.

Universal primary education was introduced in 2003, this being a remarkable achievement for thousands of Kenyan children, who can now access the education system. Nonetheless, implementation remains a challenge due to the urgent need for expansion of classrooms, teacher recruitment and training as well as the provision of learning and teaching equipment and other supplies. It also raises a demand on the secondary school and university institutions.

An attempt was made to provide universal health care systems, but this was not formalized. The report reflects that health care services are of poor quality and only a few citizenry access services in private facilities. The HIV pandemic was declared a national disaster, but the plight of orphaned children has not been addressed through policies. There is currently no policy on the procurement or manufacture of antiretroviral drugs.

With 56 percent of the population living below the poverty line, the CSAR highlights challenges in the area of housing, adequate nutrition, clean water and economic services that stimulate industrial and agricultural production and commerce.

The report acknowledges that freedom of worship is respected in Kenya, although there have been instances of arbitrary arrests and violation of rights of Muslims under the aegis of the war against terrorism. Several other violations of the rule of law are outlined in the report, including police brutality and harassment, planting of narcotics in people's pockets and the shoot-to-kill police practice. Land evictions, mob justice, prison congestion, wife beating, and the pollution of local natural resources by external investors in the Coast Province are identified as problem areas.

Measures to protect Economic, Social and Cultural Rights

Human rights related institutions include the Kenya National Commission on Human Rights, the Police, the Judiciary, the Attorney General and the Prisons department. Their capacity to perform satisfactorily is constrained by the inadequacy of funds, inadequate facilities, corruption, and interference by the Executive in the Judiciary. In North Eastern and Western Kenya, the traditional system of justice has thrived due to a weak state presence. The Governance, Justice, Law and Order legal reform programme has been initiated to improve capacity and training, recruitment and improvement of remuneration in public service. It is also envisaged that a fairer, more equitable and more effective posting of judges would also be undertaken. .

The Kenya legal system does not adequately protect the poor and marginalized groups, and judicial and police officers have been accused of gender insensitivity and an inability to contain politically related violence. There is a prevalent perception that civil society organisations, rather than government institutions, report human rights violations. An initiative of the Judiciary, such as a legal rights project for those who cannot afford representation, among others, is yet to be implemented. The country has no position of an Ombudsman, and the Kenya National Human Rights Commission plays this role, although it is hindered by the lack of summoning powers.

ii. Findings of the CRM

Civil and Political Rights

Overall, the monitoring of the various political rights stipulated in the Bill of Rights is undertaken by the major government watchdog, the Kenyan Human Rights Commission. Human rights protection is also supervised by CSOs like the National Council of Christian Churches, Transparency International and a host of NGOs and CBOs. At a more practical level, the CRM found increasing self-assertion of ordinary people (*Wananchi*) in defence of their right to know the fuller details of the innovative Constituency Development Fund (CDF) and the existing LATF monies, as well as the various other sources.

No official policy of censorship of the Press was visible, this being notable progress in the promotion of Kenya's democratic growth. However, the CRM was concerned about the ethnic bias of some of the media houses which have been given free reign to disseminate opinions close to ethnic hatred, especially some FM radio stations. Many stakeholders remarked on the role of FM radio stations that promote ethnic sentiments similar to the role of FM stations in the build up to the Rwanda genocide. The CRM, in a subsequent meeting with members of the Kenyan Media Council, expressed concern at the clampdown on some media houses as a result of perceived unethical reporting by government law enforcement agencies. The Media Council offered that a bill was in the offing to regulate the conduct of practitioners and professionals.

Few CSOs, NGOs and representatives of political parties appeared satisfied that the country's evident freedoms were in themselves enough. Most considered these freedoms and rights as the basic precursors of good governance. The high incidence of corruption and corrupt practices, rising ethnic tensions, growing religious and cultural intolerance, and the tense, bitter constitutional referendum campaigns, were highlighted as factors undermining the respect for rights. Stakeholders also pointed to the realities of ignored or unattained development goals that had often been the basis for the leaders' campaigns during elections, but which are typically honoured in the breaching thereof.

With regard to the freedom of association and opinion, the CRM in Coast Province was informed that people whose views were not favoured by the local authorities and district leaders were usually not invited to cross sectional meetings where issues are debated to generate consensus. Usually people obtain information at the grassroots through parties' representatives who visit occasionally for rallies. Many leaders do not educate their constituency on issues but, instead, only urge them to take sides. In the Coast Province, it was reported that seven MPs had come to Kinango, and instead of highlighting what was good in the draft constitution for the individual told the public how to vote in the November 2005 referendum.

Clearly discernible from the various discussions, consultations and interactions with stakeholders is a palpable sense of political freedom in Kenya as indicated in Box 3.2.

Economic, Social and Cultural Rights

Many stakeholders reported that they were upset by the many instances of bureaucratic bungling. They underscored the tepidness with which the poverty alleviation aspect of the ERS (Economic Recovery Strategy) was being pursued. Over fifty six percent of the population could be classified as poor. Several of the stakeholders met in Nairobi clearly articulated the crisis of everyday life, and the absence or unreliability of government services. There was a feeling that not enough of the economic abuses of the KANU era were not being addressed fast enough.

Clarifying the issue, the Minister for Local Government, at the CRM meeting in Kakamega, noted that the high level of complaints could be seen as part of a natural human tendency to seek immediate resolution of problems that have accumulated over the years. He further remarked that years of deprivation and the promise of dividends of democracy had bred a high level of expectations that could not be met in the short term. Perhaps echoing the same sentiments, officials of GJLOS and the Kenyan Land Commission noted that crucial service delivery institutions such as the Ministry of Justice and Constitutional Affairs did not even exist until the advent of the NARC government.

Government officials were also quick to point out that the CDF monies were a novel channel for funds to the grassroots which, where properly utilized, had the potential of empowering constituents as the money was meant to be spent locally, hence creating employment for public works and health care, to mention but a few. Other MPs also pointed to additional inflow of other funds to the districts – HIV funds, road funds bursary awards, LATF and monies from a variety of NGOs.

The majority of Kenyans, as the CSAR correctly noted, are happy about the Universal Primary Education (UPE) programme of the government. The UPE is a welcome boost to the majority of the parents, who now have government subsidising part of the education costs for their children. School bursaries also go a long way in the alleviation of the problems previously faced by needy children.

During the CRM deliberations with Parliamentarians, an MP took issue, with some validity, with the notion that not enough has been done to address poverty alleviation. She pointed out that significant savings were being made by parents as a result of the NARC free primary education programme, and that these savings were now being channelled to other needs. The inability to pay mandatory school fees had in the past kept about 24 percent of Kenya's children out of school. However, there were fears expressed that the quality of education was being compromised by the demands of large teacher pupil ratios and other student materials. Qualitative interventions are required to facilitate the universal education policy aimed at increasing the number of learners, such as the provision of teaching and learning materials, an increase in teacher training

and recruitment, curriculum improvement, designing inclusive school settings to accommodate the learning needs of children with disabilities.

The focus on the people's well-being was an anchor of the NARC campaign, and both the associated Bomas and Wako draft constitutions are very strong on health. Indeed, one of the most prominent Bills that the parliament had intensively debated was the National Social Health Insurance Fund Bill. This had to be shelved, however, when the civil servants demonstrated the financing obstacles to long-term sustainability of free health care on the same terms as free education. More than previous administrations, the current one has made efforts to address the AIDS pandemic by creating a HIV-AIDS fund that flows through the provincial and district levels to locations and sub-locations, through a chain of hospitals, clinics and NGO providers. In all the Focus Group discussions in Nairobi and the Provinces a high degree of articulation on health issues was noted

Despite the improved investment climate and warmer donor relations in the post KANU administration, poverty is on the increase in Kenya. In general, stakeholders pointed to the anomaly of a growing economy in which unemployment was growing at the same time. The displacement of people in the course of ethnic clashes has worsened the conditions of poverty and led to the growth of slums even in the rural areas where certain ethnic groups fled their homes. There are no strong social safety nets to cater for the vulnerable. In the healthcare sector, the rich depend on private services while the poor, who used to benefit from free health care prior to the elimination of government subsidies in the pre-Structural Adjustments era, now have to bear the full brunt of medical costs.

Citizens have attempted to secure economic and social services from the open market. The exorbitant prices charged by private sector operators vis-à-vis rising levels of poverty in the country have constrained access to vital services. Presently, social and economic rights are the least enjoyed category of rights in Kenya. The youth met by CRM are demanding for jobs in the formal sector, and calling for early retirement ages to be set in the civil service, while a vast number of Kenyans work in the self-regulation and relatively unprotected informal sector, where they depend on the vagaries of the economy to eke out a living.

Best Practice Box 3.2: Political and Civil Rights in Kenya

Political and civil rights are exercised with a considerable degree of freedom and few restrictions. The civil society movement in Kenya engages the government in a robust and fruitful manner. This, in part, explains the capability and capacity of the civil society movement to function as a countervailing force in curbing the excesses of government and political leaders. In effect, the Kenya civil society movement promotes the continuous expansion of the political space. Instances abound where the civil society movement has facilitated redresses of different forms of administrative abuses. It is interesting to observe that the ability to exercise this right transcends all divides, be they towns/villages, generational or of any other social form. Indeed, civil society comes across as effectively mobilised, articulate and aware of its responsibilities in keeping the democratic tradition alive and well. A review of the nature and character of the debate over constitutional revision puts this somewhat unique character and feature of the Kenyan society in clear relief.

While this may be attributable to a long standing history of political struggle, the point must also be made that the political elite in Kenya seem to cherish and respect this core value, and appear intent to preserve that major pillar of democratic governance which is the right to dissent. In most instances, there is an obvious resort to all manner of political sophistry by the political elite in its effort to push through a number of unpopular decisions. However, it does this without a resort to the usual violent reactions common or associated with repressive governments. This demonstrable commitment to preservation of political freedom in Kenya has made its civil society movement vibrant and alive to its responsibility. It is a practice that is well worthy of emulation by other countries in Africa.

It is commendable that in spite of its subsequent actions and decisions, the government undertook extensive consultation with a broad section of Kenya in producing its draft constitution. The populace also responded with convincing enthusiasm, thus preparing the ground for effective mobilisation and reflection of the different interests and positions aimed at redressing some of the injustices of the past through constitutional provisions. This is without a doubt a most commendable initiative and approach to governance which should be encouraged and shared with other countries facing similar challenges.

Respect for human rights depends on the effectiveness of all government organs and departments to deliver a multidimensional package. To isolate the Judiciary as the principal human rights vanguard in this regard may imply that only justifiable rights are important, these usually being political and civil rights. This could relegate economic, social and cultural rights, which rarely find their way into courts, to a lower calibre of rights. A rights-based approach to development should dominate the ethos of all national institutions as they implement their goals.

Although Kenya has undertaken several impressive initiatives aimed at economic recovery, there is still a heavy bias by the state towards promotion of civil and political rights. More often than not, they are relatively less demanding on government coffers, and by nature require government to limit its extension into civilian space and sanction unwarranted interferences by government. The nature of economic, social and cultural rights places a positive duty on governments to undertake welfare and developmental

programmes. A dual track promotion of liberty and welfare rights will provide the best prescriptive framework for addressing human rights issues.

The CRM was struck by the consistency of complaints over routine intimidation by the police and incidents of petty bribery everywhere. Many complained of court cases dragging for years and the inevitable appeal of alternative dispute resolutions. Issues of justice and injustice are keenly felt and people continuously drew attention to the plight of *Mwananchi*, suggesting a growing distance between rich and poor Kenyans, and the insinuation that justice was for sale and only the higher bidders can ever be sure of securing fairness.

In the case of women, traditional practices tend to lean so heavily in favour of men as to pose serious cultural limitations. Widowhood rites, the outcast status of HIV-positive women and limited rights of inheritance are all issues that serve to deny women their basic rights as Kenyan citizens.

Despite this and other issues, the CRM was impressed with the array of programmes and projects, laws, bills and pledges that together constitute an integrated series of institutionalized responses to these many vexations. The challenge has remained one of efficacious and timely implementation that could ensure that lives and living standards would continuously improve.

Arguably, the elaborate framework designed to pursue the anti-corruption agenda may be seen as indicative of a systematic and progressive desire to make anti-corruption a shared national value in Kenya. Deducible from the interactions with stakeholders is the consistency of the Government in undertaking investigations into allegations of corrupt practices. Happily, the inclusion of civil society elements in the different anti-corruption agencies appear to have changed the dynamics and facilitated a robust and result-oriented approach, at times undertaken by near missionary zeal, while in some instances, the government has found the courage to execute necessary punitive actions against individuals found guilty, such as the dismissal of the twenty five judges suspected of being corrupt..

In other instances, the government has remained incapable of mustering the required political will to pursue the action to a logical conclusion. However, a combination of the efforts of the civil society movement, the principled stance of individuals in critical positions and a modicum of encouragement from the international community have greatly facilitated the exposure of culprits on a continual basis. . It has in that respect kept the anti-corruption programme on the front burner, and has largely discouraged the government from wandering from its chosen path.

It can thus be assumed that the continuous engagement of the civil society and increased support from the international community may eventually provide the government with the required incentive to find the needed political will and courage to enforce sanctions against corrupt and malfeasant individuals,

particularly public office holders in Kenya. It is in this manner that the hope of making anti corruption irreversible and thus restoring faith and belief of the populace in the political elites and office holders lies in the foreseeable future.

From various discussions with stakeholders, it is obvious that the challenges of human security in Kenya are real and compelling. The inability of successive administrations to respond effectively to these challenges continues to create more fundamental problems and difficulties for the maintenance of law and order, human welfare, a conducive investment climate, as well as overall economic growth and development.

The average Kenyan is confronted with a struggle against economic insecurity. This is further aggravated by physical insecurity currently exacerbated by the increase in banditry and other forms of crime, often violent in nature. The lack of economic and physical security is often exploited by political leaders in their struggle for political ascendancy and hegemony. This largely explains the resort to the deployment of militia groups by politicians. Such a development is laying the foundation for the militarization of political competition, and may lead to reversals of some of the fundamental democratic gains.

iii. Recommendations

The Panel recommends the following:

- Economic, social and cultural right are crucial to individual well being and overall national development. In effect, the authorities are encouraged to accord them the necessary recognition and relevance. [Government of Kenya].
- The Universal Health Care Plan be reviewed by Cabinet and subsequently legislated upon by Parliament to facilitate access to medical care for all Kenyans [Cabinet and Parliament].
- The Ministry of Health is to regard private healthcare providers as well as health providing NGOs as partners in health care delivery and support them in their endeavour [Ministry of Health, NGOs].
- The HIV/AIDS Prevention and Control Bill be passed by Parliament [Parliament].
- Kenya Authorities review its communication strategy and ensure that Kenyans are made aware of the achievements and constraints in addressing governance issues [Government of Kenya].

3.1.4 OBJECTIVE 4: TO UPHOLD THE SEPARATION OF POWERS INCLUDING THE PROTECTION OF AN INDEPENDENT JUDICIARY AND AN EFFECTIVE LEGISLATURE

i. Summary of the Country Self-Assessment Report (CSAR)

Constitutional Provisions

The Constitution declares Kenya a multiparty democracy, and provides for the principle of separation of powers between the Executive, Legislature and Judiciary, supported by a system of checks and balances. The CSAR indicates that this system worked fairly well in the first few years it was adopted after independence, but over time, the presidency has evolved to become the most dominant arm of the Government, with Parliament being perceived to be subordinate to the Executive. The reasons for this include the fact that Ministers are part of Parliament and that the Executive vets the work of the Legislature. The CSAR observes that the president has at times declined to sign some legislative Bills. The mixture of the presidential and parliamentary systems is not feasible as Parliament is unable to ensure compliance of the Executive, and thus plays a minimal role in influencing development objectives.

Independence of the Judiciary

The Judiciary is not deemed free from the interference from, and control by the Executive. It is supposed to adjudicate on conflicts between branches of government in order to test their constitutionality, and has in the past done so in the sense of bringing the Executive to account for its actions. Nonetheless, the Judiciary is only nominally independent as the President appoints the members of the High Court without necessarily consulting the Judicial Service Commission. The CSAR asserts that the Executive has abused powers of appointment and appointed judges based on political, tribal or sectarian reasons, hence transforming it into an instrument at the service of the executive. The Judiciary has not been free from corruption or from Executive pressures, and incidents are cited of ministers ignoring court orders in the Goldenberg inquiry, for instance. Also alleged is the practice where serious crimes have been committed against Kenyans but nothing is done against presumed culprits, even where these latter are known.

Other noted weaknesses in the judiciary include questionable recruitment and promotional procedures, lack of training, weak or non-existent sanctions or unethical behaviour. The poor state of information management systems compounds the capacity situation and results in a large backlog of cases before the courts.

Independence and effectiveness of the Legislature

The Presidential recall powers over parliament are viewed as providing the President with the overriding capacity to control the Parliamentary process. In a positive move, a Parliamentary Commission has been established to facilitate the work of Parliament and to determine its calendar.

MPs are criticized in the report for not having time to research on national issues and for polarizing debate along factional lines, all of which erode the independence of Parliament as an institution. It is also alleged that the Kenya Parliament has largely failed to make the Executive accountable. The Executive always has its way on the budget and in cited incidents, Parliament seemed to have given too much discretion to the Executive over disposal of taxpayers' money.

The Executive uses the principle of collective responsibility to ensure that cabinet members vote unanimously in Parliament; hence quorum crises have been engendered in a bid to defeat unfeasible motions, such as the Bill aimed at de-linking Parliament from Cabinet in 2002. External actors such as CSOs and the World Bank have also been seen to influence the work of Parliament in passing laws.

The CSAR rated the performance levels of the legislature in the field of development, security, management of constituency funds, conflict resolution, articulation of interests in parliament and attendance to the personal needs of constituents very lowly. The integrity of Parliament was questioned, especially when it voted unanimously for huge members' emoluments at the expense of other sectors without regard to national economic realities. MPs are also inclined to vote along ethnic lines at the expense of national interest.

ii. Findings of the CRM

Independence and effectiveness of the Legislature

The Parliament in Kenya has attempted in the past, rather unsuccessfully, to provide the traditional checks on the Executive. Recommendations of the Public Accounts and the Public Investment Committees have often gone unheeded by the Executive. This reinforces perceptions that Parliament is powerless to curb the excesses of the Executive, and that the latter is more dominant than Parliament.

Upward and downward information mobility is desirable in order to promote accountability in governance. Parliamentarians informed the mission that many members of Parliament have set aside fixed days for consultations in their constituency. This information does not seem to be effectively relayed to the community members, most of whom stated that they are rarely consulted or informed by their elected Parliamentarians about ongoing development and governance issues after elections. Many stakeholders in the

provinces stated that their MPs were not accessible, although a few affirmed that politicians made regular visits to the constituencies

Politicians have a lot of power, and it is important to ensure that their levels of accountability are commensurate with that power. . There is scepticism in certain sectors of society about current MPs' capability to pass progressive laws that would promote the rule of law and constitutionalism, laws that would not divide the citizenry and instead promote peace and unity, given their penchant for ethnically based interests.

Legislators need to do a lot more in ensuring better access to, and greater communication with the constituents who voted them into power. Some aggrieved stakeholders commented to the CRM that their legislators would rather fly overseas than visit their constituents. Even if simply hyperbolic, this speaks of the disconnect that people feel with most of the legislators whose five-year term of office provides them with a sinecure of sorts: they need only show up at election time. The CRM was able to establish, however, that many are establishing offices and recruiting staff to run their constituency offices.

The most important impact of the Legislature has been the Constituency Development Fund (CDF), which clearly has had people all over the country actively engaged in what CRT members saw as laudable grassroots exercise of civic obligations on the part of citizens. However, this was tempered by the widely expressed lack of access to their lawmakers. When the CRM sought the reaction of legislators, it was clear that the issue of access varied widely across the country – some MPs held regular constituency forums for instance while others were largely absent.

While welcoming CDF itself, an unexpected twist was to be found in the mixed reactions, even alarm, on the part of many NARC loyalists and activists as well as candidates, some of whom narrowly lost the last elections, at this novel practice in Kenyan history. Many have wondered why their government, NARC, would extend this largesse to the control of anti-Coalition opposition MPs, who would not give credit to the government for this innovation, while using the funds to create a power base that could effectively shut out members of the very government that had made this possible.

The enabling Act constitutes the epicentre of enhanced cash flow into the rural economy and must be encouraged. The intent is that a wide variety of stakeholders be involved in the CDF planning committees. Nonetheless, a number of members of such CDF committees encountered in the provinces raised the argument that it would be expecting too much to have MPs include their bitter foes in such committees.

A significant number of Kenyans feel alienated from their MPs and are

disappointed with the preoccupation of the legislature with extraneous matters. Some of the issues raised include:

- Public perception of the parliament in Kenya remains largely unfavourable if not negative. Parliamentarians are often described as self serving, insensitive and predatory. Stakeholders complained and pointed to the increase in perks and remuneration of parliamentarians. In particular a majority of the people are irked that in a time of increasing poverty, Kenyan parliamentarians have recently increased their mileage allowance among other instances of self gratification.
- Another public perception is that the legislators hardly put in enough time in the true performance of their functions. Many quoted a figure of 80 days in the year, although the MPs themselves asserted that they averaged 120 days of plenary sittings, while the rest of the time they pursued their legislative duties in committees where the real business of law-making and stakeholder consultation, presentation and input usually occurred. MPs contend that they usually spent their weekends meeting with constituents, attending meetings and being otherwise engaged in one form of public service or the other.
- However, the issue that most distressed the public generally was the rather swift collapse of the NARC party coalition that had in December 2002 swept into office with such high hopes, lofty programmes and a plan of action that was expected to clean out the Aegean stables of the past 30-plus years of single-party oligarchic rule. A major attraction of the NAK LDP and FORD alliance was that it drew in a wide array of the Kenyan political power elite, whose combined strength was expected to facilitate a transformation of Kenya's development. .
- The campaign for the 21 November 2005 referendum, which according to the Electoral Commission of Kenya (ECK) chief, was supposed to last only four weeks from 21 October 2006 – but which in reality went into full swing from August in typical campaign styles - has accentuated the dysfunctional nature of the governing coalition, both at the Executive and the Legislative levels. The Parliament is divided, with some NARC members in alliance with the KANU opposition MPs stridently opposing the Government, and some of the latter aligning with the NARC-centred Government over some aspects of the referendum. From all indications stakeholders might consider the years 2003-2005 as transitional. Until the Parliament gains a sense of its corporate identity as the second arm of governance rather than loyalists or detractors of the Executive branch, the latter can always manipulate it. In addition, the image of Parliament can only continue to suffer, as the lay public remains confused by all the infighting.

- Yet another factor affecting the separation of powers is systemic and constitutional – flowing from the mixed presidential-parliamentary democracy that Kenya has operated since independence. Constitutionally, Cabinet Members must be elected members of Parliament as well. They thus straddle both the legislative and executive arms of government. Trying to decipher when they speak as partisan legislators with primary loyalty to their parties and their constituencies, or as Cabinet members with national and even international responsibilities, becomes difficult. In those circumstances, the doctrine of separation of powers becomes effectively blurred, since the large ministerial team constitutes a significant percentage of the parliament itself. Executive interference is almost a guarantee here.

Effective separation of power will be critical for the Government of Kenya to meet its objective of serving the people in an efficient and inclusive manner. This will reduce the tendency towards unilateralism and other forms of Executive excesses. The challenge in future will remain the ability of the Parliament to work with the Executive by exercising its oversight functions effectively, not so much to humiliate the Executive branch as to protect the public interest. Without question, the amended versions of the 2000 Parliamentary Commission Act, which provides for better and far more enhanced facilities for parliamentary committees, will be part of the needed infrastructural base to enhance the work of the Parliament.

The operations of the inter-party parliamentary working groups ought to be seen as critical to the dignity and public image of the legislature – along with disciplinary committees and effective leadership by the Speaker, the Deputy Speaker, the Chief Whip and the Opposition Whip. Models of tolerance for divergence and diversity need to flow from Parliament and the ordinary Mwananchi should be inspired by his or her leaders and not be instead besieged by narrow partisan politics. Overall, given the coalitional origins of the current parliament, the strength of the KANU opposition – indeed, the largest single party -- and the distraction of the constitutional referendum campaigns that have split associates from Cabinet to Parliament to party, the Kenyan parliament has serious integrity issues to contend with.

Independence of the Judiciary

The Ringera Commission Report saw the purge of several corrupt judges from the judicial system. This sent warning signals to the hitherto impregnable sense of security enjoyed by even the most incompetent and openly corrupt judges that a new era had dawned. However, while the report may be hailed as an element of the new era, it was nevertheless mired in controversy as charges of ethnicity were raised at a CRT session.

During the CRM, various stakeholders gave the impression that the judiciary

of Kenya is not considered independent enough or free from Executive interference. The most crucial complaints have had to do with the inability of the Judiciary to deal with the many instances of grand corruption that involve key political and civil service figures. The public is less understanding of the lack of judicial enforcement in glaring cases such as *Goldenberg*, *Anglo-Leasing* and similar cases.

In criminal matters, the hand of the Judiciary have been strengthened with two major pieces of legislation; the Anti-Corruption and Economic Crimes Act (2003), which sets up special courts, and the Criminal Law (Amendment) Act. The crucial Kenya Anti-Corruption Commission and the Kenya National Commission on Human Rights provide additional bulwarks for the Chief Justice and the Ministry of Justice and Constitutional Affairs to play a major role in securing judicial autonomy in the public interest.

The mounting backlog of court cases due to the inadequacy of magistrates and absence of information leads to a long list of pending cases. Indeed, the Attorney General informed the CRT at a session with ministers that background investigations had been completed in over 70 grand corruption cases, and the Director of Public Prosecutions was ready to move, but Government is still constrained over capacity issues in the prosecution process.

Judicial independence, being a major value in and of itself in a democracy, needs to be protected. The third branch of governance, the Judiciary, cannot be expected to mediate any Executive- Legislative impasse with ease: the Chief Justice being an appointee of the President is not trusted to be able to take an independent decision. The Chief Justice of Kenya is appointed solely by the President, and judges of the High Court are appointed by the President based on the advice of the Judicial Service Commission. All members of the Judicial Service Committee are presidential appointees, vis a vis the Attorney General, the Chairman of the Commission/Chief Justice, the Chairman of the Public Service Commission, and two judges appointed by the President. The Judicial Service Commission is mandated to appoint, discipline, promote and dismiss judges.

The appointment of the Chief Justice and judges by the President does not in itself necessarily or automatically compromise the independence of the Judiciary, as judicial officers are guaranteed security of tenure. However, a key judicial body like the Judicial Service Commission, that comprises members who are appointed solely at the pleasure of the President, may conceivably align itself with the President, and through this loophole, influence the Judiciary through appointments, promotions and placements of judges. The utility of adding other checks, such as a role for Parliament in vetting the appointments of the Judiciary, is an option that has been adopted as a weighting measure to check Executive excesses in some jurisdictions.

iii. Recommendations

The Panel recommends the following actions:

- Members of the bench to work under performance-based contracts in order to improve efficiency, accountability and monitoring of judicial functions [*Parliament*]
- Government reconsider the separation of Portfolio Ministers from the Legislature in order to guarantee separation of powers between the Executive and Legislature [*Government of Kenya*].
- More effective assistance be provided to Parliament for capacity building, research and use of information and communication technology [*Government of Kenya*].
- Parliament be made accountable to the electorate through the introduction of recall laws and Private members to present this law in the face of Parliament's reluctance to do so [*Government of Kenya*].
- The Panel recommends that modalities for determination and review of emoluments of all public officer holders be entrusted to a constitutional agency that is independent of both the executive and the legislature. The recommendations of such an agency will however require the joint consent of both arms of government.
- The oversight functions of Parliament be reinforced through checks and balance mechanisms on the basis of legislations such as the Public Audit Act (2003), the Government Financial Management Act (2004), and the Public Procurement Bill (submitted in 2004) [*Government of Kenya*].
- Parliament to support the necessary reforms by voting adequate funds to agencies such as the Kenya Anti-Corruption Commission, Law Reform Commission, the Kenyan Human Rights Commission and GJLOS, among others [*Parliament*]

3.1.5. OBJECTIVE 5: TO ENSURE ACCOUNTABLE, EFFICIENT AND EFFECTIVE CIVIL SERVANTS AND OTHER PUBLIC OFFICE HOLDERS

i. Summary of the CSAR

Capacity, reliability and efficiency of the civil service

The Public Service Commission established under the Constitution is responsible for the recruitment, promotion and discipline of civil servants, and members of this commission are Presidential appointees. This organ of the Executive oversees twenty--three ministries. The CSAR notes that the 1990s reforms in the civil service departments were not issues driven but rather based on predominantly political considerations, hence compromising efficiency, continuity and effectiveness while causing uncertainty among the accounting officers.

Ministerial appointments were not based on merit. Rather, job insecurity among ministers and an inclination to concentrate on their political constituencies affected their orientation and ability to carry out their duties and functions. Public service reforms such as staff retrenchment did not improve capacity in service delivery. The civil service is generally perceived as corrupt and inefficient, with top officials accused of practicing ethnic favouritism in awarding scholarships and positions.

MPs and councillors are accused of having bribed their way into office, and therefore lacking in accountability to the electorate, in addition to selfishly channelling development to areas where they have massive support. Misuse and embezzlement of public funds and limited interaction between MPs and their electorates in addressing security and development projects are also cited.

With regard to Members of Parliament, numerous charges of neglect are levelled against them in the report, although the Northern Eastern MPs are rated as being fairly effective. Emphasis was placed on the viability of a mechanism for recalling non-performing representatives as an accountability measure. The report refers to a serious leadership crisis among MPs and Councillors who are deemed chronically ineffective.

The civil service is the ultimate institution of governance, and is the most critical mechanism of governance as far as implementation is concerned. However, the quality of recruitment to the civil service is compromised by dependence on extraneous factors such as bribery, nepotism and political influence. The retrenchment exercise under structural adjustment conditionalities saw the departure of the professional and technical staff, and consequently the service currently lacks competent personnel in several fields.

The effectiveness of internal and external mechanisms of accountability is rated very low. The civil service is poorly remunerated and motivated. Government is unable to provide adequate services. Government agencies lack the necessary institutional infrastructure that should enable them to render services efficiently. To date, corruption and mismanagement of public resources have increased tremendously and have become a hallmark of service delivery and the transaction of official business.

ii. Findings of the CRM

Capacity and efficiency of the Civil Service

The CRM was informed that a Civil Service reform was initiated since 1993. The purpose was the right sizing of the Civil Service. Since 2003, performance contracts and results based management have been introduced. Government intends to introduce similar approaches in local authorities. Several coordinating mechanisms are in place, such as the Government Standing Committee, the National Steering Committee of all Permanent Secretaries and the Ministerial Steering Committee, supported by a management unit. Ministries are charged with ensuring similar structures exist at district and local authority levels. A Public Service Reform and Development Secretariat has been established to facilitate policy implementation and address challenges faced in service delivery.

Since the Economic Recovery Strategy (ERS) was put in place by government, efforts are ongoing to ensure that all chief government executives are accountable through performance contracts and evaluation systems for Permanent Secretaries and other top level functionaries in government parastatals. The contracts are designed based on the ERS. All Ministries have a strategic plan used to prepare performance contracts with deliverables.

Box 3.3: Mechanisms for Good Governance

Kenya is well serviced by a body of laws, programmes, commissions and agencies that should provide for good governance. Important reform programmes, such as the Government, Justice Law and Order sector wide coordination framework and the Economic Recovery Strategy for Wealth and Employment Creation (ERS) 2003-2007 are crucial in ensuring development and good governance in an equitable manner. The involvement of public stakeholders such as civil society ensures that higher standards of implementation and accountability are engaged through their oversight functions.

In addition, a functional review of Cabinet was conducted to strengthen oversight of the implementation of policies and to monitor and evaluate

their impact. During the interactions of the CRM with the heads of ministries and other government agencies at the office of the Vice-President, stakeholders stated that since 2003, the appointment of senior officials has been done competitively and recruitment has been transparent. In addition, appointments and promotions carried out by the Public Service Commission have been competitive and transparent. However, the capacity limitation of this body has affected its responsiveness to the needs and requests of affected staff in a timely manner.

The CRM noted that despite all the efforts made and the achievements of government, the public remains largely unaware, and there has not been a move to communicate effectively the progress made in this area. Communication is an important tool in improving the perceptions of service users. There is a need to have a sustained process of analysis and dialogue between the policy makers and the public, and for a linking between national level governance and the grassroots

Overall, Kenyans in general seemed hard-pressed to consider the civil service efficient or free of corruption. The image of the civil service is not as prestigious and professional as it ought to be, largely over the question of corruption. Many drew attention to the unresolved Anglo-Leasing and Goldenberg scandals as examples of top civil servants facilitating and hiding grand larceny at the expense of the nation.

In sessions with the heads of department, including that for Legal Affairs in the Office of the President, the CRT was informed of efforts to reorient the Civil Service toward a culture of work and service rather than dependence on patronage. Everything from recruitment and appointment to retention and promotion based on the new concept of 'results-based management' is under review. Salaries and benefits have been revised upwards to discourage temptations to corruption and rent seeking. However, there is no question that far-sighted as these may sound, the impact of these reforms is yet to be felt.

Though it is true that civil servants have not been adequately remunerated for their services, government undertook a harmonization of salaries exercise based on relative market rates in 2004. This is important in motivating the current Civil Service to perform well, and in enticing the best and the brightest into the public sector. Stakeholders raised the issue of the huge gap between senior staff and the rest. This has contributed to lack of motivation for the majority of the civil servants. While the base salaries are not changed, incentives linked to performance have been introduced. The provision of a housing allowance recently has helped to some extent. Nevertheless, the ability of the government to raise the overall salary levels of civil servants is tied to economic growth in general.

Partisanship in the bureaucracy has interfered with the implementation of good policies. Ethnicity in public life has always been an issue even before

independence, and the elite use ethnicity in their competition for resources. Practical measures must be taken to eliminate the influence of ethnicity in the Civil Service. In this regard, the enactment of the Public Services Values Ethics Act will be useful to inculcate values in government programmes and policies that underpin ethical approaches.

Under GJLOS, institutional capacity and integrity are being reviewed for ten sectors. The National Economic and Social Council serves as an advisory body for this initiative. Other initiatives include the Public Officials Ethics Act (declaration of assets and liabilities by public officers), the Procurement Act, and the Kenya Anti-Corruption Commission. The Attorney General's office is in the process of strengthening its capacity for investigating and evidencing cases. In this context, 300 outstanding posts since 1995 have recently been advertised. The Rules of Procedure are under review to bring about prosecutions more quickly. A national campaign against corruption (5-year programme with World Bank support) was to be launched in December 2005. The efforts of the government to curb corruption and corrupt practices so far seem to be producing some results that are considered bold and worthy of commendation. Former top public officials, for instance the Governor of the Central Bank and several Cabinet ministers are currently on trial. Two Cabinet ministers have also had to resign their posts after being linked to some corrupt practices. The Minister of Finance as well as the President's Personal Assistant have also had to resign their posts under not too dissimilar circumstances. These developments seem to have imbued sections of the Kenyan elite with the belief that the era of sacred cows and the attendant culture of impunity is in reverse.

An effective public service reform requires strategic thinking that combines both legal and political approaches in putting in place an efficient and accountable Civil Service. In order to dilute the perception that all initiatives mentioned above are merely attempts aimed at delaying solving causes of inefficiency, a diagnosis of the problems should be reoriented. These reforms need a different understanding. The success of reforms depends on a strong political will to unfold on concrete gestures and resources to uphold their implementation. Studies on public sector reforms have shown that bureaucrats are often most opposed to reforms as they are most of the time both the reviewers and the reviewed. Bureaucrats are the most knowledgeable of laws, rules and procedures, and can craftily use them to support or to dissuade politicians.

Under Article 107 of the Constitution, the power to appoint, discipline and remove persons from office in the public service and in the service of local authorities is vested in the Public Service Commission. These provisions imply the legal power of the Public Service Commission to preside over, or be involved in all related initiatives undertaken in the context of the Civil Service reform. Contrarily, the consultations with the heads of the Civil Service and other stakeholders revealed that the Public Service Commission was not

involved in the reform initiatives such as the performance based contracts led by the Office of the Vice President.

Legally, the Head of the Civil Service supervises public service human resources without the power to appoint or dismiss public officers. Under such circumstances, the Commission cannot authorize legal sanctions against civil servants whose performance is poor. In addition, the Public Service Commission itself should be reformed with the view to increasing the capacity of this important reform body to undertake Civil Service reform priorities and programmes decisively.

Accessibility and reliability of Public Service

The Civil Service undertakes service delivery; it is the principal implementer of government policies that have to be transformed into actions. It is imperative to understand who drives policies and the meaning of these general measures in the context of government's modus operandi on national issues. Many Kenyan policies, especially under the previous regime, appear to be donor and NGO driven. It is believed that the Kenya Anti-Corruption Authority was established as part of IMF conditionality, and that most of the anti corruption laws have been passed after repeated demands from donors. National priorities are not the primary consideration where the Government frequently adopts externally driven initiatives that have the added attraction of financial resources to implement them. Once the resources are depleted, the project is forgotten and Government moves on to new policies and starts exploring new funding.

Additionally, policies are usually unfunded in the National Planning process. Parliament or the Executive enacts laws without securing funding for their implementation. For instance, laws passed by the Parliament in the year after the national budget has been adopted would not be implemented unless funded from external resources. Without adequate resources for implementation, the laws will most likely be put on hold until the next fiscal year, or be simply forgotten.

There is a risk that, with all the policy reforms taking place, new policies will arise that will lack a coordinated approach, leading to incoherence in implementation and expected results. The GJLOS framework is an illustration of a coordinated sector wide approach to service delivery for institutions working in a related governance area. The consolidation of inter ministerial committees is also key in enhancing joint planning, implementation and monitoring to achieve consistency and standardization in the development process in a cost effective manner.

iii) Recommendations

The Panel recommends the following:

- The government is advised to align the enactment of laws, policies and programmes with adequate and sustained funding so as to secure implementation. [*Government of Kenya*].
- Kenyan Authorities initiate a strategic plan that would harmonize different initiatives [*Government of Kenya*].
- Anti-corruption programmes, including the use of ‘whistleblowers’ and anti-corruption monitoring units in each Ministry, be stepped up [*Government of Kenya*].
- The Attorney General’s office to speed up the strengthening of capacity for investigating and evidencing cases [*Attorney General*].

3.1.6 OBJECTIVE 6: TO FIGHT CORRUPTION IN THE POLITICAL SPHERE

i. Summary of the Country Self-Assessment Report (CSAR)

Corruption in the Executive, Legislature and Judiciary

The institutional and policy framework to fight graft is clearly indicative of the attention and emphasis given to this matter in all sectors of society by the current government. Kenya has established key institutions including the Kenya Anti Corrupting Commission and the Kenya Anti Corruption Police Unit.

Outstanding public focus on incidents such as the Goldenberg inquiry, the Cabinet reshuffle of 2005, the prosecution of six former permanent secretaries and the suspension of several judges, reinforce the view that Government is committed to stamping out the vice of corruption. Even so, corruption still pervades the Executive, Legislature, Judiciary and military, as well as the Civil Service. The police are particularly perceived as being corrupt as highlighted by the Transparency International- (Kenya Chapter) annual indices.

The general public perception is that corruption is endemic in Kenya, and that public confidence in government’s commitment to fighting corruption has waned. The resignations of the Permanent Secretary of Governance and Ethics and some members of the National Anti Corruption Campaign Steering Committee have not helped matters either. . One of the telling effects of corruption has been the emergence of mediocre leaders, detracting from development and raising the cost of living, mismanagement of country resources, personalization of development, increased insecurity and acute

unemployment due to poor economic planning and destruction of institutions.

Effectiveness of Mechanisms of Fighting of Corruption in the Government

The Kenya Anti-Corruption Commission is constrained by the fact that it cannot prosecute, and its files are handed to the Attorney General to make the final decision. The Attorney General is empowered under the Prevention of Corruption Act to deal with corruption cases, but over the years, the office appears reluctant to effectively enforce the laws relating to corruption, especially when politically influential individuals are involved.

The CSAR highlights the limits to the effectiveness of the various anti graft institutions. The report however notes that lack of requisite capacity, political will and commitment are major challenges undermining the effectiveness of these institutions.

ii. Findings of the CRM

Corruption in the Executive, Judiciary and Legislature

When NARC assumed power in 2003, it was generally believed that corruption would be tackled with a sense of urgency, commitment and drive. The NARC government has made concerted efforts to put in place extensive legal instruments, investigative and enforcement machinery to combat corruption. To date, the government has established the Kenya Anti Corruption Commission (KACC), and special anti corruption courts, and has enacted the Anti Corruption and Economic Crimes Act. Instructively, the Ndung'u Report on Land and Graft in Kenya, the Anglo Leasing Report and the Goldenberg Report, all illustrated the NARC government's desire to deal with the problem of public service corruption.

The GJLOS framework is designed to improve the institutional capacity of government to effectively prosecute public officers guilty of malfeasance and other corrupt practices in addition to enhancing law and order and the capacity of the judiciary. It is particularly commendable that under the GJLOS programme the Government is committed to creating a requisite legal and institutional infrastructure for effective prosecution of offenders. Whether, as highlighted in the report, the Civil Service is more efficient but still corrupt or less corrupt but inefficient, is not the major issue. The overarching challenges are the reform of the Civil Service and the effective implementation of reform policies. In this regard, the Public Service Commission, which has the legal power to appoint and remove civil servants, has been hampered.

Individual and civil society participation in anti corruption activities is a key aspect of civic responsibility and an invaluable resource in the fight against graft. Structures to fight corruption also exist at the national and

district levels. There is a National Anti- Corruption Campaign Steering Committee and a National Advisory Board, the latter comprising CSOs, private sector representatives and other members of the public. At the district level there are District Anti-Corruption Committees. The CRM was informed that there efforts were being made in every ministry to have a desk that handles corruption related issues.

There are also Anti Corruption Prevention Committees in each ministry and in Cabinet, in the Judiciary and in Parliament. The capacity of these bodies, including those at the national level, is inadequate to cope with the magnitude of the problem. . A delicate balancing act, requiring commitment and focus on the part of the Government and tenacity on the part of the civil society movement, is necessary.

Unfortunately, the commitment of the Government to following due process is rebuffed by the anxieties of the ordinary people and the expectations of speedy punishment and imposition of legal sanctions The general perception is that the delays are deliberate and indicative of a lack of will. It is important to note that the general public, including the elite of Nairobi, largely remain unaware of these developments, and the timely dissemination of information in this regard will correct the misperceptions that the NARC Government is not committed to stamping out corruption, and to accommodate the hitches in combating graft, as there is no quick fix for corruption. The general feeling among stakeholders is that government has back-pedalled on prosecuting notorious cases of corruption despite government efforts otherwise. This is also attributed to new incidences of corruption arising in key government departments e.g. the tax waiver given by the Minister of Finance to the Minister for Cooperative Development.

The Attorney General however explained that the challenge of establishing a comprehensive framework was real. Illustrating further he pointed out that enacting enabling laws, appointing and training of investigators and the full complement of staff as well as the elimination of over 314 corrupt members of the bench have taken their toll on time. To these must be added the distraction of lawsuits by “corrupt” officials challenging the Act itself. These steps, although elaborate and time consuming, are necessary to insulate the anti-corruption mechanisms from Executive interference. . He further pointed out that currently over 70 high profile corruption related cases were before courts. These involve mostly CEOs, Permanent Secretaries, senior Government officers and World Bank officials. A Report is being filed before Parliament on developments in this regard.

Box 3.4: Participatory Mechanisms to fight Corruption

Government has instituted several measures to fight corruption and made important strategic linkages. The National Anti-Corruption Steering Committee and GJLOS have incorporated civil society, including the Press, into their coordination and implementation framework. The National Advisory Board to the Kenya Anti Corruption Committee comprises religious associations, professional associations, private sector associations and labour organisations. The Board is independent in its advisory role and comprises organisations that are highly reputable and credible. The synergies of the all these institutions can only lead to the identification and designing of best practices in good governance, accountability and transparency.

Ostensibly designed to facilitate constituency development through projects by members of parliament, the CDF mechanism is however perceived by the people as corrupt and not transparent in terms of operational modalities. CDF suffers from conceptual ambiguity, and inadequate supervision or monitoring. Progressive procurement regulations have contributed to reducing the incidence of corruption. Councils used to collude with contractors in corrupt transactions, but this has decreased with the establishment of government tendering process.

The collapse of a work ethic among public officers is a major factor in the continuous spread of corruption and corrupt practices. In order to curb the illegal amassment of riches through the abuse of public office, measures have been taken by the Government to ensure that wealth must be declared. Currently there are procedures in place for the declaration of assets and liabilities by civil servants.

Current political divisions between and among the dominant factions of the Kenyan political elite seem to have negatively affected and complicated the anti-corruption fight. Some of the previous leaders are implicated in past abuse of office, corruption and corrupt practices. Allegations of corruption in segments of the current government undermine its overall commitment to anti-corruption reform and send confusing signals to the Kenyan public.

Corruption is a major factor in eroding the existing scarce resources and bears rights implications for the majority of Kenyans living in poverty. The role of the people in monitoring government expenditure and demanding transparency and accountability from the government over allocated resources will help curb corruption. The involvement of stakeholders' right down to the community level in monitoring government expenditure, especially under the decentralisation structure, has not been addressed clearly in the decentralisation laws and policies, and this gap is magnified in practice.

However, the ease with which citizens can participate is influenced by their ability to access public information in order for them to monitor the flow and use of public funds and other resources.

The legal and policy framework, with its focus on the public sector, limits scrutiny of the role of one of the largest perpetrators of corruption, the private sector. The interactions between the public service and the private sector have been known to elicit some interesting insights into the machinations and channels of corruption, especially in the area of procurement for goods and services. Trends in Access to Information laws are increasingly advocating for the need for all collaborations involving funds between Government and the private sector to be made public in a bid to maintain and enhance accountability and transparency.

iii. Recommendations

The Panel recommends the following:

- Kenyan leadership at all levels (political, private, judiciary, religious, academia, NGOs, community leaders etc) to unite on a national front in the fight against corruption, as a matter of national moral regeneration and pride. A broad and long-term programme to promote values of honesty, integrity and committed service be devised and implemented;
- Any person accused of corruption, irrespective of status or standing in the society be subjected to legal processes, with fair trial guaranteed. The Government may re-launch the “list of shame” and give it greater prominence [*Government of Kenya*].
- Kenyan Authorities to develop an effective government information, education and communication strategy to enhance information sharing across the sectors and line ministries responsible for corruption [*Government of Kenya*].
- The Government of Kenya enact an Access to Information Law guaranteeing access to information to the public, which can also assist the fight against corruption [*Government of Kenya*].
- The Authorities are encouraged to pursue the establishment of integrity clubs in schools, workplaces and religious institutions in order to institutionalize an ethical and values based culture in the country [*Government of Kenya*]
- The Public Officers Ethics Act be enforced to its full extent to ensure that public officials failing to declare their assets and liabilities as

stipulated in the act, are sanctioned accordingly [*Government of Kenya*].

- The Attorney General's Office and the Judiciary are encouraged to speed up mechanisms to eliminate legal challenges arising against corruption prosecutions [*Attorney General and Judicial Commission*].
- The Authorities may consider introducing minimum educational qualification requirements for Councillors [*Government of Kenya*].

3.1.7 OBJECTIVE 7: TO PROMOTE AND PROTECT THE RIGHTS OF WOMEN

i. Summary of the CSAR

The CSAR elaborates on the several forms of violence against women that illustrate the vulnerability of women to physical violence and insecurity. The major manifestations of violence reported are rape, domestic violence and Female Genital Mutilation. This occurs despite international prohibitions against discrimination against women (ICCPR, CEDAW) recognised by Kenya and national policies and institutions established to protect women. Discrimination against women is systemic and is embodied in the legal, administrative and social systems, which reinforce the vulnerability of women. This is especially rife in the area of inheritance and equal protection under the law.

Various institutions have been set up to address women's issues and the promotion of their rights. Government has taken progressive measures to fight violence against women by training women in self-defence, and is mitigating the suffering of abused women by providing health care for the victims of abuse. A positive development in the Police department is the establishment of the Spider Squad to help abused women, the setting up of special hospitals to deal with cases of sexual assaults and abuse, and training in the Police force on sensitivity to gender related crimes and on self-defence for women. Nonetheless, these are urban based. The report reveals important partnerships between CSOs engaged with the Police such as FIDA Kenya. A linkage is also made between low levels of education in women and the inability of women to defend their rights.

Measures taken to sustain Progress

There exist other policy making institutions to deal with women's issues, such as a National Commission on Gender and Gender Development, set up in 2005, and a Gender Department in the Ministry of Sports, Gender, Culture and Social Service. Prominent CSOs promoting women's rights include the

National Council of Women of Kenya, the Coalition for Violence against Women, The National Commission on the Status of Women, the League of Kenyan Women Voters, FIDA Kenya, The Women Political Caucus, *Maendeleo ya Wanawake* and Education for Women Democracy.

Concern has been expressed in the self-assessment over the low levels of involvement and participation of women in politics and public leadership in appointive and elective governance bodies. According to the report, women in Kenya comprise a majority, accounting for fifty two percent of the population and 65 percent of the country's registered voters. Although the current government has appointed more women to Cabinet and nominated more women to Parliament than previously done, the numbers are still dismal (3/26 women Cabinet Ministers, 4/39 Assistant Ministers, 6/25 Permanent Secretaries, 18/222 Members of Parliament, 0/8 Provincial Commissioner, 2/71 District Commissioners, and 8/57 Judges)¹⁵.

The low visibility of women in the public arena is replicated by their under representation in Parliament. The draft constitution is attempting to reduce the imbalance in the representation of women by securing at least one third of Parliamentary seats for women, as well as at least a third of the representatives of persons with disabilities in Parliament.

ii. Findings of the CRM

The Constitution forbids discrimination based on sex, and this has far reaching implications for the inclusion of women in all sectors of society. However, this has not been effectively implemented, and discrimination against women is deeply entrenched in the cultural fibre of most social groups in Kenya. Patriarchal norms and structures in the cultural and societal setting remain strongly etched in the psyche of the nation: e.g. in many districts, boys are often chosen for education over girls, especially in the rural areas. The women stakeholders who addressed the CRM at various points admitted to letting their attitudes and decisions, particularly in the political arena, dictated to by their men folk.

As noted under the section on Standards and Codes, all forms of violence against women are prohibited. However, there is currently no specific law on domestic violence and the practice is rife. This is aggravated by the fact that Domestic Violence (Family Protection) Bill, which would set up an institutional and policy framework to address gender based violence, is yet to be passed as law. The CSAR also pointed out that the widespread practice of female genital mutilation (FGM) is indicative of the prevailing practice of early marriages in certain parts of Kenya. Constraints in law enforcement in North Eastern and North Western Kenya increase the vulnerability of women with regard to forced FGM in the absence of protection mechanisms.

¹⁵ See Kenya Gender Data Sheet, 2005

The CRM learnt of other forms of violation of women's rights that are not addressed in the current laws or in the CSAR. Women in the workplace suffer from sexual harassment and some are dismissed when they are found to be pregnant. Low education levels of women on the whole have had the effect of their being assigned low calibre, low impact jobs. These hostile working conditions further aggravate the plight of women in the economic and social arena and contribute to income inequality between men and women.

The need for affirmative action for women featured prominently in the CRM consultations in Kenya. The focus of this discourse featured mainly around increasing the representation of women in Parliament, district and location council levels. However, in dealing with such a multidimensional issue as this, it is important to look beyond politics and address the element of actual empowerment of women in all sectors, rather than adopt a solely legalistic approach. The reasons why respective governments have failed to take measures to protect women need to be clearly addressed if concrete and substantive remedial measures are to be designed. Instead of undue emphasis on legal measures, Government should consider engaging multidimensional interventions such as political, social, economic, financial, attitudinal, administrative and judicial reforms that may be necessary to address the complex and multi faceted problems that women face.

Gender inequality and the subordinate status that women hold in relation to men play out in the leadership aspirations of women. Cultural attitudes and influences cause women to be seen not as leaders but as housewives, as reported by the women groups met by the CRM. Women's involvement in the Constituency Development Committees has been limited due to their lack of leadership skills and awareness levels; hence they are viewed by other committee members as mere rubber stamps. In one province, it was reported that women on the local authority committees, such as the constituency development committees, were treated as nominal members and were relegated to socially constructed roles such as serving refreshments, saying prayers, singing and dancing. Invariably, the women living in the rural areas emphasized to the CRM that they played no meaningful role on the committees despite their wish to be otherwise engaged. Women feel that they are not adequately represented politically or otherwise, due to corruption and marginalization in political parties, and that their thematic concerns and issues as a group, such as poverty alleviation are not addressed, hence a build up of pessimism.

In a remarkable display of candour and self critiquing, women stakeholders admitted to imitating gender stereotypes in the political arena, where women do not seem to support each other, preferring to support male candidates and nominees. There is a prevailing mindset across the gender that politics is a man's job. It was noted that current political trends show that

political party ethos are not based on issues but ethnicity. This has negative implications for married women who, culturally, straddle two regions, but in reality are backed by none as eligible candidates, each tribe viewing the woman as alienated by marriage.

Politics require the mobilization of human and financial resources. Unfortunately, low financial capacity is one of the limitations Kenyan women face in their struggle for effective inclusion and participation in politics. Political parties reflect allegiance to regional bases, dominated by rich individuals and those who can afford nomination fees. This serves as a structural deterrent to women offering themselves as candidates.

Hence, women fail to be nominated for inclusion into political parties and to target the top slots in the party. It is important that more women target political party leadership positions in order to build up a critical mass in the political structures and systems of decision-making, and to have more female members in the system backing them up.

Women's alliances with political parties' agendas are seldom strategically conducted in such a manner as to reap maximum gains from inclusion and participation. There was no evidence that women had made an effort to engender political manifestos, or that parties had attempted to widely disseminate gender relevant information. It is important for all actors to look at political culture not in terms of individual identities but in terms of values, and allow space for ideological evolution, and democratic participation.

To promote these transformative processes, women must insist on issues based politics and forge mechanisms that keep their leaders accountable. Collectively, women must take stock of political promises vis-à-vis deliverables, and focus on details rather than generalities.

Lack of access to resources greatly hinders the ability of women to engage in productive income generating projects. . Poverty in such instances takes on gendered dimensions. Women in Kenya largely lack properties that can be used to secure credit facilities from formal credit institutions, and this has resulted in their operating at the micro-level and in the informal sector, where labour protections are significantly absent. This is aggravated by lack of social security to enable women cope with their multiple social roles in the employment sector.

In the face of government inaction in promoting the economic rights of women, several self help projects have been initiated by the women themselves. The CRM found instances in the dry areas of Nyandarua where women have come together to construct water tanks, and in Kibera where the African Ambassadors Wives, together with the Nubian women community, built the Kibera Day Primary School.

Women lack exposure to business information and skills. In many instances, limited literacy and numeric skills deter women from engaging in lucrative businesses. In addition, they often have low value collateral for security, and in some reported instances micro finance institutions require women to have their husbands sign on their behalf as guarantors, thus subjecting such women to the domination of their partners. Women in several instances reported they were not realising the promise of micro financing, as there were hidden costs of banking charges, costs of hiring premises and then capital and production inputs. High interest rates ranging from 12 percent-25 percent per annum were reported by women's groups who labelled the rates exploitative. Some women have complained of being charged with criminal offences and having their property attached for failure to repay interest.

The repayment periods for the loans have also been perceived as being too short to enable the women groups make returns on their often low income projects. The existing women's merry-go-round interest free schemes provide very low cash inputs that fail to accelerate economic growth and development for women. Currently women entrepreneurs in the small and medium term industries are left to the vagaries of the diverse and numerous credit institutions, causing a significant amount of concern over low or non-returns for loans obtained from some 'Shylocks'.

Health care is inadequate in the Government health facilities, and this affects women's reproductive rights, including access to ante-natal and maternity services. Some women informed the CRM of instances where patients ran away from hospitals where they had been admitted because they could not afford hospital fees. Women with HIV/AIDS suffer a lot, especially concerning child neglect by spouses or partners. The rates of women with HIV/AIDS are higher than those of men, but women often fail to obtain much needed health care and medicine to alleviate opportunistic infections.

Violence against women has a causal-effect correlation to the subordinate status in which many women find themselves, and has increased the incidence and burden of HIV on women. The significant incidence of insecurity in the slum areas, where the majority of ethnic groups live, also makes poor women vulnerable to sexual violence.

The CRM was however impressed by the number and diversity of women's groups and networks with vibrancy and advocacy capacity which is highly recommended.

iii. Recommendations

The Panel recommends the following:

- The Government design and adopt expeditiously a comprehensive affirmative action policy to address the structural challenges and imbalances faced by women at diverse levels in the political, civil, economic, social and cultural spheres. Measures identified to counter these problems should filter down to all districts and local authorities [*Government of Kenya*].
- Parliament to pass the Political Parties Bill expeditiously and section 6 (2) which requires gender and ethnic equity in all parties be strictly enforced [*Government of Kenya*].
- Funding conditionalities of parties by Government, as envisaged in section 22 of the Political Parties Bill, to require the inclusion of a percentage of women for funding eligibility [*Government of Kenya*].
- Civil education be conducted by all the relevant institutions to emphasize women's participation in politics [*Government of Kenya and CSOs*].
- The Law Reform Commission, together with the Ministry of Justice and Constitutional Affairs amend the current Inheritance Laws to allow men and women equal rights to inheritance [*Law Reform Commission and Ministry of Justice and Constitutional Affairs*].
- Laws prohibiting FGM be enforced. Government and other relevant institutions to strengthen their surveillance and enforcement capacities [*Government of Kenya*].
- Practical tools at the district level be designed to ensure the education of the girl child. Local authorities be required to identify all the girls in their localities and distribute school bursaries to girls on an equal basis as boys [*Local Authorities*].
- The Government of Kenya and CSOs to promote the elimination of negative cultural attitudes against women in all spheres of Kenyan society and communities [*Government of Kenya and CSOs*].

3.1.8 OBJECTIVE 8: TO PROTECT AND PROMOTE THE RIGHTS OF THE CHILD AND YOUNG PERSONS

i. Summary of the CSAR

Rights of Children and Young Persons

In the CSAR, serious violations of children's rights are reported, as well as the impact of HIV/AIDS on children. Children in Kenya still face prejudice, discrimination and violence. The acts of abuse noted included child labour,

violence against children, defilement and rape, child trafficking and the prostitution of young girls, inadequate health care and child neglect.

In a laudable move, the Government has introduced free medical care and universal primary education, both measures being crucial in the welfare and development of children. However, important government schemes like provision of milk in schools and rehabilitation programmes for children, including street children, have come to a halt.

The CSAR points out the weak state capacity to deter child labour or to remove children from the street. It notes pointedly that no effective anti child labour measures can be established without addressing the link between child labour and economic marginalisation and poverty.

The plight of the youth is highlighted by high rates of unemployment and marginalisation in the political, social and economic arenas. This has fostered the vices of prostitution and early marriages because of poverty. Possible solutions advanced in the report include involving the youth in the constituency development funds at the decision making and management levels, as well as the passing and implementation of a Youth Policy to meet their needs. There is an emphasis by the respondents interviewed in the report that children and youth should, just like women, be viewed as a special category whose interests should enjoy priority in the political and government processes in pursuit of good governance.

The low protection of children and young persons is linked to the inadequate framework of the existing childcare institutions and policy. The challenges noted in the report call for multi dimensional interventions. These include legislative policy as well as administrative, budgetary and judicial measures.

ii. Findings of the CRM

Although Kenya has ratified and domesticated the norms contained in the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, children still suffer abuse, whether by individuals or institutions. This happens despite the high profile institutional framework for children, including the National Council for Children, the Department of Children's Services, located in the Vice President's Office, local authorities, children's courts and a plethora of child related laws.

Kenyan children are trafficked internally from rural areas to urban centres and coastal areas into involuntary servitude, including working as street vendors and day labourers, and into prostitution. Women and children are also trafficked from Burundi and Rwanda to coastal areas in Kenya for sexual exploitation in the growing sex tourism industry.

According to the ILO, the Government of Kenya has not fully complied with

the minimum standards for the elimination of trafficking. Kenya is thus currently classified as Tier 2 Watch List because the absolute number of trafficking victims is significant and there are no clear evidence of efforts to combat trafficking in persons.

In terms of laws, young people under 18 can be categorised as children. However, implementation mechanisms have a decided emphasis on children to the detriment of general youth issues. Children and youth are two specific target groups facing different challenges and vulnerabilities, which may require complementary strategies and interventions in order to meet their needs.

The implementation mechanisms for ensuring that the rights of youth are promoted seem to be non-existent or invisible. The National Youth Policy has been passed but is not well disseminated. There are no youth councils in place to facilitate the mobilization and coordination of youth development activities. This is in stark contrast to the institutions in place regarding children's rights. The youth's perception, one that is shared by the CRT, is that the governmental focus is more on children issues than on youth generally.

One of the outstanding issues for the youth is the need for opportunities for employment and entrepreneurship. Government has not currently communicated any short or long-term initiatives around this. Youth who are unemployed run the risk of taking drugs and being exploited. Although the Constituency Development Committees at local authority level are obliged to comprise at least one youth representing the constituency, the youth have not benefited from this forum of decision making, claiming that the MPs instead use politics of patronage in choosing puppet youth representatives.

The youth also complained regarding this fund, saying that the identification, design and prioritisation process for development projects to be funded was not participatory or transparent, and as a result white elephant projects came up that did not meet their needs or aspirations as a group. The institutionalisation of a culture of democracy right from the schools was considered important by the youth, who yearned to see models of choice and democratic representation replicated at the community level.

When the CRM met with stakeholders in the Coastal Province, trafficking in children, youth and drugs was highlighted as a problem in Mombassa. This practice, attributed to tourism and foreigners, was strongly condemned by many of the stakeholders met, on cultural and religious grounds.

The CRM learned that those parents who lived far from the district headquarters or who lacked adequate information, were not reached by bursaries for their children, and that their children ended up dropping out of school. There was an overwhelming perception in Coast Province that district bursary funds did not necessarily go to the needy child but to the well off,

corrupt families standing in good relationship with the committees. Those without contacts in the committee were left out of the funding processes, which aggravated the plight of the poorer children, who could not continue with education.

In the Budget Speech for the fiscal year 2005/2006, the Minister for Finance highlighted Government's intention to prioritize and ensure equitable access to education by targeting disadvantaged areas, particularly ASAL, as well as vulnerable street kids and girl child. This should also entail reviewing the bursary scheme to ensure that children from poor households significantly benefit from it. It is necessary for education policies for children and youth to reflect this position.

iii. Recommendations

The Panel recommends the following:

- Kenyan Authorities to develop a time-bound national action plan to combat child trafficking and other forms of child labour. In addition, border security, training for law enforcement officials, and anti-trafficking public awareness campaigns be increased. [*Government of Kenya*].
- Kenyan Authorities to devise a multi-dimensional programme to tackle the issue of Youth addressing issues such as education, training, employment and integration into productive life. This will enhance national stability and social cohesion [*Government of Kenya*].
- Local authorities and Constituency Committees to devote specific amounts of money to youth projects, with youths in a locality included in the design and planning of all constituency projects [*Local authorities and Constituency Committees*].
- The Government to earmark a special fund for youth just as it has done in the case of HIV/AIDS and road funds. This special fund could facilitate access to finance for youths through such mechanisms as collateral free loans, with a view to tapping into their entrepreneurial potentials [*Government of Kenya*].
- The Government of Kenya to develop and implement a concerted and targeted youth policy [*Government of Kenya*].

3.1.9. OBJECTIVE 9: TO PROMOTE AND PROTECT THE RIGHTS OF VULNERABLE GROUPS, INCLUDING INTERNALLY DISPLACED PERSONS, REFUGEES AND DISABLED PERSONS

i. Summary of the Country Self-Assessment Report (CSAR)

Refugees

While the report reflects Kenya's commitment to protecting the rights of refugees, it notes the absence of an enabling legal framework to address their protection. UNHCR is the sole agency responsible for handling refugees. Kenya hosts refugees from the Democratic Republic of Congo, Eritrea, Somalia, Rwanda, Uganda, Sudan, Burundi, the Central African Republic, and Ethiopia. It is the perception of the report that refugees have been integrated in certain sectors of Kenyan society, go to school locally, have work permits, security in the camps, citizenship, freedom of movement and receive support from UNHCR.

Internally Displaced Persons

Regarding the internally displaced persons who are forced to migrate from their natural locations due to clashes, the report reveals that, in contrast to refugees, they lack adequate relief support and security, and only receive occasional food and blankets from politicians without any follow up. In addition, there is no resettlement or economic programmes to aid them.

Vulnerable groups in the report were characterized as those groups marginalised from the mainstream society and, due to years of neglect, do not fit into society at a political, economic or social level. The report asserts that this group is numerically a minority, and identifies the Yaaku, Galjeel, Ogiek and Endoris in this regard. The Yakus were evicted from the forest where they had been better protected. During the screening of Somalis, the Galjeel had their identity cards confiscated, were asked by police to leave for Somalia, and, as the report indicates, were also attacked by security forces in August 2005. The Ogiek have lodged a lawsuit to resist the Government's decision to evict them from their ancestral homes. The report states that little protection or special polices have been designed to address the needs of these vulnerable groups.

Persons with Disabilities

Government initiated progressive programmes to deal with Persons with Disabilities (PWDs) in the educational and health sector, but these have been abandoned and neglected over time. The result is that PWDs have been marginalized in politics, and lack equal opportunities despite the passing of a progressive law for PWD. While stakeholders viewed the PWD law as setting out very commendable policies and institutions, to date there has been almost no implementation of its various progressive provisions. .

No baseline survey to map out the PWDs and determine their needs has been conducted by government, making it even more difficult to plan and design

appropriate service delivery models for them in the development process at national or district level. This is for example reflected in the physical inability of PWD to access school bursaries disbursed at district level by local authorities, and the absence of modalities in place to remit these funds to affected families.

Other challenges

The report notes that there have been strong proposals for special attention to be paid to widows, orphans and other vulnerable groups, including single mothers and divorcees, slum dwellers and the poor in general. Other disadvantaged groups identified by respondents included the aged, the unemployed, those infected with HIV/AIDS, the landless, subsistence farmers and ethnic or religious minorities.

The legal and institutional protection mechanisms for vulnerable groups were identified as rarely effective, as government services seldom addressed the needs of the poor and the disabled. The report emphasized the view that in availing resources and essential infrastructure to alleviate rural and urban poverty, the rights of the vulnerable groups in society would be promoted.

ii. Findings of the CRM

Disadvantaged, Marginalized and Vulnerable Groups

The conceptualization of vulnerable groups in the CSAR was solely based on tribal groupings that seem to also double as minority groups. The CRM confirmed the existence of tribal minorities and groups that seemed to qualify as indigenous tribes who retain their cultural identity, such as pastoralists, hunters and gatherers. Stakeholders and representatives of certain groups used the terms ‘vulnerable’, ‘marginalized’, and ‘minority’ interchangeably, describing their plight in an often confusing and misleading manner. The CRM did not find evidence of any legal or policy document indicating which groups were at risk in any of the aforementioned categories. There was no evidence of an affirmative action policy that would define and prescribe remedial measures for minorities, disadvantaged, vulnerable or marginalized groups.

The groups met seemed to have a very isolationist view and approach to their problem i.e. identifying themselves singularly as Nubians, PWDs, women, and pastoralists in the same forum. Many did not seem to have a consciousness of the problems faced by other groups or how to collectively address the overarching issues that cut across the structural difficulties faced by individual groups. From comments made, it was garnered that some individuals and representatives held and reflected patterns of prejudice similar to that of the larger community. Vulnerable groups like the street and girl children had no representation in all fora where stakeholders were met.

Other groups not mentioned in the CSAR were presented to the CRM as vulnerable and marginalized marginalised. These included: Nubians, Muslims, pastoralists, hunters and gatherers, Masai, women in pastoralist communities, Marakwet, Pokots, Oromo and Wasanye.

The CRM confirmed that social and economic disadvantage is related to vulnerability which in Kenya, to a significant extent, coincides with geographical and consequently ethnic lines, and particularly in relation to land, e.g. droughts occur in areas of extreme poverty and underdevelopment and vice versa, a prime example being the Turkana.

Stakeholders reported that limited government state apparatus in the districts of Turkwell Gorge, Tana River, coupled with food and military insecurity as well as socio economic and political exclusion from mainstream society, as major issues. Women, the aged, children and persons with disabilities who fall in these ethnic groupings are usually victims of multiple marginalisation.

Historically, those societies which resisted the influence and extension of colonialism or offered no advantage to the colonial administration were locked out of the formal education systems. This affected to a large extent the Muslims and people from North Eastern region, the latter falling within the frontier districts which were buffer zones. Colonialists had a closed district policy against Northern Kenya district, and stakeholders from this region maintain that to date civil service employees view postings to North Eastern Kenya as hardship. This has had a tremendous effect on the provision of basic services like water, electricity, health care, access to justice and physical infrastructure like markets and roads.

Minority groups of racial and religious origin, which usually coincide, have been systematically marginalized. Representatives of Muslim stakeholders cited instances where certain coastal Muslims were not deemed indigenous Kenyans according to birth certification procedures. In addition, they reported being treated like second-class citizens when applying for national identity cards, where they underwent rigorous application and screening procedures.

Stakeholders in Embu and Garissa reported that Kenyans of Somali extraction were required to carry special identity cards for years. The Nubian community that comprises a racial minority group which has spent approximately 150 years in Kenya, reported similar difficulties in obtaining national passports and getting placements in work and education institution, Although they were settled in Kibera by the colonial administration, Nubians have gradually been

displaced in Kibera by majority ethnic groups.

Some of these discriminatory practices have been justified by government based on security challenges confronting Kenya. This bears religious connotations in the instance of terrorism, which has been linked to religious fundamentalism. While the security challenge is understandable, the response mechanism from the state seems to have triggered tensions and taken on a religious dimension, particularly as the groups whose rights are being restricted are predominantly Muslim. They inextricably perceive such moves as religious persecution, and current moves to emphasise the status of Christian and other faiths in the Constitution, do not serve to allay these fears.

The Pokomo of Tana River district reported to the CRM that as pastoralists, they faced land shortages and market for their wares. Lack of good and passable roads increased insecurity and theft of their cattle. The Wasanye of the Coastal Province are hunter/gatherers who used the forest as their natural habitats but had been displaced by Government and currently fended for themselves with little help from the Government. They were not compensated and cannot farm or hunt as the Kenya Wildlife Services has imposed sanctions against such activities. In the difficult areas, women are disproportionately affected by the scarcity of necessary utilities. The CRM learned that food and water shortage in Tana River District aggravated the plight of women.

There is an underlying assumption made in the report in labelling the identified groups as marginalized or vulnerable. There exists in Kenya an asymmetric exclusion of different social groups, i.e. various groups have been excluded for different reasons and face different structural problems. It is not appropriate to paint with very broad brush strokes when designing appropriate intervention or advocacy measures for affected populations. The major problem for disadvantaged groups seems to be the inadequacy of government resources required to bolster service delivery efforts. The inequitable allocation of resources to certain areas and sectors of society has also spawned systemic marginalisation and discrimination, which affects vulnerable groups disproportionately. Affirmative action is more appropriate for those groups that require the removal of structural barriers and the strengthening of policy tools and development inputs for those whose problems stem from inaccessibility of resources and infrastructure.

Persons with Disabilities

The CRM confirmed that there existed workplace discrimination against the majority of PWD. Many PWD are not given equal opportunities in the workplace. In the social arena, they are challenged by lack of accessible buildings and transport facilities. Special schools for PWD are very

expensive and many parents cannot afford to take children with disabilities to those schools. The absence of social security mechanisms for families of PWD is critical, and parents who take care of children with disabilities cannot sufficiently attain adequate incomes to look after the family, resulting in higher incidences of poverty among PWD.

PWD are underrepresented at all levels of society in the current political and governmental offices and institutions. The PWD and their CSOs admitted to having a very weak advocacy and lobbying strategy and no collaborative or coordinative mechanism. They were unclear on how their 11 representatives would be nominated or elected under the party structures and it was not clear how they would gain from Parliamentary representation as an interest group i.e. whether the MP with disabilities would owe allegiance to the party or the disability movement. The Constituency Development Committees are not mandated by law to appoint a PWD from the constituency, so even in the development process, PWD are not given a chance to participate in the identification, design and prioritization of projects for the communities in which they live. Even those mainstream CDF projects chosen, such as schools and hospitals, lack basic structures to accommodate the challenges faced by PWD, such as ramps.

Currently, PWD are not being targeted for civic education on their citizenship rights. At national and district levels they are largely uninvolved in, and unaware of the key political processes and discourses and how they relate to them. The CRT found that very few PWD were positioned in key government positions across the various national and district leadership structures, whether on elective or appointive bodies-even the National Council for PWD reportedly had no PWD representative. Hence, it is unlikely that focusing unduly on political representation will address their concerns comprehensively.

Internally Displaced Persons (IDPs)

The CRM visit to Nyeri Provincial Headquarters confirmed that IDPs were scattered in the Rift Valley districts of Kirinyaga, Thika and Muranga and resided in the slums. No government resettlement policy or development programmes had been put in place at Provincial level, and after the clashes, the district leaders had encouraged the IDPs, in the absence of any resettlement measures, to go back to their former dwellings. The inaction displayed by the district leadership in integrating the IDPs into the mainstream society has implications for long-term reconciliation of ethnic groups in Kenya, and poses a challenge for unity and nation building. The lack of concerted central Government policies and interventions to alleviate the plight of certain segments of society following conflict is likely to be taken advantage of at the local level to the detriment of vulnerable groups like IDPs.

Refugees

In general, refugees are well integrated in the Kenyan society. However, in Garissa, there seems to be a potential conflict quietly brewing between the indigenous community and refugees. The indigenes perceive the refugees as further compounding their problems without any form of benefit to themselves. The level of resentment towards the refugees is quite high. It was confirmed by the CRM that a draft bill on the rights of refugees existed but for reasons not made known to the CRM, it was not yet published.

Persons Living with HIV AIDS

It should be noted that Kenya has a programme and a policy for HIV/AIDS. However, the discrimination of People Living With Aids is prevalent. In particular, women living with HIV/AIDS are facing hardships, coupled with discrimination and stigmatisation by the rest of society. There is treatment for all PLWAs, but some continue to face stigma and marginalisation. Despite positive government policies and political will to mitigate the disease, the approach to HIV/AIDS as a health issue does not address the structural problems faced by this group. Widows and orphans particularly suffer and are affected by the economic and social toll of this pandemic in the lack of adequate income generating projects. Although the CRM did not interact with children and men living with HIV/AIDS, the absence of a law prohibiting discrimination of those living with HIV/AIDS must be felt keenly by all affected persons, especially in the health, education and employment sectors.

iii. Recommendations

The Panel recommends the following:

- The Government of Kenya to enact and implement a clear policy on refugees and internally displaced persons [*Government of Kenya*].
- The Government of Kenya to prioritise basic infrastructure projects targeted at improving the lives of vulnerable groups, including tribal minorities [*Government of Kenya*].
- The Government to step up security in conflict prone areas and strengthen the response capacity of law enforcement institutions [*Government of Kenya*].
- Organisations and representatives of marginalised and vulnerable groups to coordinate their advocacy efforts for greater coherence [*Marginalised and Vulnerable groups and CSOs*].
- The Government to streamline immigration screening procedures for entry of refugees into the country, and eliminate all discriminatory

screening practices within the country [*Government of Kenya*].

Progress made by Kenya in the area of Democracy and Political Governance

- A culture of democracy and participation that was largely repressed under one party has been encouraged by the government. Exercise of civil and political rights in Kenya has improved since 2003. Individuals have a right to join political associations of their choice and to air and promote their beliefs.
- Civil society organizations have been given space to operate as agents of change and advocacy to the extent that some of them were even co-opted into government. The inclusion of civil society organisations in important governance bodies like the National Anti-Corruption Steering Committee and Governance, Justice, Law and Order Sector is most commendable and indicative of future possibilities.
- Participation and inclusion of the grassroots communities in governance is effectively facilitated through innovative laws such as the Constituency Development Fund Act and the Local Authority Transfer Fund Act in order to promote identification of the poor and implementation of development policies in their favour.
- Education rights for all children are guaranteed with the advent of the Universal Primary Education policy that makes education free for all.
- Government has heightened its fight against corruption, with the passing of a series of laws, the establishment of a thorough institutional framework at the Executive, Legislative and Judicial levels since 2003. This is important, as the struggle against graft requires increased government oversight and the capacity and commitment to conduct investigations and prosecutions. Kenya was the first country in the world to sign the Convention against Corruption, signalling winds of change for the country.
- Performance based contracts for the Civil Service are commendable and to be emulated in other sectors.
- Kenya's role in pacifying her warring neighbours and bolstering various conflict resolution mechanisms is admirable and deserves to be emulated in the promotion of peace and security for the region.
- Kenyans' hospitality towards refugees is highly commended. There are no indications of xenophobia against refugees and migrants.

CHAPTER FOUR

4. ECONOMIC GOVERNANCE AND MANAGEMENT

“... to promote market efficiency, to control wasteful spending, to consolidate democracy, and to encourage private financial flows –all of which are official aspects of the quest to reduce poverty and enhance sustainable development.”

Declaration on Democracy, Political, Economic and Corporate Governance, paragraph 18

4.1 OVERVIEW

Despite its status as the third largest economy in Sub-Saharan Africa, after South Africa and Nigeria, Kenya's economic performance has been below potential. On attaining independence in 1963, Kenya promoted rapid economic growth through public investment, encouragement of smallholder agricultural production, and provision of incentives for private, albeit often foreign, investors. Gross Domestic Product (GDP) grew at an annual average of 6.6 % from 1963 to 1973.

Economic management deteriorated in the late 1970s which witnessed, inter alia the intensification and emergence of a number of major distortions including terms of trade shocks and fiscal indiscipline. During the 1980s progress was measurable and significant only in a few areas and the economy's momentum of the first two decades of Independence slowed considerably despite having a relatively more favourable economic structure and institutions than most African countries. The highly protected, uncompetitive and oligopolistic industrial structure nurtured at independence was at strain. The custom union with Tanzania and Uganda collapsed in the late 1970s and the industrial sector became more insular and deteriorated in the 1980s.

Kenya embarked upon the first adjustment attempt from 1980-84 but this faltered due to poor compliance, partly because of design and timing problems but also because the commitment to the stated policy changes was limited to a small coterie of top civil servants. Even in the second period of adjustment (1985-91), when much more effort went into building a broader consensus, the pace was "incremental," and the commitment of top officials waxed and waned. Overall, despite a fairly stable political climate, commitment was patchy and intermittent. The lack of transparency in the implementation of reforms dampened the structural reform that was undertaken. The lethargic implementation record and funding from the World Bank helped postpone critical reform in the civil service and the social sectors.

From 1991 to 1993, growth in GDP stagnated, and agricultural production shrank at an annual rate of 3.9 %. Inflation reached a record high of 100 % in August 1993, and the government's budget deficit was over 10 % of GDP. Bilateral and multilateral donors suspended programme aid to Kenya in 1991.

In 1993, the Government of Kenya began a major programme of economic reform and liberalization with the assistance of the World Bank and the International Monetary Fund (IMF). As part of this programme, the government eliminated price controls and import licensing, removed foreign exchange controls, privatised a range of state-owned enterprises, reduced the number of civil servants, and introduced conservative fiscal and monetary policies. From 1994-96, Kenya's real GDP growth rate averaged 4 % a year.

In 1997, however, the economy entered a period of stagnation, in part due to adverse weather conditions and reduced economic activity, especially prior to the general elections in December 1997. In July 1997, the Government of Kenya failed to satisfy IMF conditions on governance reforms. As a result, the IMF suspended its financial programme with Kenya (for a period of three years), and the World Bank also put on hold a \$90-million structural adjustment credit.

Subsequently, the Government of Kenya undertook some reforms, including establishment of the Kenyan Anti-corruption Authority in 1999, and measures to improve the transparency of government procurements and reduce the government payroll. In July 2000, the IMF approved a \$150 million financial support under the Poverty Reduction and Growth Facility (PRGF), and the World Bank followed suit shortly after, with a \$157 million Economic and Public Sector Reform credit. The Kenya Anti-corruption Authority was declared unconstitutional in December 2000, and other parts of the reform effort faltered in 2001. The IMF and World Bank again suspended their programmes. Various efforts to restart the programme through mid-2002 were unsuccessful.

Following the landmark elections on 27 December 2002, which brought an end to President Daniel arap Moi's 24-year-old government, the new National Rainbow Coalition (NARC) government, under the leadership of President Kibaki, launched an ambitious economic reform programme, which led to the resumption of cooperation with the World Bank and the IMF. The government enacted the Anti-corruption and Economic Crimes Act and Public Officers Ethics Act in May 2003 aimed at curtailing graft in public offices. Other reforms especially in the Judiciary and public procurement led to the unlocking of donor aid and a renewed hope for economic revival.

In June 2003, the government issued *the Economic Recovery Strategy for Wealth and Employment Creation (ERS)*, representing the government's strategic vision, objectives, and priority actions for stimulating economic

growth, reducing poverty, and promoting human development in line with the Millennium Development Goals (MDGs). It is predicated on the three interlinked pillars of economic growth, equity, and good governance, each of which is essential to poverty reduction. Its strength lies in its strong emphasis on improving governance and restoring the rule of law, and on a participatory process in preparing the strategy. Also important is its focus on results, through inclusion of a comprehensive monitoring and evaluation framework with targets that refer to the MDGs as benchmarks and a time frame for achievement.

In November 2003, following the adoption of key Anti-corruption laws and other reforms by the new government, donors re-engaged with Kenya, committing \$4.2 billion support over four years as the IMF approved a three-year \$250 million use of its resources under the PRGF. The renewal of donor involvement has provided a much-needed boost to investors' confidence.

Kenya has registered positive economic growth under the new coalition government. Over the last four years, real GDP growth has been positive (0.4 %, 2.8 %, 4.3 % and 5.8 % in 2002, 2003, 2004 and 2005 respectively), but it has barely surpassed population growth, which was somewhat greater than 2 % per annum during the 2002-5 period. Inflation has been low but rather variable — 2 %, 9.8 %, 8.2 % and 15 % in 2002, 2003, 2004 and 2005 respectively.

Kenya's economy, although somewhat diversified, is essentially based on agriculture, which provides, directly or indirectly, a living for 70 % of the population and represents 50 % of the foreign exchange earnings. Kenya is the world's third largest exporter of tea, which, together with coffee and horticultural products, contributed about 53 % of total merchandise exports in 2002. Agriculture made up 19 % of GDP in 2002, industry 18 % and services 62.6 %. Although the industrial sector is still small, it is a growing source of East African exports. The horticultural and tourism industries are becoming two of the country's most important sources of foreign exchange.

The banking system consists of 43 commercial banks (down from 48 in 2001), 2 investment banks, 2 operating Non-Bank Financial Institutions (NBFIs), 2 mortgage finance companies, 4 building societies and 48 foreign exchange bureaus. Two multinational banks (Barclays and Standard Chartered) and two parastatal banks (Kenya Commercial Bank and National Bank of Kenya) dominate the banking sector. The US bank, Citibank, has a branch in Kenya and has recently taken over the operations of ABN-AMRO. Management within the banking sector has generally improved, but problems with non-performing loans and undercapitalisation continue to plague the industry.

With the amendment of the Central Bank of Kenya Act in 1996, the Central Bank of Kenya (CBK) was accorded greater control over monetary policy. Under the law, CBK is authorised to maintain price stability, and given greater regulatory and supervisory powers over the banking system as well as an

increased role in other areas of the financial sector. For instance, CBK sits on the board of the Capital Markets Authority. The banking sector has remained relatively stable since 2001 despite the apprehension caused by the 2001 passing of the Donde Act, imposing interest rate caps and the collapse of Euro bank in early 2002. The Donde Act was implemented as from July 2003. In early 2003, one bank was liquidated and another put under CBK statutory management.

Nairobi continues to be the primary communication and financial hub of East Africa. It enjoys the region's best transportation linkages, communications infrastructure, and trained personnel, although these advantages are less marked than in previous years.

In November 1999, the three heads of state of Kenya, Uganda and Tanzania signed a treaty to re-establish the East African Community (EAC), which had collapsed in 1977. The treaty provided for an economic community and removal of trade barriers by November 2003. Two other countries - Rwanda and Burundi - have expressed interest in joining the community. So far, progress has been made in the reduction of trade barriers. The countries are moving towards the establishment of a Customs Union. In June 2003, the three governments harmonised some duties and proposed to cede powers to central banks for registration and deregistration of financial institutions.

Kenya faces many challenges in its economic governance and management. These include implementing strong and effective anti-corruption policies; enacting anti-terrorism and money laundering laws; restructuring government expenditure and reducing the government wage bill relative to GDP; improving the efficiency of public sector service delivery; rehabilitating existing infrastructure and building new ones; improving water supply in most areas; maintaining sound macroeconomic policies; and implementing various structural reforms, most notably, within the agricultural sector, needed to reverse slow economic growth. The number of people living in poverty is estimated to have risen from 48 % of the population in 1990 to 56 % in 2001, and continues to rise. This disappointing development has further been complicated by the upsurge in the infection rates of the HIV/AIDS pandemic, estimated at 14 % of the population by 2002. HIV/AIDS, which emerged as a public health issue in Kenya in 1984, has had a devastating effect on the economy. In addition to more than 1.5 million deaths attributed to the disease, which left more than one million children orphaned, the long-term impact on Kenya's workforce has been severe.

In what follows, the Country Review Mission (CRM) appraises Kenya's position with respect to the APRM standards and codes. It then discusses the progress and challenges in achieving five key general objectives of the APRM Questionnaire. The discussion of each objective starts with a brief summary of Kenya's self-assessment. This is followed by a summary of the discussions the CRM had with stakeholders, both at the national and provincial levels; the issues discussed were motivated by the background and Country Self-

Assessment Report (CSAR). There are a number of areas in policy making where resolute action by the authorities will greatly improve governance. Each objective thus ends with recommendations on some of the governance issues that arose, supplementing actions that the authorities themselves are taking or envisage. For each recommendation, the authority/authorities in Kenya, which the Panel believes most competent to undertake the tasks, are identified.

4.2 IMPLEMENTATION OF STANDARDS AND CODES

i. Summary of the CSAR

The CSAR did not address in detail compliance with the Standards and Codes as requested in the APRM Questionnaire. There is a broad discussion of the standards and codes under the following headings: Code of Good Practices on Fiscal and Budget Transparency; Guidelines for Public Debt Management; International Standards in Auditing and Accounting; Code of Good Practices on Transparency in Monetary and Financial Affairs; Principles for Payment Systems; Core Principles for Effective Banking Supervision; and African Union Conventions for Preventing and Combating Corruption. The CSAR gives an overall “Expert Rating” for each Standard or Code, which, not surprisingly, shows a certain level of compliance by Kenya, but not complete in each case. The overall rating is not very informative and the CSAR work in this area is incomplete and of limited use. The degree of compliance for each article or principle, within the Standard or Code, should have been specified as clearly as possible. The section also discusses data standards (national accounts, General Data Dissemination Standards of the IMF) and the treaties establishing both the East African Community and the Common Market for Eastern and Southern Africa.

ii. Findings of the CRM

The CRM found that a joint IMF-World Bank mission (2003) had done a detailed assessment of most of the standards and codes, as part of the Financial Sector Assessment, in the context of the Financial Sector Assessment Programme (FSAP), and that this had informed the report presented in the CSAR. Given this, the authorities agreed that they would try to prepare a more detailed assessment of compliance with the standards and codes listed in the APRM Questionnaire.

Budget Activities and Processes

The CRM drew attention to areas of weaknesses in government budget activities and processes. The authorities described what they were doing or intended to do to raise performance (see Objectives Two and Three below), some of which would achieve closer compliance with the *Code of Good Practices on Fiscal Transparency* and the *Best Practices for Budget Transparency*.

Kenya's Debt Management and Sustainability

Kenya's management of its debt fell far short of the standards required of the *Guidelines for Public Debt Management*. The authorities informed the CRM that they were taking steps to improve the legislative framework; to specify better the organisational framework, clarifying mandates and roles, and consolidating debt management functions as necessary to increase the publicly available information on debt and debt management and to augment staff capacity.

Accounting and Auditing Standards

The Insurance Act had serious shortcomings and hence needed to be amended, an issue dealt with elaborately by the FSAP mission, which wanted the law revised to strengthen compliance with the standards of the International Association of Insurance Supervisors. Among the specific measures recommended by the FSAP mission were: de-licensing of insurance companies that were too weak to implement a time-bound remedial action plan; and reviewing of the Insurance Law with a view to strengthening compliance with the standards of the International Association of Insurance Supervisors. The CRM was told that the authorities were in the process of implementing most of the recommendations but that significant time would be needed to complete the process.

Bank Supervision and Banking System Restructuring

The CRM was informed that the Kenya authorities, and in particular the CBK, were taking steps to address the gaps and shortcomings identified by the FSAP mission, especially the introduction of risk-based supervision, capacity building for supervision, and revision of prudential regulations.

The authorities are planning on extending supervision to activities and organisations of great importance in credit and banking that have so far escaped supervision, namely, microfinance organisations and savings and credit cooperative societies (SACCOs). The CRM learnt that the government was still working on two Bills, namely, the Deposit-Taking Microfinance Bill 2005 and the SACCO Regulatory Bill 2005. The FSAP mission recommended revision of the Microfinance Bill to increase capital adequacy and asset quality standards for the microfinance institutions (MFIs), and to define narrowly the geographical limits for community-based MFIs.

The FSAP mission also recommended suspension of lending by development financial institutions (DFIs). The report advised against revival of failed DFIs. In addition, it recommended that future development financing be done either through properly supervised financial institutions or in the form of grants rather than credit.

AU Convention on Preventing and Combating Corruption

The authorities have still not ratified the *African Union Convention on Preventing and Combating Corruption* signed on December 17, 2003. However, they were the first to sign the UN Convention on Corruption and have established comprehensive legal, institutional and policy frameworks.

General Data Standards

Kenya subscribes to the *General Data Dissemination Standards* of the IMF and the UN *Fundamentals of Official Statistics*. But the IMF, in its assessment of Kenya's national accounts statistics in the context of the *Reports on the Observance of Standards and Codes* (ROSC), highlighted serious deterioration in data quality. The CSAR blames high staff turnover and serious budgetary constraints at the Central Bureau of Statistics (CBS) as important causal elements of the deficiencies. The Kenya authorities, involving collaboration of the Ministry of Finance, the CBS and the CBK, have prepared a detailed response setting out their plans to address the ROSC report. The CRM was given a copy of this detailed report and is satisfied that the authorities were in the process of addressing the statistical issues raised in the ROSC. The timelines for achieving these objectives would depend greatly on the ability of the agencies to overcome capacity constraints.

iii. Recommendations

The Panel recommends the following actions by the Government of Kenya:

- Complete a detailed principle-by-principle or article-by-article assessment of each standard or code listed in the APRM Questionnaire [*Ministry of Finance, Central Bank of Kenya, Commission of Insurance, Capital Market Authority*]
- Where compliance with codes and standards are incomplete, prepare a Programme of Action (POA) specifying the measures to be put in place to address the deficiencies in compliance. [*Ministry of Finance, Central Bank of Kenya, Commission of Insurance, Capital Market Authority*]
- Ratify, as soon as possible, those standards and codes requiring ratification. [*Parliament of Kenya*]
- Be resolute in implementing the accepted recommendations of the FSAP mission and raise directly with that mission any concerns and problems with the recommendations, in order to foster understanding of the major policy thrust and measures of Kenya's financial sector reforms. [*Ministry of Finance, Central Bank of Kenya, Commission of Insurance, Capital Market Authority*]

- Pay immediate attention to the payment system¹⁶ to make sure that the new Real Time Gross Settlement Payment System (RTGS) meets the standards of the ten core principles for systemically important payment systems. It is recognised that Kenya has little experience in this area, unlike in the area of issues related to budget and financial system transparency, debt management, supervision of financial systems, or accounting and auditing standards. [*Central Bank of Kenya*]

4.3. ASSESSMENT OF KEY APRM OBJECTIVES

4.3.1 OBJECTIVE ONE: PROMOTE MACROECONOMIC POLICIES THAT SUPPORT SUSTAINABLE DEVELOPMENT

i. Summary of the CSAR

The CSAR covers macroeconomic policy issues quite well, bringing into sharp focus the progress made in recent years, the policy framework within which the authorities operate, and the major challenges ahead. The CSAR notes that GDP performance per capita has been modest over the last three years; real GDP growth has been positive (0.4 %, 2.8 % and 4.3 % in 2002, 2003, and 2004 respectively), but barely above the rate of population growth, which was somewhat greater than 2 % per annum during the 2002-4 period. The government, according to the CSAR, expected GDP to grow at 5 % in 2005. Inflation had been low but rather variable — 2 %, 9.8 % and 11.7 % in 2002, 2003, and 2004 respectively.

In the conduct of monetary policy, interest rates (as revealed by Treasury bill rates and commercial bank lending rates) vary significantly from one year to another, which should perhaps not be surprising given the inflation rate variability, but they seem to have declined over the last four years. Comparing 2000 and 2004, the CSAR states that the Treasury bill rate went from 13.5 % to about 1.4 %. Over the same period, the CSAR states that commercial bank lending rates went from 16.5 % to 12.3 %. Of interest is the remark in the CSAR that total credit to the private sector remained high but private investment activity remained weak. The report seems to intimate that, among other reasons, this reflects an unfavourable environment for investment. It notes that monetary policy seeks to maintain an underlying inflation; normally in the 3.5 - 5 % range and that the authorities are challenged to design a

¹⁶ The Real Time Gross Settlement Payment System (RTGS) is a major initiative in the area of payment system reforms. In fact, in a majority of countries, migration to an RTGS environment is considered a core objective of payment reforms especially where it involves accessing cross border settlements. Under the RTGS, processing and settlement of payments take place continuously in real time (that is, without deferral) and gross (that is, transaction by transaction).

monetary policy that is consistently supportive of economic recovery and growth.

The CSAR underscores the success of the authorities in containing the government budget deficit. Over the past five years, the CSAR states, the deficit, excluding grants, has averaged 3.6 % in relation to GDP; including grants, it has averaged 1.6 % of GDP. The CSAR notes the major challenges quite clearly. The main one is that government expenditure is dominated by consumption expenditure; the government would like to re-orient expenditure toward development and socio-economic programmes, the latter so as to reduce poverty. Another challenge is containing the government wage bill, which is currently about 40 % of total revenue. In this general area, the CSAR highlights two reforms considered important for improving the macroeconomic framework, namely, adoption of the Medium Term Expenditure Framework (MTEF) as a core element of the budget process, and instituting the Public Expenditure Review (PER) process as a diagnostic tool.

The CSAR points to the enormous progress Kenya has made in its *debt management* over the past years. In this regard, it notes that Kenya has reached the point where it is not ranked as a highly indebted poor country. But the report mentions that the fiscal burden is quite high; indeed, about 29 % of government revenue currently goes to debt service.

The CSAR underscores the role of the Macro Working Group (MWG) in macroeconomic policymaking. The MWG provides forecasts of overall economic development as well for the government's fiscal programme. The discussion in CSAR leaves the impression that the MWG forecasting exercise has been a frustrating one. As the report puts it, the projections "are undermined by exogenous variables such as unexpected droughts, changes in international prices and donor inflows." Still, according to the CSAR, the growth projections of the MWG have been "quite reliable."

The CSAR mentions the wide-ranging and devastating criticism of the Statistics Department of the IMF in the context of its Report on the Observance of Standards and Codes - Data Module (2005). According to the CSAR, Kenya's macroeconomic statistics "were found to be weak in terms of quality, methodological soundness, accuracy and reliability, serviceability and accessibility." The Government Finance Statistics (GFS), the System of National Accounts (SNA), and the Balance of Payments Statistics were all found guilty of the above charge. The identified shortcomings in data quality and reliability were being addressed in the context of a programme, STATCAP (Statistical Capacity Development), with financial and technical assistance from the World Bank, as well as through the IMF Regional Technical Assistance and Training Centers programme (AFRITAC), towards the development of official statistics.

The CSAR covers *sectoral policies and programmes* in the priority sectors listed in the NEPAD Framework Document (2001), namely; human resource development, health, agriculture, environment, and science and technology. As regards *education*, most notable is the introduction of free primary school education. This is an important innovation in the history of Kenya, as it enables children to get equal access to educational opportunities in the public sphere.

The challenges at the primary level include overcrowding in classes, high pupil teacher ratio in some areas, and regional and gender disparities. At the secondary level, school fees that are considered high by many Kenyans are a particular problem. The educational system has had to confront the problem of dropout by HIV/AIDS orphans and children of the poor. An important objective is to attain the MDGs and stop the spread of HIV/AIDS. In general, the CSAR states that the health sector suffers from inadequate medical supplies, shortage of staff, and the absence of an appropriate health insurance scheme. The government is trying to address these problems. It has raised health care financing as a fraction of total expenditure (from 5.6 % in 2003/04 to 9 % in 2004/05), while the Kenya Medical Supplies Agency is being restructured to improve drug supply. In 2004, a Health Bill was passed by Parliament — the National Social Health Insurance Fund, with --costs to be shared by employers, employees, and the Treasury. The legislation has not been implemented, according to the CSAR, due to “lack of consensus” among the Parliament, the Executive, and other stakeholders.

The *agricultural sector* is very important in the economy. According to the CSAR, it accounts directly for 26 % of GDP, and indirectly, via linkages with manufacturing, distribution, and other service-related sectors, for 27 % of GDP. The sector contributes 60 % of export earnings and 45 % of government revenue. But its growth has slowed continuously over the last 30 years, from 6 % annual growth in the 1960s to 3.5 % in the 1980s and to 1.3 % in the 1990s. In the period 2001-2004, its growth recovered somewhat to 2.9 %.

The CSAR collated the views from focus group discussions, provincial forums and a household survey of the problems and challenges facing agriculture in Kenya. The list contains all the possible problems, without any attempt to rank their relative importance. . It includes unfavourable macroeconomic environment; terms of trade shocks; inadequate legal and regulatory framework; frequent droughts and floods; lack of capital and access to credit; ineffective extension services; poor governance and corruption in key institutions supporting agriculture; inadequate market infrastructure and information; high and multiple taxes; low and declining fertility of land; pests and diseases; poor physical infrastructure (especially rural access roads); lack of storage and processing facilities; insecurity in various parts of the country; dependence on rain-fed agriculture, and increasing incidence of HIV/AIDS, malaria and waterborne diseases. The government plans to address all these problems in a comprehensive approach.

It has come up with two strategy papers; the Economic Recovery Strategy (ERS) 2003-2007, and the Strategy for Revitalization of Agriculture (SRA) 2004-2014. According to the CSAR, “ERS presents a broad development framework for reviving the economy, creating jobs and reducing poverty, and it recognizes agriculture as a critical sector for economic recovery.” The SRA, hopefully, will address the problems of agriculture (listed above) more directly.

As regards *physical infrastructure*, according to the CSAR, the government plans to implement measures aimed at expanding the road network and improving road safety; increasing access to clean water; increasing availability, reliability, and affordability of energy; developing, expanding and enhancing the efficiency of the rail transport system; expanding and modernizing the air transport facilities; increasing the efficiency of telecommunication services; and creating a vibrant information technology sector.

The authorities take *gender equality* seriously. The CSAR states that there is a Gender Thematic Group, which is an integral part of the institutions within the MTEF budgetary process. The group is multi-sectoral and multi-disciplinary with membership drawn from the government, civil society, and the private sector. The mission of the Gender Thematic Group, as described in the CSAR report, is to institutionalise gender approaches in poverty eradication interventions through the PRSP and MTEF. It does so by providing technical support to all the Sector Working Groups to ensure gender responsive poverty alleviation strategies, processes and outcomes. The Ministry of Gender, Culture, Sport and Social Services also has embarked on plans to establish units in all the ministries to guide the mainstreaming of gender parity in all the development programmes initiated by the government.

With respect to *environmental sustainability*, the CSAR describes the main elements of a comprehensive institutional (including legal) and organisational framework that the government has designed and is implementing to address environmental concerns and to achieve environmental sustainability. The framework includes establishing a National Environmental Management Authority. The Authority has developed water and pollution standards to ensure a clean environment, and created various other bodies (listed in the CSAR) “to spearhead environmental agenda and enhance environmental mainstreaming.” Various pieces of legislation have been passed or Bills have been prepared (listed in the CSAR) covering various elements of the environment (water, forest, etc).

The government has set itself objectives and targets in the area of *employment creation*. The primary objective, as described in the CSAR, is to create 500,000 new jobs annually. It will do so, according to the CSAR, by stimulating overall economic growth, while paying attention to the development of small and medium enterprises (SMEs) as well as public works

programmes under the infrastructural development initiatives.

As regards measures to reduce *vulnerability to shocks*, the CSAR states that there have been efforts to diversify exports, but still there has been little change in the composition of external trade.

ii. Findings of the CRM

The CRM discussions under this objective covered particularly, expenditure restructuring, the investment climate, debt management, the monetary policymaking framework, the model used in macroeconomic policymaking, the MTEF process, resource mobilisation, export diversification, the sectoral programme, labour and wage policies and employment, and country ownership of reform and development programmes.

Expenditure Restructuring

The government would like to reorient expenditure toward development and socio-economic programmes, the latter so as to reduce poverty directly. However, preliminary impressions portray a limited scope for public expenditure restructuring. The reasons for this include especially rigidities in expenditures, such as on wages and salaries, and the weight of debt service. In discussing these issues with them, the authorities underscored that the restructuring was indeed taking place; wages were falling in relation to GDP and expenditures on items such as the ports, roads and other infrastructural categories were increasing relative to GDP.

Investment Climate

The investment climate has not in recent years seemed particularly attractive, and the authorities are taking steps to improve on this. Still, the authorities have maintained a favourable macroeconomic environment. A few stakeholders opined that it was possible that many foreign investors wanted more favourable tax holidays from the government; such persons were of the view that, in general, the authorities should be careful in granting such tax holidays as they could be exploited in ways that were disadvantageous to the country. As for domestic investors, most stakeholders were not sure of the causes of the weak response, but business groups and unions, in particular, thought that various factors were at play. More specifically, they felt that investors might be discouraged by low incomes (and hence demand) at home; uncertain demand abroad for their products; difficult credit conditions; security concerns and political uncertainties; high transaction costs, due to burdensome bureaucratic, regulatory, and other requirements in setting up and running their businesses.

Debt Management

The authorities have achieved enormous success in public debt management. They felt quite secure that they had adequate tools in place to ensure that the level of such debt would be maintained only at sustainable levels. They relayed their understanding of the need for vigilance, as the ratio of debt service to government revenue was quite high (29 %). In their view, they were doing their utmost to ensure that new external public debt would not only be concessionary but would also contribute substantially to economic growth. They reiterated government's decision to contain domestic borrowing so as not to crowd out private borrowers in domestic financial markets.

Monetary Policymaking Framework

The CBK operates in a context in which the government and the Parliament want to take some responsibility for monetary policy, while granting the CBK sufficient autonomy and accountability for the implementation of the policy. Hence the modus operandi involves the CBK drawing up proposals for the objective(s), the intermediate targets and the operating targets of monetary policy and having these agreed to by the Ministry of Finance and the Parliament. The CBK described the process to the CRM in a way that could be characterised as one of checks and balances. The CBK did not seem concerned with the decision making process, mainly because the Ministry of Finance and Parliament have usually approved the CBK proposals.

A Monetary Policy Advisory Committee (MPAC) was established in July 2005, following amendments to the CBK Act. The Monetary Policy Advisory Committee will have 9 members, 6 of who will be appointed by the Ministry of Finance. The others will include the Governor and Deputy Governor. The CBK targets a broad money aggregate and uses reserve money as the operating target. Because of appeals from many persons and organisations in the economy, the CBK wants to refine its own interest rate policy to more rationally influence interest rates, and hence credit and its allocation, in the economy, consistent with the CBK policy on inflation. At the same time, at least for the time being, the CBK wants to maintain its reserve money programming framework. Many challenges will arise in this new policymaking environment. The main rationale for the MPAC is then to have a panel of experts with the capability to wade through the technical complexities, while being sensitive to the socio-political context, and to advise the CBK and the Ministry of Finance on the conduct of monetary policy.

Model used in Macroeconomic Policymaking

The model used in macroeconomic policymaking by the Macro Working Group (MWG) needs improvement. The authorities stated that there were efforts being made to revise the model, both by improving the quality of the

data and by reworking the structure and specification of the model. They felt that significant progress had been made in the work to improve the Government Finance Statistics (GFS), the System of National Accounts (SNA), and the Balance of Payments Statistics, in the context of the Statistical Capacity Building Programme (*STATCAP*¹⁷), with financial assistance from the World Bank. At the time of the mission, the authorities were unsure of the precise timetable for completing the task.

The MTEF Process

Many of the ordinary citizens met by CRM felt that the government did not have systematic, institutionalised and effective ways of involving them in the budgetary and development planning decision-making processes. The consequence was the failure to take proper account of the interests and views of women and persons without substantial political power. Thus, government priorities in addressing water, health, education, children's, land, microfinance and various family-related issues did not, in their view, adequately reflect the priorities of ordinary citizens. The stakeholders suggested that committees should be arranged at the grassroots (wards, locations) such that they can elicit the views of, and to communicate effectively with, ordinary citizens. A consequence would be that the choice of projects, the allocations of district and constituency funds and the implementation of projects would all change positively from the perspective of socio-economic welfare and economic growth and development.

Resource Mobilisation

The government has been taking steps to improve *resource mobilisation* both for the finance of government expenditure and for domestic private investment. Hence, the government has sought: to expand the tax base via policies that encouraged business; to improve tax administration; to encourage savings; to enhance the efficiency of financial markets and institutions; and more generally to promote financial intermediation and these policies are yielding results as indicated in Box 4.1. According to the CSAR, the government has, first and foremost, re-examined many pieces of legislation and amended a number of them to provide additional but reasonable incentives to encourage business activity, capital inflow, and revenue collection. The laws include the Income Tax Act (1974) and the Trade Licensing Act (1968). In addition, the Investment Promotion Act (2004) makes a formal distinction between domestic and foreign investors, and requires the latter to apply to the newly established Kenya.

¹⁷ STATCAP is a lending programme approved by the World Bank's Board in March 2004. It is designed to make investments in statistical capacity easier and more effective, simple to initiate, plan and operate.

Investment Authority (KIA) for an investment certificate, which is an incentive mechanism to shorten start up periods for new investments. Second, Kenya has become a member of the Multilateral Investment Guarantee Agency. Third, the country has ratified Bilateral Investment Treaties with Germany, Italy, Netherlands, and the United Kingdom. Fourth, Kenya is taking steps to reform and modernize its national payment system. Finally, other steps being taken to improve the efficiency of financial organisations and promote financial intermediation include the amendment of the Banking Act to liberalize interest rates; the enhancement of the supervisory powers of the CBK; the drafting of a Bill to regulate microfinance; the strengthening of the Deposit Protection Fund; the creation of a central depository system; and the privatisation of certain commercial banks. The CRM confirmed the above measures and discussed the likely chances of success in achieving the objectives. The authorities reflected their optimism that they would.

Best Practice - Box 4.1: Domestic Resource Mobilisation in Kenya

A striking feature of Kenya is its ability to mobilize revenue. Unlike many other African countries, Kenya is a high tax-yield country with a tax-to-GDP ratio of over 20 per cent. The country is able to finance a large proportion of its budget from revenue generated locally, while external donor finances are used to cover a much smaller share than in other countries of the region. This, however, does not mean that the country is not without its problems in tax administration. Like many other developing countries, it has had to contend with the common problems that plague tax systems of developing countries such as the existence of tax systems with rates and structures that are difficult to administer and comply with; that are unresponsiveness both to growth and discretionary tax measures hence offering low tax productivity; that raise little revenue but introduce serious economic distortions; and that are selective with regard to tax administration and enforcement, and skewed in favour of those with the ability to defeat the system

Export Diversification

The stakeholders in Kenya agreed that although the country was making progress in diversification of its exports, as seen in the progress made with horticultural products (See Box 4.2), textiles and a few agro-industrial products, the achievements had been below expectations.

The CRM explored, with the stakeholders, possible explanations. In short the obstacles were stated as: inadequate physical infrastructure, especially roads and telecommunications facilities; limited access to finance, and even more so the high cost of such finance; poor information about foreign markets and the means of gaining access to such markets; trade barriers in many countries; and insufficient entrepreneurial capability to penetrate and survive in global markets for commodities and services different from the traditional exports of Kenya. But stakeholders warned against Kenyans underestimating their own

abilities and potential for producing goods and services that could succeed in global markets. In addition, they thought that Kenya could do well, by continuing to expand its exports in the context of the East African Community and also to other African countries.

Best Practice - Box 4.2: Production and Exports of Horticultural Products

Kenya has made significant strides in the production and export of horticultural products. Since 1974, the value of Kenya's horticultural exports has increased fourfold in constant dollar terms, and horticulture has become the third largest source of foreign exchange after tourism and tea.

In recent years, the production of horticultural produce for export increased by 9.0 percentage points, from 135,600 tons in year 2003/04 to 147,799 tons in 2004/2005. Europe continues to absorb the bulk of the produce. In fact, Kenya is a leading exporter of cut flowers to the European Union, accounting for 25% percent of all cut flower imports and now actually exports directly to the United Kingdom without having to go through the Dutch auction.

The sector is driven largely by nimble private traders responding to international market opportunities. It is characterised by a wide array of institutional arrangements, including smallholders selling in spot markets, personalised relationships with traders, implicit contracts, explicit contracts, farmer organisations, medium- and large-scale farming, and vertically integrated producer-exporters. More than 25,000 small farmers participate in the sector, accounting for over half of Kenyan horticultural exports. Kenya's Horticultural Crop Development Agency (HCDA) has played a facilitative role, attempting to coordinate various participants in the industry rather than directly intervening as a buyer in the market.

The Sectoral Programme

The sectoral programme is huge and appears comprehensive. Both the authorities and the CRM agreed that there was great risk that serious budgetary and capacity constraints could delay the implementation of the whole package. While resolute attempts needed to be made to implement the whole programme, authorities stated that they would need to prioritise the objectives. In this regard, the authorities reiterated that implementation was a big part of the explanation for failure to achieve programme objectives. They urged the CRM to think about what needed to be done to improve the implementation record for government programmes. The challenges would be greatest in the areas of agriculture, physical infrastructure and employment creation for which the government was intending to create at least 500,000 new jobs a year.

A recurring issue in the discussion throughout the CRM visit was the problem of increasing poverty despite positive economic growth. The apparent answer

was that economic growth was not keeping pace with population growth, and income distribution seemed to have worsened. The obvious solution was to raise the GDP growth rate and institute policies that would enable the growth to be more equitably shared. Raising agricultural growth, increasing quality employment opportunities for youths, promoting education at the primary and secondary levels, and improving micro-credit schemes were among the objectives that, if achieved, would reduce poverty in the community at large.

Labour and Wage Policies and Employment

The representatives of trade unions told the CRM that they felt that the Ministry of Labour was marginalised in the government, to the detriment of workers in general. Nevertheless, they felt that recently revised labour laws adequately dealt with the major issues of concern to labour. They insisted that the industrial courts did not work well and that the Department of Inspection in the Ministry of Labour lacked the capacity to do its work properly, and also suffered from corruption. The unions were not dissatisfied with their influence on the wage determination process, but felt that their power was seriously undermined by the great freedom given to employers to lay off workers.

The trade unions and other stakeholders felt that certain factors continued to hurt employment possibilities in the economy. The job market for graduates was not widening to meet supply of new graduates; industries were concentrated in and around Nairobi; and rural development programmes had collapsed. More generally, the union representatives felt that there was a need to accelerate agricultural growth and transformation as well the development of agro-industries.

Country Ownership of Reform and Development Programmes

Some stakeholders, particularly the unions, wanted to see a broader national debate on the government's privatisation programme. In the view of such stakeholders, apart from being structured to increase domination of the economy by foreigners, the programme as it stood ran the risk of transferring valuable national assets to foreigners at essentially cut-rate prices.

Kenyans did not express any view with respect to *country ownership* of economic policy and reforms. It apparently was not of major concern to the stakeholders at this time. Hence, there is no mention, whatsoever, of the issue of ownership in the CSAR. The CRM was not able to verify with any degree of certainty if this lack of concern was simply an oversight, or indifference to the issue of country ownership, or whether in fact Kenyans believed that they had ownership of their policymaking.

iii. Recommendations

The Panel recommends the following actions by the Government of Kenya. Further elaboration of the recommendations is provided after the summary

- Design a comprehensive policy directed squarely at the issue of diversification — of the domestic production structure and of exports. [*Ministry of Planning and National Development, in collaboration with the various sectoral ministries*]
- Assess the autonomy of the central bank in the light of current challenges and policy intentions. [*Ministry of Finance, Central Bank of Kenya*]
- Do a detailed study of credit markets and policies in Kenya, to better comprehend the effects of credit availability, including its distribution, and its cost on economic growth and the socio-economic well-being of Kenyans. [*Central Bank of Kenya*]
- Do a comprehensive survey of implementation problems throughout government and the public sector, with a view to characterising the nature and the sources of the problems; obtain a clear picture of their incidence and how deep-seated they are, , and design strategies and actions to deal with them, both on a grand scale and in specific contexts. [*Ministry of Finance, Ministry of Planning and National Development*]

Diversification

The economic recovery strategy programme, the policies to revitalize agriculture and to improve infrastructure, and the education and health policies of the government, as well the financial sector policy reforms, will all go some way towards creating the conditions for further diversification of the production structure and of exports. But there is still no direct focus on diversification as a clear objective of government policy. With such emphasis, the Panel recommend that the Ministry of Planning and National Development, Ministry of Finance, Central Bank of Kenya, working in collaboration with sectoral ministries and other public sector bodies] undertake the following:

- establish clear benchmarks, indicators, and targets for diversification;
- conduct periodic analyses of the areas where Kenya's comparative advantage was emerging and could emerge with appropriate assistance, and specify what needs to be done to speed up the processes;
- design economically efficient criteria for selective intervention by the public sector, including direct incentives to entrepreneurs (tax relief, subsidies, entrepreneurial and other types of training, market research, assistance in market penetration, fostering of joint ventures), and the institutional and organisational mechanisms and instruments to ensure the effectiveness of policies; and

- make continuous formal assessment of the effects of indirect policies on diversification — policies such as education and training of young people, labour and manpower policies, health policies, infrastructure policies, financial sector policies, policies to address corruption, and monetary and fiscal policies — with a view to restructuring and fine-tuning the policies, as necessary, to promote diversification.

For such a bold strategy, *enhanced ownership is necessary*, at two levels.

- First, the programme must be designed, implemented, and continuously monitored, appraised and refined by persons who are committed to the overall objective(s).
- Second, the programme must be continuously legitimated by the population at large, to ensure cooperation and appropriate coordination, which means that citizens must understand and support the objectives and the instruments being applied. The government must find transparent and democratic means to obtain such legitimacy.

Autonomy of the Central Bank of Kenya

Kenya currently operates in a context in which the IMF, in particular, plays an important role in the country's formulation of monetary and budgetary policies. Hence, it is likely that both the Ministry of Finance and the central bank would have a common understanding of the macroeconomic framework within which monetary policy operates. Moreover, in this context, it is unlikely that the Ministry of Finance would make demands, in mid-stream, on CBK that would compromise the anti-inflationary objectives conditioning CBK operations.

- Nevertheless, from the standpoint of macroeconomic stability and transparency in policymaking, *the CBK needs to be given clear instrument autonomy in the area of monetary policy* by Parliament and the Ministry of Finance.

Credit in the Economy

There are a number of things that the Panel believes should be done to improve the credit markets and to reduce any sub-optimality of credit volume, distribution and cost.

- First, the Central Bank to appraise its policymaking framework to re-assure itself that it is sufficiently appropriate to the Kenya economic environment. CBK treats real output as exogenous and then worries about the base money that would produce the money stock consistent with the exogenous output and the inflation target desired by the

authorities. The CBK should investigate whether both output and credit are affected by central bank monetary policy, perhaps via the impact of such policy on the real interest rate in the economy. The CBK staff should be assisted in this work by the Macro Working Group where the CBK also has representation.

- Second, commercial banks traditionally ignore certain sectors and economic agents in a typical African country for reasons having to do with the normal banking standards for lending, risk and administrative and other transaction costs in dealing with the borrowers. The interaction of the CRM with stakeholders indicated that many believed that Kenya was no exception in this regard. The CBK to take the leadership in exploring, with the commercial banks, ways to change the status quo, including via legal reforms and training for small business. The role of the CBK, Bankers' Association, Chamber of Commerce and the Macro Working Group will also be crucial in achieving this goal.
- Third, there are too many weak and inefficient financial organisations still surviving in the sector. The authorities (Ministry of Finance, CBK, Commission of Insurance and Capital Market Authority) need to speed up their reform plans in the financial sector (privatisation, reform of DFIs, and regulation and supervision of important micro credit institutions).
- Probably the area needing the most work is the understanding of the microfinance subsector and how it could better contribute to the economic growth process. The subsector is segmented and its workings are not very transparent on the whole. A transparent and integrated microfinance subsector is desirable, and could ensure the emergence of a better functioning and more efficient microfinance market. The CBK and the Ministry of Finance are encouraged to organise a comprehensive study of the microfinance subsector in Kenya, with a view to finding out how it could be made more integrated and efficient on the whole, and better integrated with the other financial organisations in the economy. Also important are other stakeholders, such as the Ministry of Finance, the Ministry of Planning and National Development, CBK, the Bankers' Association, the Chamber of Commerce and any umbrella organisation(s) of the microfinance subsector

Implementation Problems

Implementation problems abound throughout the public sector in Kenya. The Panel recommends the following:

- The Government of Kenya to conduct a comprehensive survey of implementation problems throughout government and the public sector, with a view to characterising the nature and the sources of the problems,

and their incidence, and then to design strategies and actions to address the underlying problems.

- The study to explore the following reasons for implementation problems, namely: unforeseen shocks; human and technological capacity constraints; bureaucratic procedures, some of which may be outdated or unnecessary; non-cooperation and deliberate obstacles by those who want to obstruct a policy they do not like or who seek to block a beneficiary they oppose; corruption; internal conflicts within departments or sections; poor communication between units, departments or regions; unclear and even confused guidelines and instructions; lethargy and inefficiency; and inadequate incentive of staff to work and perform well, because of displeasure over pay or the work environment.
- The report of the study to provide policy prescriptions for solving the major problems. No doubt capacity problems are likely to loom large. In those cases, technical assistance and supplies of appropriate equipment would be at the core of the solution. Some of the other sources of implementation problems may require less money and yet prove more difficult to tackle. For example, those involving conflicts and bureaucratic procedures could prove very difficult to solve, the latter because major accountability issues are likely to arise.
- Every department, body, etc that is found to have significant implementation problems should then put in place a programme of action to address its problems. The Ministry of Finance to monitor the implementation of the programmes of action, and also develop criteria to monitor implementation problems on a continuing basis, within units of the public sector, consistently with its programme to improve efficiency in government.

4.3.2 OBJECTIVE TWO: IMPLEMENT SOUND, TRANSPARENT AND PREDICTABLE GOVERNMENT ECONOMIC POLICIES

i. Summary of the CSAR

The CSAR elaborates on measures to make public administration, the legislative system and the fiscal authorities work soundly and transparently. First, the CSAR argues that Kenyans have access to a wide range of government budgetary information, but that there are still gaps, especially with respect to sub-national levels of government. The authorities have enacted legislation to enhance transparency in public administration. In the major area of procurement, the Public Procurement and Disposal of Assets Bill (2004), which has been passed by Parliament, proposes a number of

useful reforms as well as the creation of an autonomous regulatory body. The functions of this regulatory body are not specified in the CSAR. The pieces of legislation mentioned are those identified earlier in the subsection on Standards and Codes, namely, the Anti- Corruption and Economic Crimes Act, the Public Officer Ethics Act, and the Public Audit Act.

Second, the CSAR argues that the MTEF budget process and the annual Public Expenditure Review (PER) process promote sound administration and transparency. The report adds that the government publishes annual PERs, and that at quarterly intervals information on budget monitoring is published by the Budget Monitoring Department of the Ministry of Finance.

The CSAR discusses public and internal audits, and parliamentary oversight, designed to help ensure the effectiveness of the administrative systems put in place to implement sound and transparent policies. The report mentions the Controller and Auditor General (CAG), an independent professional auditing body that audits the Appropriations Accounts, and other public accounts including those of the ministries. Then there is the Auditor General (Corporations), which audits government public investment and submits its report to Parliament. Internal auditing is the responsibility of the Internal Auditor General's office. Each ministry also has internal auditors. Despite the foregoing, the CSAR notes that, particularly in the case of internal audit in the government, there is a serious lack of physical and human resources, traceable ultimately to financial resource constraints.

The CSAR mentions the parliament oversight committees, the Public Accounts Committee (PAC) and Public Investments Committee (PIC). The report states that both committees and Parliament, ipso facto, have problems performing their tasks. There are delays in reporting to the committees and Parliament lacks the power to implement their recommendations. In addition, the committees are short of qualified support staff. Parliament, moreover, appears unhappy with its role in the budget process. The CSAR report states that there have been increased calls by the legislature to establish a Parliamentary Budget Office.

The CSAR discusses the broad consultative processes in place in economic policymaking. It mentions the PRSP process and asserts that the ERS drew from the consultations conducted in the context of the PRSP, the NARC Manifesto, and other consultations at the national level. The report therefore asserts that the ERS represents the "views and aspirations of Kenyans." At the local level, the CSAR report informs that consultations "have been held" under the District Focus for Rural Development (DFRD) introduced in 1983, which led to the establishment of District Development Committees (DDCs). But the report states that the National Sample Survey under APRM process indicated that the majority (54 %) of respondents did not know about the operations of the DDCs and 11 % felt that the operations of the DDCs had worsened. The private business sector has also formed the Kenya Private

Sector Alliance (KEPSA), to augment the ability of the business community to voice its special interests to the government. The CSAR notes, in addition, that the government has also sought and consulted other neighbourhood associations, specifically the Nairobi Central Business Organisation, on development issues of policy that affect the private sector within the Central Business Districts.

The CSAR states that the establishment of a national integrated Monitoring and Evaluation (system is paramount to the achievement of the ERS objectives. The report asserts that “significant progress” has been achieved towards the establishment of the integrated M&E system. But the description of the M&E system or what has been achieved in realising it is not clear. One does learn, though, that the integration is coordinated through a national Monitoring & Evaluation steering committee and that a Monitoring and Evaluation department has been created in the Ministry of Planning and National Development to spearhead the implementation of the M&E system on a national basis

Lastly, the CSAR shows quite clearly that the government takes seriously the business of dissemination of information on government policies. The government uses all the traditional methods — sectoral and ministerial bulletins, dissemination seminars, conferences and workshops, open forums, and press releases. The report adds that the “government has established a Public Communication Secretary’s office that informs, clarifies and responds to various information gaps and misrepresentations concerning government policy,” adding that the Internet service is widely used to deliver policy messages by the government. However, the record is not good as regards public awareness of government policies and programmes. The CSAR stipulates that more than 50 % of those interviewed for the National Sample Survey “indicated total lack of awareness” of development projects in their localities.

ii. Findings of the CRM

The main issues that arose under objective two related to parliamentary oversight and flow of information to citizens outside the capital relating to development projects.

Parliamentary Oversight

The existing Constitution and the proposed one both give Parliament an important oversight role in public finance. Parliament must approve the budget and all loans, loan guarantees, and grants. Also, it can request by resolution, and the government must respond promptly (normally within seven days), by providing information on a loan, related to the principal and accumulated interest, the provisions for servicing the debt, the use of the loan

proceeds, and the progress made in repayment of the loan. In addition, the Permanent Secretary in charge of a ministry and the accounting officer in charge of a department of a public body are each accountable to Parliament for funds in that ministry, department or public office.

Three months before the end of the financial year, the head of each self-accounting department, state body or organisations should prepare estimates of revenue and expenditure for the following year and submit them to the Minister of Finance. The Minister in turn submits the estimates to Parliament without revision but with any recommendations that the Commission on Revenue Allocation may have on them. A committee in Parliament should review the estimates, before Parliament considers the estimates placed before it by the Minister of Finance. The Parliamentary committee then makes recommendations to Parliament; in discussing and reviewing the estimates, the committee would seek representations from the public and the Economic and Social Council, and those recommendations would be taken into account when it makes its recommendations to Parliament.

During the CRM visit, the stakeholders agreed that parliamentary oversight in the budgetary area had not been working as smoothly and effectively as envisaged in the Constitution. Hence, there was a need to strengthen the parliamentary oversight committees, namely, PAC and PIC by reducing delays in reporting to the committees, enhancing the power of Parliament to have its recommendations implemented, and addressing Parliament's shortage of qualified support staff. Parliamentary members, in discussion with the CRM, informed the latter that the legislature had introduced a Bill with the expressed purpose of establishing a Parliamentary Budget Office.

Information of Citizens outside the Capital about Development Projects

The CSAR states that more than 50 % of those interviewed for the National Sample Survey lacked any knowledge of development projects in their localities. The CRM confirmed this and found that there seemed to be a lack of transparency -- from the perspective of many of the residents of a number of the local areas -- in the decision-making process for the selection of projects to be financed by resources from the Constituency Development Fund (CDF) and the Social Development Fund (SDF). The central government allocated budgetary resources to the Local Authorities to finance local development projects, in the case of CDF, and small scale income-generating activities of private individuals and groups under the SDF.

In the case of the CDF, for any given budgetary period, Constituency Development Committees (CDCs) determine projects and send the list to the District Project Committees (DPCs), which in turn collate them to transmit to the National Management Committee for forwarding to Parliament for concurrence. The funds, from the Ministry of Finance, go to the District

Development Officer (a staff member of the Ministry of Planning). Many local citizens complained that the criteria for selection of persons to serve in the CDCs were not sufficiently objective and transparent. In the case of the SDF, the Funds go from the central government to the District Social Development Officer, who is responsible for collating all the projects to be financed for ultimate forwarding to Parliament.

The members of Parliament explained that, whereas it was true that the composition of each CDC was a responsibility of the relevant parliamentarian, the membership was constituted according to criteria clearly spelt out in the Parliamentary Act establishing the CDF. Parliamentary members had to be sensitive, responsible, and accountable, in their actions in this area, not only because they were interested in the development of their local communities, but also because they or their party would want to stand for re-election. Indeed, the whole process, they insisted, was a very consultative one. They added that the CDF was a new initiative — only about two years old — and Parliament would re-assess it in a few years to see if the original objectives were being realised.

In addition to the CDF and SDF, another general fund that had been created was the Local Authority Transfer Fund (LATF). The CRM's understanding was that each Local Authority (County, Town or Municipal Council) would prepare a Local Authority Service Delivery Action Plan (LASDAP), to which LATF funds were applied. Some local authorities informed the CRM that, in the decision making, unlike in the case of CDF, LATF had no committee involving ordinary citizens. Rather, the councillors made the decisions. This did not seem, to the CRM, an unreasonable approach, since, essentially, the funds were fungible resources to supplement local resources in the financing of local service delivery programmes. In this respect, there were a number of earmarked funds transferred from the central government to the local authorities. For instance, there was a Constituency Bursary Fund from which funds were transferred to education, as well as an AIDS and Road Funds.

iii. Recommendations

The Panel recommends the following, which are further clarified immediately below.

- Parliament to take appropriate steps to effectively perform its oversight role in the budgetary and planning areas;
- Constituency Development Committees (CDCs) be made fair, transparent, and revolving in their membership, and should be more transparent in their operations; and
- Develop an integrated approach in the management and utilization of local development funds such as LATF, Bursary, Road funds, CDCs so

as to maximize impact.

Parliamentary Oversight

Governance in the fiscal area will improve with sound and effective parliamentary oversight. What are required are access to information from the governments (central and local) and the capacity to handle and to analyse information and to do independent analytical research on issues.

- Parliament should build its capacity to do oversight. It must obtain qualified staff, appropriate technology, and library facilities.
- Parliamentarians must explore ways to address two hurdles. First, they must obtain the budgetary allocations, which means bargaining with the executive. Second, they must overcome the perception within the population that they do not work hard enough; otherwise, the public will not be happy to have greater budgetary resources devoted to parliamentary oversight.
- In an attempt to make the burden easier and to strengthen their case, Parliament to investigate how other legislatures in selected but well-run countries perform the oversight functions and the relative capacity and resources placed at the disposal of those legislatures to perform the tasks.

Constituency Development Committees

The CRM supports parliamentarians who want the Constituency Development Funds programme re-assessed in a few years to see if the original objectives were being realised. In addition, Parliament is implored to take the following actions as soon as feasible, and certainly within the next two years, since parliamentarians would appear to have full authority to implement the measures.

- As a minimum, certain facts to be widely publicised about the members of a CDC selected by the parliamentarian, such as, who they are, whether or not they are related to the parliamentarian concerned, how and why they were selected, and how long they are going to serve.
- Parliamentarians be encouraged to have at least fifty per cent of the membership selected in a democratic way (broad-based election), and the membership could be rotated, perhaps by having a different composition of the committees every year, except in exceptional circumstances that would be made transparent.
- All citizens of a locality be encouraged to propose projects; there should be open hearings on the merits of the projects submitted; and the reasons

for not selecting projects that had a fair amount of support in the community should be given.

4.3.3. OBJECTIVE THREE: PROMOTE SOUND PUBLIC FINANCIAL MANAGEMENT

i. Summary of the CSAR

The CSAR discussed measures already taken with respect to the planning, implementation and monitoring of public expenditure in order to improve financial management. Many of these measures have been discussed under Objectives One and Two. The report states that the legal basis for Kenya's planning and budget procedures is contained in chapter 99 through 105 of the current Constitution of Kenya, the Public Audit Act, and guidelines on Budget and Budgetary Controls in Treasury Financial Instructions. The report states further that in its public expenditure management, the government has introduced reforms to improve the link between policy, planning, and budgeting; strengthen transparency and accountability in financial management; and improve fiscal discipline. In this context, the MTEF, the PER processes and the Budget Strategy Paper are central.

Other elements (institutions and bodies) are important as well. These include: an Integrated Financial Information System aimed at integrating budget preparation, execution, control and financial accounting and reporting in one system; Ministerial Public Expenditure Reviews; and the Directorate of Public Procurement; the Public Procurement and Disposal of Assets Bill 2005, which has been passed by Parliament; the Public Audit Act; and the Government Financial Management Act.

Despite the reforms and the efforts of the authorities, the CSAR explains that many problems remain. These include: payment arrears; delays in project implementation; extra-budgetary expenditures; unpredictability in resource flows; data deficiencies in reporting and in auditing; inadequate recording, monitoring, and tracking of aid flows; and inadequacies in classification of expenditures. In 2003, the government, in collaboration with DFID, the IMF and the World Bank, undertook a comprehensive review of public expenditure management in Kenya.

A second assessment was done in 2004. The CSAR states that the reviews uncovered many weaknesses in budget formulation, execution, monitoring and reporting. The CSAR also mentions that serious coordination problems exist between the Ministry of Planning and National Development and the Ministry of Finance, even though Presidential Circular No.1/2004 sets out the mandate of each. The government has a number of action plans in place to address the above problems.

Service delivery is of major concern, and the authorities have in place reforms designed to strengthen the management of the public sector for efficient and cost effective service delivery to all Kenyans. The reform programmes entail: Civil Service Reforms, Parastatal Reforms, Local Authority Reforms and reforms under the Governance, Justice, Law and Order Sector (GJLOS). These reforms entail strengthening the management and technical capabilities of the bodies and agencies.

Kenya has plans for fiscal decentralisation, which it has been trying to implement following the introduction of the Kenya Local Government Reform Programme, introduced in 1986. The Local Authorities (LAs) have been given some legal authority to raise revenue (the types and rates of local taxes and fees, and limits on local authority borrowing). The Local Authority Transfer Fund Act of 1998 established the LATF to facilitate the transfer of funds to the LAs to supplement their own revenues generated locally.

Local councils oversee the affairs of LAs and the central government through the Local Government Financial Regulations (LGFR) issued in 1986, which spelt out the financial responsibilities and functions of the LAs. The CSAR states that the LGFR and the Local Government Act require the LAs to prepare budgets for services indicating sources of funds and annual accounts and submit them to the CAG for audit within six months after the end of the financial year.

The CSAR states that the performance of most LAs has not been good; financial management has been the general problem, reflected for instance in the non-payment of salaries and other bills. Still, according to the CSAR, the local governments have been able to identify and implement projects with direct impact on the local community, especially in the areas of water and feeder roads. The report also mentions that the central government is helping with capacity building of the LAs. Apparently, a lot remains to be done. Also, the report states that the LAs have not been open to public participation and consultations in their budgetary processes. There is limited citizen involvement in the identification, design, implementation and monitoring of the projects and activities funded by the local authorities.

ii. Findings of the CRM

The major issues raised during the CRM visit in the current context of fiscal decentralisation have been mentioned already, under Objective Two. The CRM also looked at the major provisions for such decentralisation contained in the Proposed Constitution. Also discussed during the visit were problems in public financial management, and the efficiency of public sector service delivery.

Problems in Public Financial Management

Kenya has many problems in public financial management, as listed above in the CSAR. The CRM discussed with the authorities the steps the authorities were taking to address the problems. The latter emphasised that they were making progress in improving financial management and therefore finding appropriate solutions to all the above problems. Particularly, they noted that government was not accumulating any new arrears, while the stock of old arrears was being reduced systematically. In addition, there were no more extra-budgetary expenditures.

The authorities reiterated the several institutional and organisational elements of their proposed system with most of the elements in place to ensure sound financial management. In particular, first, they were striving to ensure a system of procurement of public goods and services, which sought to be fair, equitable, transparent, competitive and cost-effective, while being fast enough not to delay implementation of development projects. Second, they aimed at strict Treasury control, which could stop the transfer of funds to a district government, a state organ or any public institution, for material breach of standards of transparency and expenditure control.

Third, there would be a highly qualified and autonomous Controller of Budget to oversee the implementation of the budgets as approved by the government and the district governments. The Controller, among other things, would ensure that money was spent in accordance with appropriations or an appropriate Act of Parliament. The Controller would be working closely with the Treasury, departments, and ministries, and would submit a report to Parliament within two months after the end of the financial year on the operations of the office during that financial year. Fourth, public institutions would continue to be thoroughly audited. The Auditor General, in accordance with international standards, would continue to audit the accounts of government departments and public sector institutions on a timely basis. A professionally qualified accountant appointed by Parliament would audit the accounts of the Controller of Budget and the Auditor General.

Of importance in the budgetary area will continue to be the National Revenue Authority, responsible for government revenue collection; the Commission on Revenue Allocation, which determines the basis, including equity, for sharing revenue; and the Economic and Social Council. As stated in the proposed constitution, the Economic and Social Council, among other things, would advise the government and Parliament on general economic and social issues of concern to Kenyans; advise the Government on the formulation, implementation, monitoring and evaluation of strategic economic and social policies; consider and report to Parliament on the economic and social implications of all Bills and budgetary proposals introduced in Parliament; and monitor progress in living standards of Kenyans, particularly those deemed poor and disadvantaged. The Economic and Social Council would comprise nine persons of diverse origins in Kenya who are qualified and experienced in economic and social development matters and appointed by the

President, with the approval of Parliament.

Devolution and Fiscal Decentralisation in the Proposed Constitution

Chapter 14 and the Third Schedule of the Proposed New Constitution of Kenya deal with devolution of government. The objectives are clearly stated. They include: (1) ensuring “the democratic and accountable exercise of sovereign power;” (2) fostering “national unity by recognising diversity;” (3) enhancing “the participation of people in the exercise of the powers of the state;” (4) recognising “the right of local communities to manage their own local affairs;” (5) ensuring “equitable sharing of national and local resources throughout Kenya, with special provisions for less developed areas;” and (6) facilitating the decentralisation of state organs and functions.”

The unit of devolution will be the district. The districts themselves will be free to decide on appropriate decentralisation of the provision of services and other functions of government within their jurisdictions. With respect to urban areas within districts, the constitution states: “Parliament shall by legislation provide for the governance and management of urban areas within districts.” Among other things, such legislation shall “provide for the participation by the citizens of urban areas in governance functions of the district within which the urban area lies.”

Each district will have a district assembly, with powers to pass laws and to make recommendations to Parliament to enact legislation “concerning any matter outside the authority of that district assembly that is within the legislative competence of Parliament.” A district council will exercise the executive authority of a district. Cooperation among district governments will be encouraged, including via a National Forum for District Governments.

As regards the district governments, except where the Constitution or legislation otherwise provides, “the powers and functions of the district government in all its functional areas” shall be: (1) “the formulation of district policies;” (2) the “setting of district standards;” (3) “district planning;” (4) “the monitoring and evaluation of implementation;” (5) the production, management and delivery of district services; (6) the development, operation and maintenance of district infrastructure and services; (7) “the facilitation and harmonisation of operations within the district; and (8) capacity building.”

The list of functional areas cover a wide spectrum, such as, agriculture; district health services; control of air and noise pollution, other public nuisances and outdoor advertising; cultural activities, public entertainment and public amenities; district transport; animal control and welfare; trade development and regulation; district planning and development; education at pre-primary, primary and secondary levels, special education, village polytechnics, home craft centres and childcare facilities; implementation of national government policies on natural resources and environmental conservation; district public works and services, police and fire

fighting services and disaster management; and control of drugs and pornography. The district governments will also be responsible for “ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the powers and functions and participation in governance at the local level.”

The Fourth Schedule of the proposed constitution gives the local authorities (District Governments) broad taxation powers (taxes, duties, user charges, surcharges, fees, and levies and charges), including: “flat rate surcharges on the tax bases of any tax, levy or duty that is imposed by national legislation other than the tax bases of corporate income tax, value added tax and customs and excise;” land use tax; agricultural tax; business permit tax; entertainment tax; and district roads maintenance tax. Apart from this power to tax, the proposed constitution states that “[w]hen powers and functions are assigned to a district government, arrangements shall be put in place to ensure that the funds necessary for the exercise of the power and the performance of those functions are transferred accordingly.” Of importance, though, the proposed constitution explicitly states, in Article 220 (2), that the “taxation and other revenue-raising powers of a district government shall not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across district boundaries or the national mobility of goods, services, capital or labour.”

There are other noteworthy provisions of the proposed Constitution, in this area, all consistent with current practice. Two that are important for the tax effort incentives of districts are in Articles 221 (c) and 221 (d). The first states that “additional revenue raised by a district government shall not be deducted from its share of revenue raised nationally, or from other allocations made to it out of Government revenue.” The second provision states that “there shall be no obligation on the government to compensate a district government that does not raise revenue commensurate with its fiscal capacity and tax base.” In addition, a Revenue Fund shall be established for each district “into which all money raised or received for the purposes or on behalf of, or in trust for the district government, other than money excluded by an Act of Parliament, shall be paid.” Moreover, a district government, according to the proposed Constitution, “may raise loans for development or recurrent expenditure in accordance with conditions determined by an Act of Parliament.”

Efficiency of Public Sector Service Delivery

Service delivery has been of major concern, and the authorities are undertaking reforms designed to bring about efficient and cost effective service delivery to all Kenyans. In discussions with the CRM, the government representatives explained that the authorities had for many years been concerned with improving implementation of government programmes and efficiency in government departments and public bodies in general. They had,

therefore, since November 2004, introduced a results-based management approach for enhanced service delivery.

Typically, it involved a two-pronged framework. First, within the government, there were standing and steering committees to ensure that the approach was implemented throughout the country. Second, stakeholder forums were held throughout the country to explain the approach, seek comments and recommendations, and obtain feedbacks as to implementation successes and problems.

The authorities recognised, and were acting on meeting the need for transforming leadership as well as capacity building in government, in general. They also were working, through direct education and publicity campaigns, on promoting the kind of public ethical values fundamental to enhancing efficiency in government. Indeed, the government recently held a workshop involving academia and other knowledgeable persons to explore ways of developing the appropriate transforming leadership and public service values. The government has put in place a system of enhanced oversight in all service delivery situations and was working on refinements of the system. The authorities are working resolutely to strengthen e-government.

Since the Economic Recovery Strategy was put in place, the authorities explained that a general thrust of governance has been to ensure full accountability of public servants. As part of this, performance contracts are being effected throughout the public sector. In addition, departments, agencies and other bodies are being made to operate with clear strategic plans containing explicit deliverables. It is these strategic plans that will determine the form and content of the performance contracts. Moreover, the government is working on developing a system of service delivery charters, so that the public would know, for each service (e.g., passport delivery) precisely what to expect in terms of the nature of the services provided and the timing of their delivery.

The CRM was very impressed with the policy initiatives being put in place to address issues in the two broad areas, particularly the results-based management approach for enhanced service delivery, and the performance contracts that were being introduced throughout the public sector. But implementation problems, including broad acceptance of the approaches, have arisen which will need to be addressed in order to improve public financial management and increase the efficiency of public sector service delivery.

iii. Recommendations

The Panel recommends the following:

- The government and the parliamentarians to seek consensus on the devolution plans for local government contained in the draft Constitution [Kenya

Authorities].

- The Government of Kenya to address immediately capacity constraints in Local Authorities, which have been accused of financial recklessness [*Ministry of Finance, Ministry of Planning and National Development, Ministry of Local Government*]
- Implementation problems in policy reform must be overcome to improve public financial management and increase the efficiency of public sector service delivery. The proposals made earlier for a study of implementation problems are extremely relevant in these contexts. [*Ministry of Finance, Ministry of Planning and National Development, Ministry of Local Government*]

4.3.4 OBJECTIVE FOUR: FIGHT CORRUPTION IN PUBLIC ADMINISTRATION AND MONEY LAUNDERING

i. Summary of the CSAR

The CSAR asserts that a sound legal basis now exists for the fight against corruption, and that the administrative and organisational structures are also there in principle. But, with respect to the laws, there are weaknesses in implementation and follow-through. In addition, some capacity problems exist in the bodies that have been set up, and some re-organisation of the structure would be useful; it appears that too many bodies have been set up to fight corruption and their roles seem sometimes to conflict.

In the legal area, the CSAR mentions the Anti-Corruption and Economic Crimes Act 2003, which led to the establishment of the Kenya Anti-Corruption Commission (KACC); the Public Officers' Ethics Act 2003, the Public Audit Act, and the Public Procurement and Disposal of Assets Bill. Among bodies set up, apart from the KACC, the CSAR mentions the Kenya Anti-Corruption Advisory Board (KACAB) and the Permanent National Anti-Corruption Campaign Steering Committee (PNACCSC). The KACAB, with membership from professional and business associations, and labour and religious organisations, advises the KACC; only Parliament controls it. The President of Kenya created the PNACCSC, in an attempt "to coordinate the entire nationwide anti-corruption campaign." Also in the fight against corruption are: (1) the Ministry of Justice and Constitution Affairs, set up by the current government "with the mandate to spearhead the anti-graft war and especially to spearhead the enactment of requisite laws to facilitate the execution of the anti-corruption campaign"; (2) a Permanent Secretary in the office of the President that is in charge of governance and ethics; (3) the Controller and Auditor General; and (4) the PIC and PAC of Parliament, whose reports have been kept on pointing out the enormity of the public

financial mismanagement, and have made recommendations to improve financial probity and accountability.

The CSAR demonstrates clearly that Kenya is taking seriously the fight against money laundering, but that the country is still only in the early stages of establishing the domestic legal framework and deciding the organisational and administrative bodies to carry out the necessary tasks. Consequently, Kenya had hardly started to build the required capacity to fight money laundering. Meanwhile, the CSAR lists UN Conventions that Kenya has signed: The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988; UN Resolution 1373 on Prevention and Suppression of the Financing of Terrorist Acts; the UN Convention against Trans-national Organised Crime (Perlamo Convention); and the UN Convention for the Suppression of the Financing of Terrorism, 1999. Kenya is also a member of the East and Southern Africa Anti-Money Laundering Group, a regional forum on Anti-Money Laundering (AML).

The CSAR outlines the domestic actions taken and those underway. On April 25, 2003, a National Taskforce on Money Laundering was set up; the taskforce helped to draft the AML and Proceeds of Crime Bill, 2005 and the Suppression of Terrorism Bill, which were still in Parliament. The country's Narcotic Drugs and Psychotropic Substances (Control) Act No. 4 of 1994 does have a bearing on AML, except that it is confined to drug trafficking activities only.

In 2000, the Central Bank of Kenya issued prudential guidelines for the financial sector based on the Know Your Customer principle of the Basle Core Principles for Effective Banking Supervision. However the CSAR notes that the lack of appropriate legislation "inhibits enforcement of the regulations." The same is apparently the case for the Capital Markets Licensing Requirements Regulations 2002, issued by the Capital Markets Authority of Kenya, which addresses money laundering based on the same Basle principle just mentioned. The government is trying to strengthen law enforcement units in ways that would help them to tackle money-laundering activities; for instance, the CSAR cites the strengthening of the Anti-Narcotics, Anti-Fraud and Anti-Terrorism units of the police force. Finally, the CSAR notes that the AML and the Proceeds of Crime Bill 2005 was designed to satisfy the 40 recommendations of the Financial Action Task Force.

ii. Findings of the CRM

Corruption

The CRM found that, indeed, in the fight against corruption a sound legal basis exists, as are the administrative and organisational structures. The

authorities are working on strengthening implementation and follow-through in enforcement of the laws. The CRM inquired about the lack of clear evidence that substantial success had been achieved.

The authorities believed that the institutions and organisations set up to address corruption were working reasonably well. An Anti-corruption Action Plan had also been agreed with the major development partners. They emphasised that the fight against corruption should be seen as a process rather than as one big bang event. They reiterated some of the details of their programmes and policies that had been put in place to continue the attack on corruption.

Implementation, the government explained, had been delayed by a number of difficulties that had been underestimated. The Acts took time to operationalise, including putting in place the required organisational arrangements. For instance, in the course of recruiting required personnel, advertisements had to be put out for positions, and appointments made. Another constraint was that those accused of corruption were putting up determined and spirited legal fights. The courts had to be cleaned up to ensure their integrity in enforcing the laws, and this involves the hiring and firing of judicial personnel.

During the CRM consultations, the Attorney General stated that there were more than 70 prominent cases in court. The biggest challenge faced, according to the government representatives, came from the fact that in many areas corruption involved networks and it was not easy to totally eliminate such networks in one swell swoop. Hence, a persistent and resolute onslaught is called for. Moreover, the authorities explicitly expressed the view that corruption at the highest political levels had to be reduced if success at lower levels was to be achieved. All in all, they underlined that the current government was fully committed to the tasks required.

The authorities acknowledged that some capacity problems existed in the bodies that had been set up, and that reorganisation of the overall structure would also be useful. By the time of the mission visit, the President had still not signed the Public Procurement and Disposal of Assets Bill. Kenya had also not ratified the African Convention on *Preventing and Combating Corruption*. However, the authorities argued that, as a matter of principle, in their view, it was not necessary to formally sign or ratify a convention if their institutional and organisational framework were already in conformity with the requirements of the convention.

Money Laundering

The CRM found that the Anti Money Laundering (AML) and the Proceeds of Crime Bill 2005 had been passed by Parliament. What remains is for the task of operationalising the Act to begin in earnest. In the meantime, the government would continue its efforts to strengthen law enforcement

units in ways that would help them to tackle money-laundering activities, for instance, the strengthening of the Anti-Narcotics, Anti-Fraud and Anti-Terrorism units of the police force. Nevertheless, the authorities were already expressing concerns that the capacity building requirements may be enormous.

Recommendations

The Panel recommends the following:

- The Kenya Anti- Corruption Commission (KACC) is encouraged to issue a detailed report on the state of the fight against corruption and the factors that have slowed down implementation. The Attorney General and the head of KACC should then hold a news conference to release the report once it is completed.
- As regards Anti-Money Laundering, the authorities should earnestly commence the task of operationalising the Proceeds of Crime Act 2005. The Government of Kenya to do a self-assessment as soon as possible to ensure that the Kenya national system (institutions, organisations and operational procedures) for combating money laundering and terrorist financing comply with the Forty Recommendations of the Financial Action Task Force (FATF) on money laundering. The authorities would, after that, be encouraged to invite peer review of its systems via technical assistance from the international financial institutions, namely, the IMF or the African Development Bank, as desired. [*CBK, National Taskforce on Money Laundering*]

4.3.5 OBJECTIVE FIVE: ACCELERATE REGIONAL INTEGRATION BY PARTICIPATING IN THE HARMONISATION OF MONETARY, TRADE AND INVESTMENT POLICIES AMONGST THE PARTICIPATING STATES

i. Summary of the CSAR

The CSAR states that Kenya is a member of the resuscitated East African Community (EAC), as well as the Common Market for Eastern and Southern Africa (COMESA). There is not as much discussion of the benefits of membership in COMESA as there is of membership in EAC, where the benefits are hailed as positive for Kenya in light of enhanced international trade transactions with the other two members (Tanzania and Uganda). Within the EAC, tariffs and other aspects of customs are being harmonised, as are banking supervision and the payment systems.

Challenges are noted regarding the integration. The short to medium-term effects of tariff harmonisation may adversely affect customs revenue receipt, and the unification of the markets of the three countries may adversely affect producers in Tanzania and Uganda and favour producers in Kenya, raising the issue of whether some compensation scheme may be useful to smooth the adjustment process. Moreover, the national survey for the APRM exercise revealed that a large fraction of Kenyans were quite ignorant of Kenya's major integration activities. For instance, 33.7 % of interviewees were aware of the EAC and 55.3 % were not aware of any regional integration block. The CSAR stressed the need for some kind of sensitisation campaign to educate the public about the country's integration activities, especially since the survey revealed that the people were aware of possible gains from regional integration.

ii. Findings of the CRM

Kenya is a member of the resuscitated **East African Community (EAC)** comprising Kenya, Uganda and Tanzania, which has been designated as one of the pillars of the African Economic Community.

When the EAC collapsed in 1977, the three member states lost over sixty years of co-operation and the benefits of economies of scale. Each of the former member states had to establish services and industries that had previously been provided at the Community level at great costs and at lower efficiency.

In essence, the EAC made considerable political and economic sense and it was inevitable that it would be revived once the political climate in the region stabilised. The East African Community was finally revived on 30 November 1999, when the Treaty for its re-establishment was signed. It came into force on 7 July 2000. The reinvigorated East African Community (EAC) articulates itself as based on the principles of good governance, deemed to include adherence to democratic principles, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality and, most pertinently in this context, "recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights (ACHPR).

This new EAC treaty envisages an economic and, ultimately, political union of the three countries. A further treaty signed in March 2004 set up a customs union, which commenced on 1 January 2005. Under the terms of the treaty, Kenya, the richest of the three countries, will pay duty on its goods entering Uganda and Tanzania until 2010. A common system of tariffs will apply to

other countries supplying the three countries with goods.

In addition to membership of the East Africa Community (EAC), and the Common Market for Eastern and Southern Africa (COMESA), the CRM notes that Kenya is also a member of Inter-Governmental Authority on Development (IGAD). The CRM raises the issue of rationalisation of membership of integration arrangements. It was agreed that there was a need for a strategy to avoid, or to cope with, possible policy conflicts between EAC and COMESA over the medium-term.

The mission also found that the authorities were not surprised that many citizens are insufficiently informed about the country's integration activities. They agreed that more needs to be done to sensitise the public about Kenya's activities in regional integration.

iii. Recommendations

The Panel recommends that the Government of Kenya undertake the following:

- Together with other key actors in Tanzania and Uganda continue to reinvigorate the East African Community [*Government of Kenya*].
- Do an analysis and address the issue of rationalisation, with a view to designing a strategy to avoid, or to cope with, possible policy conflicts between EAC and COMESA over the medium term. [The Ministry of Finance and the Central Bank of Kenya].
- The general public to be sensitised about Kenya's activities in regional integration. The traditional ways of going about such sensitisation be utilised, namely, publications; radio and television programmes; informing the public about government objectives and activities; and engaging the public in open forums, discussions and debates on integration issues. [Ministry of Regional Cooperation, Ministry of Finance, CBK]

CHAPTER FIVE

5. CORPORATE GOVERNANCE

“Corporate governance is concerned with the ethical principles, values and practices that facilitate holding the balance between economic and social goals and between the individual and communal goals. The aim is to align as nearly as possible the interests of individuals, corporations and society within a framework of sound governance and common good”.

Objectives, standards, criteria and indicators for the APRM - 6th Summit of the NEPAD Heads of States and Government Implementation Committee, 9 March 2003, Abuja-Nigeria

5.1 OVERVIEW

The significance of corporate governance is now widely appreciated, both for national development and as part of the international financial architecture, as a lever to address the converging interests of competitiveness; corporate citizenship; and social and environmental responsibility. It is also closely linked to the issues of efficiency and corruption.

Corporate governance is increasingly recognised as an important element of sustainable private sector development, which in turn creates economic growth and employment, and therefore contributes to the alleviation of poverty. Strengthening corporate governance is critical to improving the business environment and access to capital, ensuring appropriate risk management, increasing productivity and competitiveness and supporting the fight against corruption. In doing so, corporate governance assists in the strengthening of the overall international financial system, and reduces the vulnerability of developing and emerging markets to financial crises .

Overall, the Country Self Assessment Report (CSAR) on Corporate Governance covers almost all of the issues relevant to the Kenyan context. It could be presented to other APRM countries as a model of best practice in terms of data collection in the self-assessment process, designing a truly participatory process and objectively analysing the outcomes of the consultations. Together with the CSAR, Kenya submitted a draft Programme of Action (POA). However this initial POA was very broad and presented a whole list of issues and proposed solutions which are not readily applicable. Moreover, the course of action was not charted.

Following the completion of the Country Review Mission (CRM), this report has been prepared to serve as the basis for focusing on the issues raised in the

CSAR and as an additional resource that elaborates on the process in which the Kenyan Government and other stakeholders in the country have engaged to improve corporate governance standards in the country. It is based on Kenya's CSAR, the background paper prepared by the APRM Secretariat and findings during the CRM. The Corporate Governance Team met with diverse stakeholders, including several government and professional bodies such as the Central Bank of Kenya (CBK), the Nairobi Stock Exchange (NSE), the Capital Markets Authority (CMA), the Institute of Certified Public Accountants (ICPAK) and the Kenya Chapter of the Association of Chartered Certified Accountants (ACCA), among others.

The CRM also conducted visits to the regions allowing for further understanding of the realities of the Kenyan corporate world. Interactions were also held with women, youth, disabled persons, and marginalised groups. In addition, the mission met with members of the Asian business community, which plays a significant role in the Kenyan private sector.

Kenya has the potential of being an economic giant in East Africa. It has relative political stability in a turbulent sub-region, a vibrant economy, multi-party democracy since the early 1990s, a sound legal system, sophisticated financial and capital markets and a well -educated workforce and a hardworking population. In general, awareness on corporate governance values and principles, albeit a recent phenomenon, is growing in Kenya. These are being disseminated by various national organisations. However, despite making substantial progress in the field of corporate governance, there are still some palpable weaknesses and these relate to:

- a lack of predictability of government policy affecting business;
- inadequate enforcement and monitoring of corporate compliance with the adopted regulations and laws;
- the need for restoration of trust and confidence in the judiciary and order institutions;
- the pervasiveness of corruption;
- the insufficient and uneven development of infrastructure;
- the scarcity and high cost of utilities; and
- Widespread insecurity.

In addition, corporate governance development is hampered by ethnic politics and regional imbalances, as indicated in the CSAR.

In what follows, we appraise the state of corporate governance in Kenya. The next section evaluates the record of implementation of the stipulated standards and codes while the key APRM objectives are the focus of section 5.3.

5.2 IMPLEMENTATION OF STANDARDS AND CODES

i) Summary of the CSAR

The CSAR ascertains that Kenya has signed, ratified, adopted and attempted to comply with a number of internationally accepted standards and codes, amongst which the most significant include:

- Principles of Corporate Governance (OECD and Commonwealth);
- International Accounting Standards (IAS);
- International Standards on Auditing (ISA);
- Core Principles of Effective Banking Supervision (Basel I);
- Core principles for Securities and Insurance Supervision and Regulations;
- African Charter on Human and Peoples Rights;
- Labour Codes of International Labour Organisation (ILO); and
- Codes on Industrial and Environmental Safety and Hygiene of the World Health Organisation, and other International Agreements.

The CSAR documents an impressive number of laws and institutions that have been passed by the government, in conjunction with private sector organs or independently. As a result of ongoing efforts to put in place a good corporate governance framework to meet international benchmarks in Kenya, it notes an improvement in the corporate governance environment in the country. The CSAR asserts that most listed companies are now adopting and implementing good corporate governance practices. However, it admits that there is still much to be done to ensure that good corporate governance principles are adopted, applied and implemented in all non-listed companies, micro and small scale enterprises, cooperatives and community based organisations.

(ii) Findings of the CRM

The CRM observes that Kenya has, indeed, acceded to, ratified and adopted the most significant international standards and codes listed under the APRM framework, which have set up agreed benchmarks for good conduct and practice in corporate governance. However, the mission was not able to confirm the adoption or application of the following additional and relevant standards and codes: principles and guidelines for effective insolvency and creditors' rights systems; core principles for systematically important payments system; the financial action task force's 40 recommendations against money laundering and the 8 special recommendations on combating terrorism financing, which are all relevant when it comes to market integrity, insolvency, payment and settlement in companies and the financial sector.

There are several challenges that the government and the corporate sector need to address. First, there is a need to apply corporate governance standards and principles beyond big companies, many of which are foreign-owned. More attention should be given to the small-scale enterprise sector, which accounts for about 18% of the GDP. Second, attention should also be given to the effective application of the codes and standards, as this aspect remains problematic. Third, the enforcement of codes and standards has been very patchy as the capacity of some regulators and supervisors is constrained (for

example the Ministry of Labour's inspection and enforcement of labour codes). Fourth, there is the need to improve the legal framework governing accounting and financial reporting, the professional education and training arrangements, the professional associations, and enforcement mechanisms. Lastly, there is also the need to develop appropriate capacity-building initiatives, through implementation of an action plan that develops accounting and auditing practices and brings about improvements in compliance with international standards.

The CRM found that the core principles of corporate governance are not adhered to by many non-listed companies and SMEs generally, although these subsectors constitute a very high proportion of the commercial sector in Kenya, with some non-listed companies owning assets larger than some companies listed on the NSE. Although the CRM found that the Institute of Directors had engaged in widespread training programmes for board directors with the intention to cover all companies in future, there is the issue of the effective application of the provisions of the principles relating to the composition of board committees, the holding of the AGM, the independence of non executive board directors and the rights of minority shareholders, especially in the area of participation and influencing the AGM agenda.

The corporate governance framework does not provide for the pooling of the voting rights of minority shareholders, and often, minority shareholders do not receive timely communication on the agenda of their AGM meetings. Decisions are often made by majority shareholders and the AGM often appears as a forum to simply endorse decisions. Moreover, there is no systematic training for shareholders on their rights and duties, and the Companies Act does not provide for mechanisms to detect and investigate insider trading or for the assessment of individual directors and the board. In principle, many corporations do not comply with the provision of the codes relating to setting up internal control systems for risk management mitigation.

Kenya has adopted the International Accounting Standards (IAS) and the International Standards on Auditing (ISA), but there is still a wide gap in complying with and enforcing these standards relative to best practices. There is also a need to revise the curriculum for the training and regulation of accounting professionals since the current arrangement of having three regulatory bodies under the Accountants Act (1977), namely the Institute of Certified Public Accountants of Kenya, (ICPAK), the Registration of Accountants Board (RAB) and the Kenya Accountants and Secretaries National Examinations Board (KASNEB), is cumbersome and leads to coordination problems.

The CRM confirms that Kenya has not yet ratified the Principles of Insurance Supervision and Regulations, and does not have adequate regulatory mechanisms in place in the insurance industry. It is estimated that there are less than 300,000 life policies in Kenya. This low level of coverage has resulted in more expensive private sector solutions including *harambees*. A task force has,

however, been established to speed up the formation of an agency to regulate the insurance industry.

The CRM also verified that Kenya has ratified the core ILO conventions with the exception of convention 87 related to the freedom of association. Kenya has also ratified convention 182 related to the worst forms of child labour. In spite of a demonstrable commitment to the rights of workers, the CRM notes that some commercial enterprises and parastatals do not comply with these international instruments. There are widespread violations of workers rights in Kenya and instances of child labour abound in areas such as mining and in the EPZs.

(iii) Recommendations

The Panel recommends the following:

- Corporate governance regulatory institutions provide for the enforcement and effective application of the codes and standards to which the business sector may have already voluntarily subscribed. [*Corporate Governance regulatory institutions*]
- The revised Companies Act be passed and enacted expeditiously by Parliament.

The revised Companies Act should include provision for:

- a) safeguarding the effective practice of good corporate behaviour;
 - b) protection of minority shareholders' rights;
 - c) training and education of shareholders and the public, especially on the benefits of transparency and ensuring effective performance; and
 - d) proper assessment of directors and the boards.
- The Accountants Act and related regulations be revised by government to achieve a legal and regulatory framework under which the use of financial statements, auditors, and regulators will be required to ensure high quality financial reporting. [*Ministry of Finance, Law Reform Commission*]
 - Appropriate legal and institutional steps be taken by the public authorities and corporate sector organisations to differentiate between financial reporting requirements for listed companies and financial institutions and those for small and medium size enterprises. In this regard, the International Accounting Standards (IAS) be made legally mandatory for large enterprises and financial institutions and simplified reporting requirements be established for SMEs. [*CMA; NSE; Registrar-General's Office*]

- An adequate insurance industry regulatory framework be developed with the enactment of an Insurance Act, which will provide amongst many other institutions, the Insurance Institute of Kenya as planned, and include provisions for regulating the NSSF and RBA. [*Ministry of Finance, Ministry of Trade and Industry*]
- Labour Laws and Codes be revised to strengthen enforcement and compliance. The revised code to include incentives and protection for whistleblowers reporting the mistreatment of children and workers. Kenya to consider ratifying ILO Convention 87 relating to the freedom of association in order to maximize the realisation of workers' rights.
- The capacity of organisations involved with corporate governance regulation, especially the Centre for Corporate Governance (CCG), the Institute of Certified Public Accountants Kenya (ICPAK), the Central Bank of Kenya (CBK), the Capital Markets Authority (CMA), and others, be strengthened through awareness creation and deployment of relevant skills.
- An inter-institutional task force be established to review the state of implementation and reporting of all standards and codes acceded to, adopted, signed and ratified by Kenyan authorities, institutions and organisations, and act expeditiously to address weaknesses where ratification and compliance is incomplete. [*Law Reform Commission, Ministries of Justice, Finance, Labour and Human Resource Development*]

5.3 ASSESSMENT OF THE PERFORMANCE ON APRM OBJECTIVES

5.3.1 OBJECTIVE 1: TO PROMOTE AN ENABLING ENVIRONMENT AND EFFECTIVE REGULATORY FRAMEWORK FOR ECONOMIC ACTIVITIES

ii) Summary of the CSAR

Since independence, Kenya has maintained a leadership position in Eastern Africa, especially in the spheres of the economy and financial markets. However, with one of the worst performances in terms of corruption and a lacklustre growth rate, the country has in recent years been grappling with maintaining its image as an attractive investment destination. Kenya has in place a number of regulatory and supervisory agencies overseeing many economic sectors, but many of these agencies lack the necessary capacity, resources, and political will to play their roles effectively. The banking, capital markets, and pension fund industry are all regulated. However, the insurance industry lacks the necessary regulatory framework.

Main Categories of Business

The main trading and business firms in Kenya are sole proprietorships, partnerships, cooperatives, registered private or public companies under the Companies Act (1962) and branch offices of foreign companies. Sole proprietorships must be registered with the Registrar of Business Names. Partnerships are administered under Common Law, although the terms and conditions of a Partnership Agreement take precedence over Common Law. The Companies Act (1962) restricts the number of partners to a maximum of 20. The membership of private companies is restricted to between 2 and 50 shareholders. The minimum number of shareholders in a publicly listed company is seven. Foreign companies incorporated outside Kenya can operate in Kenya without having to register locally.

The CSAR indicates that there were 115,544 companies registered under the Companies Act in February 2005 of which approximately 5000 enterprises were public companies, 2760 were foreign owned and 48 were listed on the Nairobi Stock Exchange (NSE). In addition, as of 2003, another 412,048 registered businesses operated under the Registration of Business Names Act, and there were 10,297 cooperative societies of which 4200 were Savings and Credit Cooperative Societies (SACCOs), and 4166 agro-allied.

Legal and Regulatory Framework

The CSAR notes that many laws regulating registration and conduct of business inherited from the colonial era have not undergone revision or amendment. Consequently, major amendments to the law relating to companies, investments, partnerships and insolvency are needed. According to the CSAR, these amendments are still being awaited. In spite of a plethora of legislative instruments and procedural regulations, the Kenya court system is regarded as slow and inefficient. The Law Reform Commission, however, is currently reviewing the Companies Act and other scattered business laws. Public service delivery is also being reformed as part of the Governance, Justice, Law, Order and Security (GJLOS) programme.

The background paper notes that Kenyan courts are slow and inefficient and that investors generally are hesitant to take recourse to local courts due to lengthy litigation procedures oftentimes tainted by corrupt practices. The CSAR corroborates this finding and lists the following problem areas:

- Many business people feel that the civil procedure rules are too technical and obscure, making the judicial process both inefficient and excessively expensive.
- The time lag between the institution of commercial suits and their determination in court is extremely long, which tends to dissuade

- prosecution of commercial disputes through the courts.
- Lack of clarity on the jurisdiction of the Commercial Court faced by businesses and individuals dealing with commercial disputes in the areas of copyright matters, labour issues and shareholder rights.
 - The report by Foreign Investment Advisory Services (2004) indicating that the problems of the court system include backlogs in hearing cases with resultant delays and a succession of adjournments.
 - Corruption in the Judiciary among the professional staff and the Court support staff has been cited as a key problem.
 - The judicial system is clearly suffering from years of under-investment in basic infrastructure such as court buildings and modern technology.
 - Outside Nairobi, civil (including commercial) court cases tend to be allocated just one day a week for hearings, with resulting backlogs

The CSAR also notes that laws governing insolvency and bankruptcy are ineffective and insensitive to unsecured creditor rights. They fail to protect companies from bankruptcy proceedings and give debtors a new lease of life. Thus, few companies survive receivership.

With respect to the efficiency of arbitration, the CSAR notes that while the Arbitration Act of 1995 is fairly new, it still has some palpable weaknesses that need to be addressed, including the lack of provision of a time limit within which arbitration should be conducted. It notes the problem of the lack of use of Alternative Dispute Resolution (ADR) in Kenya compared with many African States. Judges and lawyers have resisted ADR as they perceive that it is usurping the court system and their livelihoods.

There is, however, a consensus amongst the business community that ADR should be adopted as part of dispute resolution mechanisms in the Kenya legal system. In this regard, the CSAR refers to a Bill formulated by the Ministry of Justice and Constitutional Affairs entrenching ADR in the legal system as part of the GJLOS reform programme.

The CSAR acknowledges that the process of registering, licensing and deregistering business enterprises has been slow, cumbersome and a hindrance to business activity. The business registration system is especially burdensome to SMEs. In terms of business licensing, Kenya relies heavily on licenses as a mechanism to control business entry. Every business is subject to some form of license and some businesses require multiple licenses. This is a hindrance to business activity.

Under the new Investment Act of 2005, the government has instituted clear measures geared towards reducing the number of procedures and time required to register a business. The main issues remaining appear to be ensuring that all the problems cited by business are addressed by this legislation and verifying the implementation of the government measures

outlined in the Act.

There is no clear legal framework for operation of Micro Finance Institutions (MFIs) which lend to the SME sector. At present, according to the CSAR, finance institutions that cater for the SME sector can operate under one of eight different statutes. The multiple nature of legislation has made it difficult for MFI regulation by the government. A Micro Finance Bill is under formulation whose purpose is to ensure MFIs adopt and implement prudent credit and other policies and services to small business. The issue is whether the Microfinance Bill addresses the problem of differing statutes governing MFIs and whether the Bill will be passed into law in the near future.

Existing legislation under the Kenya Bureau of Standards (KBS) and the Kenya Industrial Properties Institute (KIPI) has not succeeded in stamping out counterfeit products, which are widely available in the market. The CSAR links this problem to the cross-cutting issues of corruption and Kenya's porous borders. Although the government has set up the Copyright Task Force in the Attorney-General's Chambers, it still underlines the need for a new law banning counterfeit and contraband products from the market.

Investment Climate

Kenya has a single umbrella organisation for the private sector (KEPSA). It has however been acknowledged in the self assessment report that the Kenya private sector is not well organised and does not sufficiently engage the government on a regular basis. Factors negatively affecting the investment climate are elucidated upon, including the impact of poor public service delivery, corruption and money laundering, capacity and skills shortages, growing insecurity and economic factors such as decaying infrastructure, high taxes and non-availability of capital. The cost of doing business is also high due to security and infrastructure problems, including lack of adequate power, water and sewerage facilities.

According to the 2004 World Bank Investment Climate Survey of Kenya, firms lose almost 10% of sales per year due to power outages, with 2/3 of firms losing capital equipment due to power outages. Moreover, the same study reports that almost a third of firms reported criminal acts of theft or arson in the previous year, with the average firm spending \$1,300 on crime prevention in 2002. The average cost of crime was 4% of sales, with the additional cost of security at 2.7% of sales.

Public Service Delivery

The CSAR identifies the poor implementation of government policies and

programmes as a major contributory factor to the rather harsh investment climate. It bemoans the dearth of incentives to promote agriculture and agricultural based industries and criticizes Kenya's regional and international trade policy stance. The report notes that Kenyans are of the opinion that other countries impose trade restrictions on Kenyan goods, especially tea, and that this detrimental behaviour is not reciprocated by their government.

Public service delivery is identified as a key issue for Kenya in the self-assessment. The capacity to effectively police and enforce compliance is generally lacking. Service delivery has been especially poor in the areas of business registration, business licensing, and commercial dispute resolution, access to land as well as customs and trade facilitation. In the area of commercial disputes, although steps have been taken to address the problem, there is a backlog in the Kenyan court system, and Alternate Dispute Resolution (ADR) mechanisms are not well developed.

Several concerns emerge with regard to access to land. State land in the past was the main source of land supply for investment. Further allotments have been put on hold because of previous corruption in this area. The state is also considering revoking previous allotments owing to suspected corruption in the transactions. Most of these have already been sold to third parties at competitive market prices. This is a matter of concern to investors, knowing that land property can be used as collateral for bank borrowing. There are also other issues including restriction of foreign ownership of land under the Land Control Act.

The CSAR outlines the differences in performance of various government departments and agencies responsible for regulating, monitoring and supervising corporate governance related areas. It notes that institutional capacity is a major factor affecting performance, especially in the following authorities rated moderately effective: NEMA, Commissioner for Insurance, the Kenya Bureau of Standards (KBS), the Communications Commission of Kenya, the Nairobi Stock Exchange (NSE), the Transport Licensing Board, the Electricity Regulating Board, and the Kenya Roads Board. Cooperatives were rated least effective. Customs procedures and systems have also been cited as contributing to excessive delays in processing imports and exports. The Kenya Revenue Authority (KRA) has a successful track record in revenue collection, although it is widely regarded by the business community as obsessed with maximizing revenue collections.

In the insurance sub-sector, the main problem identified by the self – assessment report is the lack of a mechanism to deal with complaints from policy holders and the public, as well as the failure of government to put in place proper legal and regulatory mechanisms to regulate the industry, hence the recent collapse of some insurance companies. The Association of Kenya Insurers has recommended the establishment of an Insurance Regulatory Authority. The Finance Bill initiated in 2005 also proposes the establishment of a Policy Holders Compensation Fund to ensure that policy

holders are covered in the event that an insurer becomes insolvent.

Corruption and Money Laundering

Kenya has gained notoriety for high level corruption, and this has been denounced by Kenyans as well as the international community. Reports by bodies such as Transparency International note that corrupt activity indicts even top officials in the government. The Transparency International survey of perceived corruption regularly ranks Kenya among the most corrupt countries in the world. The country is said to be entrenched in a regime of poor accountability, and lacking in due processes and procurement instruments. Corruption in both the private and public sector imposes an additional cost to doing business in Kenya. The self-assessment cites the example of the Port of Mombassa, where the Port Authorities regularly demand bribes (approximately 75% of the time) with an average bribe of KShs 9,700 paid (2001 Transparency International Kenya Survey). Kenya is a founder nation of the Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG).

Capacity and Skills Development

The CSAR alludes to a shortage of high level skills in appropriate levels of management, accounting, business and entrepreneurship. . It refers to the expert opinion that Kenya's manufacturing sector has stagnated due to the inability to move to high quality products and a poor recognition of the role of innovation and technology upgrading.

Impact of Social, Political and Health Security on Investment Climate

The self-assessment notes that 87.5% of experts surveyed opined that insecurity is a major issue affecting business growth and sustainability in Kenya. This finding is also corroborated by the National Household Survey and focus group discussions. Kenyans also perceive that the political uncertainty created by wrangling in the ruling NARC coalition and the HIV/AIDS pandemic through lost skills and huge medical bills impact negatively on business activity.

Infrastructure Development

With respect to infrastructure, the-self assessment presents several infrastructure bottlenecks in Kenya, including the fact that only 14% of the road network is paved, that 58% and 61% of non-exporters and exporters respectively were dissatisfied with the rail service, that the Port of Mombassa is poorly perceived by business as a result of delays in custom clearance and the massive paperwork involved in transporting goods through the port, that

the telecommunications sector in Kenya impacts on business through poor service and high costs, and that the power sector is high cost, inefficient and unreliable due to power outages

Competitiveness of the Private Sector

Many Kenyans eke a living from the hawking of wares. This sector is said to have a huge potential for improving the rate of economic growth in the country if it is regulated and enabled. Sessional Paper No. 2 of 2005 on the “Development of Micro and Small Enterprises for Wealth and Employment Creation for Poverty Reduction” was approved by Parliament in August 2005. The operationalisation of this paper is an urgent matter that needs to be addressed. It is noted in the paper that Small and Medium Enterprise (SME) sector employed 4.1 million Kenyans in 2000, a number that grew to 5.1 million by 2003. Despite this high growth rate, the CSAR notes that Kenyans feel the government is not paying enough attention to the SME sector.

A related issue to the growth of SME firms in Kenya is the growing informality of the Micro and Small Enterprise (MSE) sector business environment. The MSE sector is the smallest segment of the SME sector. It is noted in the CSAR that the informal sector share of employment rose from 48.9% in 1993 to 74.3% in 2002. Further, 88% of MSE firms operate without registering as businesses (61% operate with no license whatsoever). This development has an impact on other issues of concern to Kenya, including maintenance of labour standards and access to finance and land. Moreover, the CSAR notes that hawkers in Kenya face hardship precisely because they are not registered as businesses. As a result of lack of registration, they face constraints such as the destruction of wares by local authorities, especially the city council police units.

Access to Finance and Financial Services

The main commercial banks have been consolidating and withdrawing services from many rural areas, which have resulted in the reduction of the availability of banking services. Moreover, the majority of Kenyans rate the lack of access to credit and the high cost of credit as the greatest impediment to business growth in the country. Availability of collateral is a serious impediment to business, especially in Coast Province where land titles are not available. Banks consider SMEs and small depositors high risk and consequently charge very high interest rates in lending to this business group. This has led to the mushrooming of unregulated microfinance institutions and community based savings schemes, as well as money lenders who charge prohibitive interest rates.

Deficiencies in the legal and the regulatory framework in Kenya have

also been alluded to as contributing significantly to the problem of lack of access to credit. Laws relating to secured transactions are fragmented and outdated. As there is no single regime for secured transactions, this hinders acquisition of secured credit through taking equipment, inventory and accounts receivable as collateral. Another reason that can be advanced for this is the absence of efficient enforcement mechanisms in law to protect creditor rights. Further, the lengthy and expensive resolution of disputes relating to contract enforcement realisation of collateral and bankruptcy procedures is an additional impediment to business.¹⁸

Capital Markets

The self-assessment notes that, currently, there are 48 companies listed on the Nairobi Stock Exchange (NSE). This number has been static over the past five years, and in fact below the 53 companies listed in 2003. This is abysmally small compared to the 115,000 companies registered under the Companies Act, and a matter of concern given the fact that most new offers listed on the NSE are over-subscribed. However, while the NSE is the largest in the East Africa region based on market capitalization, the number of listed companies is small when compared to other emerging markets in Africa such as the South African and Egyptian Stock Exchanges.

The Capital Markets Authority has not been able to attract new listings to the NSE despite its effectiveness in regulation. However, the Minister of Finance has put in place a number of incentives in the 2005 budget to attract more companies to the NSE.

Privatisation of State Owned Enterprises (SOES)

A Privatization Act was passed in 2005 in an attempt to revamp the State Owned Enterprises sector and ensure efficient running of loss making or non-strategic SOEs. In this regard, a Privatisation Commission has been created to spearhead the privatisation process. Views have however been expressed in the self-assessment that privatization may not solve the nagging problems with SOEs in Kenya.

ii) Findings of the CRM

Legal and Regulatory Framework

The CRM confirms that the judicial process is deficient in Kenya and that it takes too long to dispense justice in the country. Further, the current Companies Act has not kept pace with the changing business environment and the huge backlog that hinders speedy dispensation of commercial disputes is a major concern to the business community. The introduction of special courts,

¹⁸ Macboka Penina, *The Need for Efficient and Effective Secured Transaction Regimes in Sub-Saharan Africa: The Case of Kenya*

such as commercial courts, has helped to speed up matters, although many legal cases are still handled by the high courts and generally take a long time to conclude. There is also a need to build capacity in the judicial sector, by increasing the number of judges.

Concerning the legal framework, the CRM learned that the Kenya Law Reform Commission is currently reviewing the Companies Act, Cap 486, together with the Partnership Act and other related commercial laws. The proposed Bills include the Bankruptcy Bill; the Small Claims Courts Bill; the Arbitration (Amendment) Bill; the Anti-Terrorism Bill; the Employment Bill; the Insurance Institute of Kenya Bill; the Kenya Institute of Bankers (Amendment) Bill; the Mining Bill; the Competition and Fair Trading Bill; the Standards (Amendment) Bill; the Public Service Pension (Amendment) Bill; the National Social Security (Amendment) Bill; the Partnerships Bill; the Electronic Communication Bill; and the SACCO Societies Regulatory Bill. The Privatisation Act and the Public Procurement Act were gazetted in 2005.

The enactment of all these laws should improve the business environment. The CRM expressed unease about the pace, transparency and the inclusiveness of the process of the reforms. It voiced criticisms over the risk of duplication in the laws, and advised on the need for serious harmonization with a view to avoiding implementation bottlenecks when they are eventually enacted by Parliament. Further, the CRM learned that Kenya does not have the appropriate internal capacity for legislative drafting. The CRM was not able to clearly establish that the process allows all affected parties to fully understand the new laws and regulations, given the fact that various ministries and bodies in the public sector are seemingly in charge of drafting and promoting the reforms.

While the self-assessment report notes the resistance of lawyers to the use of ADR in Kenya, the CRM was assured that the Law Society of Kenya accepts ADR, provided that it is integrated into the appropriate legal framework and not simply arbitration and conciliation.

The Law Reform Commission (LRC)

The LRC was created by an Act of Parliament to revise outdated laws. A committee within the LRC is undertaking the revision of the 1962 Companies Act. The committee has requested and received input from the public on suggested amendments to this Act. Through the GJLOS Programme, the LRC has also requested a consultant to work specifically on the revised Companies Act, including drafting the Act and ensuring the currency of the legal framework. The revised Act will include changes to legislation in areas such as insolvency, partnership, investment, bankruptcy and related laws. The current time frame envisaged by the LRC for completion and submission of the final draft Companies Act to Parliament is mid-2006. Capacity is also an issue at the LRC. The LRC is thus seeking to hire a consultant who will be

responsible for setting up a legislative drafting section.

The CRM learned that the State Law Office is not the only government agency responsible for revising laws in Kenya. Individual ministries are also responsible for reforming the laws. For example the Ministry of Finance undertakes reforms such as the Microfinance Bill and Privatisation Bill and the Ministry of Labour is in charge of the revision of the Labour laws. The CRM corroborated that the law review process at the Ministry of Labour and the LRC is transparent, participatory and inclusive. However, it is of the opinion that there is a need to ensure that similar reviews in other government ministries such as the Ministry of Finance are equally open and transparent.

Working Committee on Regulatory Reforms for Business Activity in Kenya

The Working Committee on Regulatory Reforms for Business Activity in Kenya is made up of representatives from the State Law Office, the Ministry of Trade and Industry, the Ministry of Finance and the Law Reform Commission. Its mandate is to study all the license requirements of the government and to streamline the business licensing process. The business licensing reforms initially planned to review 600 licenses. The working committee has since found out that it must review approximately 1000 licenses. Under Phase I of the reforms, 35 licenses had been abolished and 4 licenses simplified. Among the reforms initiated is provision for the Single Business Permit under the Local Government Act. The 35 licenses will be eliminated once the Statute Law Bill of 2005 (Miscellaneous Amendments No. 2), is enacted by Parliament, with an effective date of 1st January 2006. The Bill also requires presidential assent. Phase II of the reforms involves further reviewing of 34 licenses identified in Phase I, as well as reviewing 32 additional licenses and developing a master list of all business licenses in Kenya. Phase II was due for completion on September 30, 2005. Phase III of the reforms will involve monitoring and evaluating Phase I results, as well as examining all licenses not reviewed in Phases I and II. Phase IV includes the development of an electronic registry of business licenses in Kenya, as well as establishing a permanent monitoring and evaluation capability that reviews all new license requirements as part of a new permanent quality review unit.

The CRM observes that the business registration reforms are already yielding fruitful results. The legal framework is now in place: it currently takes 7 days to register a company at the Registrar General's Office and 24 hours to obtain Kenya Revenue Authority registration, among other improvements. Nevertheless, business licensing still remains a critical impediment to business undertaking in Kenya. In meetings with stakeholders in the provinces, business licensing came up strong as one the most serious difficulties that small-scale enterprises encounter. Traders often have to obtain multiple licences, which require yearly renewal. Since the system is not decentralised, small-scale entrepreneurs have to travel long distances to

Nairobi for this purpose, increasing the cost of doing business in the provinces.

In addition, many often have to pay bribes to obtain the licences or to renew them. Those who cannot access the licences, especially hawkers, are subjected to many forms of harassment. Small-scale traders are continually harassed by police and city council officials, some of who assault them physically and seize their wares.

Revised Labour Laws

The Ministry of Labour has recently completed a review of the labour laws in Kenya. The revisions to the labour laws include regulation on labour disputes, workplace discrimination and harassment. Parliament has not yet enacted the revised laws drafted by the Ministry of Labour in consultation with its tripartite partners – unions and employer representatives. The revised laws include provisions to enforce rulings by the Industrial Court, which are currently challenged at the High Court by employers. Settlements of the Industrial Court are also challenged. Employers can afford to challenge decisions at the High Court, but this is a problem for employees.

Pension and Insurance Industries

The regulatory framework of the pension industry is very weak as is that of the insurance industry. There are plans for the Insurance Commissioner's office to be upgraded to a true insurance regulator. Discussions between the insurance industry and the Institute of Certified Public Accountants of Kenya (ICPAK) on this issue are ongoing.

Social Protection Scheme

There is a need to develop a comprehensive legal framework for social protection in Kenya. This should also involve bringing the NSSF into the ambit of the Retirement Benefits Authority (RBA). The framework should, further, include provisions for the protection of informal workers and those who are expected to lose their jobs as a result of the implementation of the government donor supported programmes, the Investment Promotion Act and the Privatization Act.

Investment Climate

The CRM notes that although government policy has been geared towards encouraging investment in Kenya, foreign investment inflows have been poor in recent years. Kenya has made serious efforts over the past three years to improve the business climate issues such as poor quality of the macroeconomic environment, but the lack of delivery by the country's institutions and the weak technological base are still not being confronted

head-on.

It was also noted that tourism is a major part of Kenya's economy, with the Coast Province and the Game Parks acting as the two major anchors. The tourism industry grew strongly in 2004, with the number of visitors up by 21.1%, and this upward trend was sustained in 2005. Nevertheless, a lack of investment in recent years has led to a shortage of high-class accommodation. Further, the poor road infrastructure, and overall security problems continue to deter potential visitors.

The Investment Promotion Act (2004) is a welcome development. However, the mandatory minimum capital requirement for foreign investors and the requirement that all such investment must be screened by the Kenyan Investment Authority (KIA) are perceived to be highly restrictive impediments to foreign investment. Secondly, the process for acquiring work permits in Kenya is lengthy, and the Immigration Department does not provide clear guidelines about the timeframe in which an application is to be reviewed. The VAT system is also an issue for investors as businesses are subject to delays in VAT refund by the Kenya Revenue Authority (KRA). The CRM also learned that the process of acquiring agricultural land is long and unpredictable, although under the proposed new Constitution, freehold land and leasehold land with terms in excess of 99 years owned by non-citizens will be converted to leasehold terms of 99 years.

A key challenge for Kenya is productivity improvement of the SME sector. This can be accomplished using benchmarking of SMEs against national and international competitors. The CRM notes that this process would provide a basis for self-improvement, especially if studies were followed up with training opportunities in areas of deficiency.

Public Service Delivery

In the regions, entrepreneurs complain about poor public service delivery and failed projects in the past. Specific examples mentioned include the following:

- The Fisheries Department has supported and developed fisheries in Lake Victoria, but similar efforts have not been extended to fisheries in the Indian Ocean.
- The collapse of the Tana River irrigation scheme. The revival of the scheme would not only increase agricultural employment in the surrounding region, but would also provide for regional food security.
- In order to obtain a land title, a visit to Nairobi is necessary for people living in the provinces. Further, the demarcation of family owned land is an expensive and long process, which makes it difficult for the poor to obtain title deeds.

- In North Eastern province, the absence of adequate legal and judicial

structures in the region was noted as was its deleterious effect on security and criminality

The GJLOS Programme

The Governance, Justice, Law & Order Sector (GJLOS) Reform Programme was officially launched in November 2003. It has two phases: The Short-Term Priorities Programme (STPP), which commenced in July 2004 and ran until September 2005. The second phase is the Medium-Term Strategy, which began in October 2005 and is designed to run to mid-2009. The primary focus of the GJLOS programme is to attain better service delivery in 32 government departments and 5 ministries by addressing issues of governance, corruption and human rights abuses. Key government institutions saddled with public service delivery, including the police, provincial administrations, public prosecution staff, community service offices and the judiciary are included in the reform programme.

The GJLOS reforms target corruption and specific target outcomes include reducing the incidence and prevalence of bribery, increased compliance with anti-corruption rules and a reduced public perception of corruption. It also entails the reform of commercial laws to promote private sector development. Specific target outcomes, among others, are a lower cost of doing business as measured in cost, time and financial terms. There is also a crime prevention component with a focus on social crime prevention. Specific target outcomes of the programme in this regard include better safety in public places, greater public confidence in the police as well as reduced domestic violence and household crime.

Infrastructure Development

The CRM notes that in the provinces outside Nairobi and the main urban areas, business development is inhibited by a lack of electricity, ICT, water facilities, properly functioning sewer systems, schools and health facilities, among other constraints. This is especially the case in North Eastern Province, parts of Coast Province, especially Upper Tana and the area north of Lamu and the northern parts of the Eastern Province. The lack of adequate infrastructure is a hindrance to the development of a properly functioning economy. In the Coast Province, the Port of Mombassa was singled out as a potential regional economic development catalyst if its management problems and customs difficulties could be dealt with.

Competitiveness of the Private Sector

Kenya has a vibrant entrepreneurial class engaged in diverse activities, a healthy financial sector and an extensive participation of locals in business undertakings. The CRM notes that the formal manufacturing sector represents

approximately 13 % of GDP in spite of employing less than 1.5 % of the work force. By size and rate of growth, the informal manufacturing sector is larger, employing approximately 40 % of the workforce and contributing 18 % of GDP. However, these firms tend to be very small and unproductive.

Members of the Asian community, which plays a significant role in the Kenyan economy raised concerns about systematic discrimination, harassment and extortions by local regulatory and enforcement agents. On the other hand, in interactions with other stakeholders, the mission noted a negative perception against this community and its allegiance to Kenya. Nevertheless, the impact of such practices is detrimental to the Kenyan economy.

The CRM was perturbed that Kenyan firms demonstrated an alarming indifference to, and ignorance of the HIV/AIDS pandemic. While the infection rate in the workforce is estimate at 15 % nationally, some firm managers believe that none of their workforce is at risk. Others, fortunately, have programmes to address the problem, although they are in a minority.

Capacity building for entrepreneurs is a major constraint for Kenyan business. This has been exacerbated by the collapse of the Kenya Management Assistance Programme (K-MAP), which had assisted in management training in the 1980s and 1990s. The Ministry of Trade and Industry has also formulated a Private Sector Development Strategy (PSDS), which allows for better coordination of sectoral development efforts, and whose aim is to ensure that government and the private sector work together to develop private enterprise. The PSDS includes the revival of the KMAP programme and capacity building for entrepreneurs.

Access to Finance and Financial Services

The major banks and finance institutions are present in many of the urban areas and in agricultural regions such as Central Province, Rift Valley Province and Coast Province. For example, in Central Province financing agencies include the Kenya Commercial Bank, the Kenya Rural Enterprises, Cooperative Bank, Equity Bank, Barclays Bank, Bank of Baroda, Family Finance and Kenya Women Finance Trust. However, the CRM found out that major banks were closing rural branches due to low profitability. Further, there are no development banks in Kenya catering specifically for the Kenyan market. There are, however, non-banking finance corporations such as the Agricultural Finance Company (AFC).

The Central Bank of Kenya (CBK) regulates commercial banks and building societies. Due to a lack of capacity at commercial banks, the CBK has decided not to implement Basle II in Kenya. As the Basle I regulatory framework is already in place and all banks are compliant, the focus of the CBK is on risk-based supervision. The CRM was informed that the Banking Act is in the process of being amended to introduce provisions which will safeguard the

interests of borrowers. It was also noted that following past banks' bankruptcies, depositors have not been properly indemnified if at all, resulting in many Kenyans not trusting the banking system anymore. The Bills of Exchange will also be amended to enhance the payments system.

The CBK has started implementing corrective actions identified in the World Bank Financial Sector Assessment Program (FSAP) report for Kenya including:

- Capacity building;
- Recapitalisation and restructuring of banks with a higher proportion of non-performing loans;
- Preparation of risk management guidelines for commercial banks;
- Enforcement and monitoring of penalties for non-compliance with regulations;
- Provisions for risk based supervision; and
- Passing of an anti-money laundering bill and modernisation of payment systems

Access to Finance for SMEs

SMEs and small scale farmers often have to resort to microfinance institutions and in the worst cases moneylenders for their financing needs. These financiers often charge very high interest rates due to lack of adequate collateral, although some microfinance institutions do use inventory as collateral. During consultations with people in the provinces, the CRM found that many people who borrow from microfinance institutions and moneylenders at high interest rates are unaware of the actual interest rate as well as the duration and other repayment terms. This is due to a lack of financial literacy. It was noted at stakeholder meetings that the main problem with lending to the smallest SMEs, which comprise the informal/unlicensed sector, such as hawkers, is the experience that even if hawker stock is used as collateral there is no guarantee that the hawker will not move from the unlicensed premises.

Given the daunting constraints to financing at reasonable cost, a number of SMEs and small-scale farmers are resorting to the Savings and Credit Cooperatives (SACCOS), which offer lower rates of interest, and this encourages borrowing for growth and investment. In Central Province, SACCOS operate in diverse entities such as teachers unions, tea, coffee, rice, milk and transport businesses, among others. During the provincial forums and meetings with representatives of SMEs, it was acknowledged that SACCOS are a good way to access finance for SMEs and small-scale farmers, and that this should be encouraged. But SMEs representatives also complained that SACCOS tend to upgrade their portfolio profile by focusing mainly on salaried workers.

Microfinance Institutions

The microfinance industry has a high cost of financing because current laws do not allow for pooling of funds for lending purposes. To address financial constraints, microfinance institutions (MFIs) have pushed for a microfinance Bill, which has been drafted at the Ministry of Finance. Stakeholders have indicated that under the current draft of the microfinance Bill, the MFIs will need to have a minimum asset base of KSH 60 million, and will be regulated by the Central Bank. The final form of the Act should allow for deposit taking by MFIs so as to lower the cost of financing, which should permit MFIs to lend to SMEs at lower rates of interest. The CRM learned that the Cabinet is redrafting the microfinance Bill and it is expected that the Bill will be enacted before the end of 2005.

Access to Finance for Women

Access to finance for women is more difficult than for men. For example, women experience serious difficulties in opening their own bank accounts in North-Eastern Province although the Arid Lands Management Programme has tried to organise women groups for access to micro finance programmes. In Central Province, women cannot sign loan agreements as they often do not have title deeds for land to use as collateral. Nevertheless, women small business owners in the province acknowledged that some banks such as Equity Bank offered good terms for financing, including low interest rates and a shorter processing time for loans.

Government Initiatives

The government is responding to these concerns with a comprehensive policy framework that seeks to promote SMEs. The framework addresses the issue of effective policy coordination and implementation, which has remained a major challenge in the country. The policy framework also includes the strengthening of the capacity of the department of micro and small enterprise development, (within the Ministry of Labour and Human Resource Development (MHLRD), to play an oversight function, and the establishment of a broad-based and independent national council for small enterprises (NCSE) to advise on appropriate policies for the MSE sector, and to mobilize resources.

The MLHRD is sponsoring a micro and small enterprises (MSE) Act that will provide the appropriate legal framework to support the growth and development of the sector. Further, the MLHRD intends to push for the amendment of the Local Government Act. Cap. 265 as well as the revision of the Post Bank Act to allow the Post Bank to lend to SMEs.

Donor Initiatives

Donor financing of SME development in Kenya is often coordinated or implemented through the Ministry of Trade and Industry. However, SMEs and their representative organisations usually interact with the MLHRD, which has responsibility for the sector within the Kenyan government. The CRM also notes that there is little monitoring or evaluation of donor funded programmes for SMEs. The CRM has neither been able to document the extent to which SMEs and their representative organisations are involved in the implementation of donor programmes, nor conduct an assessment of the impact of these programmes on SME development in Kenya.

The CRM met with representatives from the World Bank and the International Finance Corporation (IFC). These institutions are currently implementing programmes to support the Kenyan government initiatives for strengthening SMEs. The programme consists of two components:

- The SME Solutions Centre by the IFC, geared towards capacity building, access to information, access to finance and creating an enabling environment for business;
- The MSME Competitiveness Project by the World Bank, whose objectives are to increase productivity and employment in the MSME sector by strengthening financial and non-financial markets to meet the demand of MSME; strengthening institutional support for skills development and business management; and reducing constraints on investments. The project aims, amongst other things, at deepening and expanding the reach of financial services and products available to MSME.

To ensure efficiency and accountability, these programmes are being implemented by private sector firms such as Price Waterhouse, Coopers, Deloitte & Touche and Business Partners, a South African firm. It is expected that the programmes will improve access to finance by the MSME sector in Kenya. However, both the World Bank and IFC programmes only cater for the larger SMEs, neglecting very small enterprises. For example, funding through the MSME Competitiveness Project is restricted to businesses with at least Ksh 4 million in capital. Moreover, stakeholders informed the Mission that many of these donor programmes were not well known to the SMEs sector or the general public.

Capital Markets

Kenya has one of the most developed capital markets in Africa, comprising an equity market (NSE) and the Capital Markets Authority (CMA). The Nairobi Stock Exchange (NSE) 20-share index was stagnant at a low level in 2001 and 2002, but doubled in 2003 and has since risen steadily for several reasons,

including rising corporate profits across most sectors, improvement in the economy as reflected in the modest GDP growth rate, and the favourable tax incentives proposed for newly listed companies in the recent 2005/2006 budget. Market capitalization has also grown strongly, reaching KSH409bn (US\$5.4bn) on July 1, 2005 about 50% higher than a year earlier.

There were 47 listed companies in October 2005, as compared to the 48 companies listed at the time of the writing of the CSAR. The CRM is of the opinion that the listing of only 47 companies on the NSE out of approximately 115,000 registered companies in Kenya is not a healthy development, and this is a challenge for the CMA. However, the NSE market capitalization has soared over the last 10 years. Indeed, NSE market capitalization, which was less than \$100,000 fifteen years ago, has now grown to over \$5 billion, with over 1.2 million shareholders. Several companies that have been de-listed from the NSE in the last 5 years were operating in weak sectors, or were foreign owned companies that had been sold to locals, who opted to be delisted. There is also reluctance by many family-owned companies to be listed on the NSE. Available information to the CRM indicates that the main barriers to listing on the NSE include the following:

- A general reluctance on the part of entrepreneurs to attract closer scrutiny from tax and capital market regulators. Understated tax liabilities for non-listed companies is perhaps the largest inhibitor from listing on the NSE;
- The costly listing requirements for SMEs;
- The reluctance to lose control of a firm, especially in the Kenya South Asian community, which may be cultural; and
- Apathy of the government towards privatizing large state-owned enterprises, for example, Telekom Kenya which could serve as a stimulus for capital market development.

The CRM was also informed that the Ministry of Finance had reacted to the issue of few listings on the NSE by lowering the income tax rate for newly listed companies from 30% to 20% in the 2005 budget. As a result, 10 companies are said to be eyeing NSE listing in the near future.

Privatisation

According to stakeholders, the main problem of privatisation in the last fifteen years has been an over politicisation of the issue, and the narrow self interest of government officials who resist the process unless they predetermine the buyers of state owned corporations to be privatised. Privatisation is still viewed by many Kenyans with suspicion, as transferring the resources collectively acquired and owned by Kenyans into the hands of a few (mostly foreign) buyers. The idea that Kenyans will be deprived of their national, commonly owned, wealth creates a strong resistance to privatisation. The recent initial public offer of KenGen presented in Box 5.1 attests to the potential of stimulating private domestic investment through privatisation, if it

is properly handled.

Box 5.1: Stimulating Private Domestic Investment through Privatisation: KenGen

Kenyan Finance Minister Amos Kimunya officially launched for sale, 659,508,437 ordinary shares representing 30 per cent of the government's shareholding in the Kenya Electricity Generation Company (KenGen) to the public in Nairobi on 20 March 2006.

The KenGen Initial Public Offering (IPO), which closed on Tuesday, 12 April 2006, proved so popular that it was massively over-subscribed. During the three-week offer period, thousands of people queued outside banks and stock broking offices to buy into the KenGen deal.

Figures released by the privatisation committee handling the (IPO) confirmed that investors, mainly locals, paid out an unprecedented Sh26 billion (\$361 million), representing more than the value of the company at the offer price of Sh 11.90 916.32 US cents), about three times the amount the Government had hoped to raise, and nearly ten per cent of what the Government raises in taxes. The Sh18 billion (\$250 million) to be returned to prospective investors is the largest amount since the privatization programme commenced in 1990. The previous record had been held by another successful privatization -Kenya Airways' sale in 1996, where Sh2.5 billion had been returned.

The KenGen IPO could be regarded as a defining moment for Kenya, not just because it was the first privatization under the NARC government, but more importantly, it heralded private sector participation in key state infrastructure corporations, a strategy which the Government is committed to implement to attract private sector resources in the financing and management of infrastructure facilities.

The Central Organisation of Trade Unions (COTU) recommends a two- phase privatisation process with an initial phase of commercialisation to be followed by the actual selling of state- owned enterprises (SOEs) to citizens so

that Kenyans own majority stake in the newly privatised companies. COTU is opposed to the Privatisation Bill passed recently in Parliament and has written a protest letter to the government expressing its displeasure at not having been consulted during the drafting of the Bill.

The Privatisation Bill as passed envisages the creation of a Privatisation Commission. The Ministry of Finance has been given the power to appoint members of the Commission. The CRM notes that the composition of the Privatisation Commission as envisaged in the Privatisation Bill may become a source of friction amongst stakeholders. Some key ministries, institutions and social groups, such as the Ministries of Labour, Trade and Industry, Public Works, the CBK, and COTU are not members of the Commission. For example, COTU contends that its views will not be solicited by the Commission. However, other key stakeholders, including the Law Society of Kenya, the Federation of Kenya Employers, and the Institute of Certified Public Accountants of Kenya, are included. The Privatisation Act also establishes the Privatisation Appeals Tribunal, but it does not stipulate the mandate of the Tribunal, the matters on which the Tribunal has jurisprudence and the authority to resolve disagreements between the Tribunal and the Commission.

iii) Recommendations

The Panel makes the following recommendations:

Legal and Regulatory Framework

The Government of Kenya to undertake the following:

- Provide regulatory agencies (NEMA, Ministry of Labour, the Monopolies and Prices Commission etc) and the Judiciary with adequate financial and human resource capacity so as to be able to regulate their sectors adequately;
- Introduce ADR as an alternative to commercial courts while ensuring ADR is properly placed in the legal framework;
- Reinforce the regulatory framework of the pension industry;
- Strengthen the regulatory framework of the insurance industry, including setting up an insurance regulator; and
- Develop a comprehensive legal framework of social protection. The framework should include protection of informal workers, the retrenched workers of various policies, especially in the case of donor supported programmes and the privatisation and investment promotion programmes.

Law Reform Commission

The government of Kenya to undertake the following:

- Expand the mandate of the Law Reform Commission to include proposal/coordination of all new laws, and ensure that the commission has the resources and capacity to propose and coordinate the drafting of all new laws in collaboration with representatives of the Ministry of Finance and other line ministries.
- Establish a special sub-committee within the LRC to deal exclusively with the reform of laws relevant to corporate governance. The sub-committee will focus on laws and regulations that are outdated, such as the Companies Act, laws governing insolvency and bankruptcy, and laws relating to commercial disputes.
- Enact the new Companies Act into law with any public requested changes to the draft law, and monitor and evaluate the effect of the Companies Law.
- Take steps to develop an internal capacity for legislative drafting.

Working Committee on Regulatory Reforms for Business Activity

The Working Committee to:

- Finalise the on-going business license reform process and ensure that the Single Business Permit is accessible across the country, and decentralise the Single Business Permit by enacting the new Local Government Act and remove provisions that require its renewal every year in the regions
- Ensure that the Working Committee has the resources, capacity and government support to effect the needed changes to business license requirements
- Accelerate the work on license reform and transform the Working Committee into a structure with monitoring and evaluation responsibilities.
- Simplify business license registration for small scale traders, including registration in the regions so as to avoid the prospect of travelling to Nairobi for business licenses

Revised Labour Laws

- Parliament to enact all the revised labour laws
- Ensure that the Ministry of Labour is empowered to implement the laws
- Monitor/Evaluate effects on service delivery of the revised Labour Laws, including at the Industrial Courts [*Ministry of Labour and Human Resource Development*]

Investment Climate

- Introduce penalty fees payable by KRA in the case of late VAT refunds

[KRA]

- Introduce guidelines for foreign investors' applications for agricultural land [*Ministries of Agriculture; Trade and Industry ;Lands and Housing*]
- Increase capacity at anti-corruption institutions [*Ministry of Justice*]
- Increase the capacity of inspection of regulatory agencies such as the KRA and municipal authorities
- Enforce public service codes of conduct more publicly. [*Public Service Commission Ministry of Justice*]
- Ensure that the GJLOS and other reform programmes have the resources, capacity and government support to improve corporate governance and service delivery [*Public Service Commission; Ministry of Justice*]
- Expand the GJLOS programme to include Ministries and SOEs with poor service records, including NEMA, the Ministry of Labour and Kenya Telecom [*Ministry of Justice, GJLOS Programme Coordination Office*]
- Monitor and evaluate the effect of GJLOS, CBK and other government reform programmes, including the usage of GJLOS indicators already identified, such as measurement of incidence and prevalence of bribery, increased compliance with anti-corruption rules and reduced public perception of corruption; better safety in public place, greater public confidence in the police; reduced domestic violence and household crime; lower cost of doing business as measured in cost, time and financial terms. [*Line Ministries and parastatals; Ministry of Justice, GJLOS Programme Coordination Office*]
- Given the importance of the GJLOS Programme Coordination Office, extend the mandate of this Office [*Ministry of Justice*]
- Enhance the effectiveness of government and self-regulatory agencies in monitoring, and supervision, to ensure the proper discharge of their duties. The list of agencies includes regulators of all the sectors. [*CCK, ERB, CMA, CBK, NEMA, the Ministry of Labour and the Kenya Bureau of Standards*]
- The Ministry of Trade and Industry to develop policies that benefit economic development in the regions, including the Indian Ocean fisheries and Tana River irrigation scheme.
- The Ministry of Trade and Industry to also develop benchmarking schemes for the SME sector that include performance measurements for national and international competitors
- The Ministry of Lands and Housing to facilitate land titles registration outside of Nairobi so as to minimise travel times for citizens from other provinces
- Strengthen capacity at the Commercial Courts and extend it to regions beyond Nairobi [*Judiciary*]

Competitiveness of the Private Sector

- The Federation of Kenya employers and ministry of trade and industry to include HIV/AIDS education and awareness in programmes developed for workplace sensitisation. The aim of such programmes would be to educate employees on the pandemic and so reduce infection rates nationally.
- The Ministry of Trade and Industry to monitor the KMAP Programme, once it is revived under the PSDS.
- The Government to take steps to address the specific issues raised by segments of the business community such as SMEs, the Asian community members, and hawkers.

Access to Finance and Financial services

- Enact into law the Microfinance Bill [*Parliament*]
- Modernise the Registrar of Companies offices to ensure access to accurate information
- Strengthen capacity at the Commercial Courts and extend services to provinces beyond Nairobi [*Ministry of Justice*]
- Develop a Rural Banking Strategy, including incentives for banks and MFIs to set up rural branches. [*Ministries of Local Government; Planning and National Development; Finance; Regional Development Authorities*]
- Reform ownership of land such that women have equal access to land titles as men [*Government of Kenya*]
- The Ministry of Labour and Human Resources to address the need for financial literacy for the end borrower, and coordinate these actions with those of the Ministry of Trade and Industry.
- Integrate SACCOs and other financial cooperatives into the financial regulatory system as they currently carry out banking services without banking licenses [*Ministry of Finance*]
- Publicise and disseminate programmes put in place to strengthen SMEs [*Government, MHLRD*]
- Put in place a Small Business tax code (separate from the individual and corporate codes) to allow easy implementation of favourable tax policy for Small and Micro Enterprises (SMEs) sensitive to their growth stage and general size. [*Ministries of Finance and Labour & Human Resource Development*]
- The Government of Kenya to establish (i) a national debt collection body with specific legal powers to collect the bad loans from bankrupt banks and indemnify depositors, and (ii) to set up an insurance deposit schemes with greater supervision of the banks to avoid perverse effects.

Capital Markets

The Capital Market Authority to:

- Take steps to lower the costs of listing on the NSE [*NSE; CMA*]
- Publicise the benefits of listing on the NSE, including the tax incentives. [*NSE; CMA*]

Privatisation of State Owned Enterprises (SOEs)

The Ministry of Finance to:

- Implement the privatisation strategy in a more open manner and in consultations with key stakeholders, including the Ministry of Labour and Human Resource Development and COTU
- Provide the appropriate budgetary allocation and human resources to the Privatization Commission so it can effectively discharge its duties and responsibilities in a transparent manner
- Clarify the mandate and mission of the Privatization Appeals Tribunal.
- Undertake a major sensitisation campaign on the government privatisation policy. This campaign may be based on comparative studies of privatisations carried out in other countries in order to better inform the public, especially the trade unions and parliamentarians who are strongly opposed to the privatisation of state entities.
- Put in place mechanisms to monitor the performance of the privatised SOEs in order to assess whether government and national objectives have been achieved.
- Consider floating shares of state-owned enterprises on the NSE as a means of privatisation.

5.3.2 OBJECTIVE 2: ENSURE THAT CORPORATIONS ACT AS GOOD CORPORATE CITIZENS WITH REGARDS TO HUMAN RIGHTS, SOCIAL RESPONSIBILITY AND ENVIRONMENTAL SUSTAINABILITY

i) Summary of the CSAR

Corporations' adherence to good citizenship is acknowledged to be one of the weakest points of the Kenyan corporate sector. Although the country has a battery of labour laws, these are generally not applied by Kenyan employers, and employees often encounter enormous difficulties in claiming their rights. Moreover, environmental laws and regulations are not complied with either, and often only subsidiaries of multinational companies and large firms

are involved in educational and development programmes for the benefit of the communities they operate in. There are many agencies in charge of enforcing laws and regulations, but they often lack the necessary enforcement capabilities, or remain largely inefficient in many cases because of corruption.

Labour Laws, Employee Rights, Rights to Unionise

There is consensus in government and among employers and workers' umbrella bodies that there is a need to review a number of labour laws to address perceived inadequacies. An industrial court which arbitrates all major labour disputes exists. However, many employers do not comply with the law. Moreover, the level of compensation outlined in legislation such as the Workman's Compensation Act is out of touch with the present economic realities. As a result, it may cost an employer less to compensate an injured worker than to comply with safety standards.

The lax standards on labour and human rights can also be attributed to problems such as the weakness and reluctance of regulatory and supervisory authorities to execute their mandates, the lack of capacity, and the complexity of the judicial process. For example, the poor capacity of the Ministry of Labour in conducting inspections and enforcing compliance with labour laws, especially its safety provisions, has been pointed out. Problems in the labour arena include the lack of observance of minimum wage and workmen compensation rules, discrimination against people with HIV/Aids, nepotism, lack of a conducive business environment and an inability to participate in trade union activities. Many employees in unionisable environments are unaware of their rights or easily intimidated. Employers are rarely prosecuted for human rights and labour law violations, even where there are clear violations of the law. Further, workers organisations are also weak. According to the CSAR, workers perceive trade unions as ineffective in protecting their rights.

SMEs and the EPZs are often accused of abusing labour laws. A 1990 Decree by the Minister of Finance excludes EPZs from the provisions of the Factory's Act, which also covers safety issues. This is regrettable as this is the sector most impacted by the lack of observance of safety standards. The Kenya Human Rights Commission (KHRC) has noted that EPZ employees work under poor conditions, with some of them accepting low wages that do not meet the cost of living. A report by the KHRC also alleges that EPZ employees work long hours with little precaution against hazardous equipment. Women have been denied maternity leave and subjected to sexual harassment in some cases.

Corporate Social Responsibility (CSR)

According to the CSAR, few companies have CSR as a requirement or

a strategic business objective. Competition for resources or safety issues has often resulted in conflicts between corporations and local communities. However, there is a rise in awareness of CSR issues, and several organisations have rejuvenated CSR activity in the country.

The Environment

There are no prosecutions for environmental degradation in Kenya, even with increased levels of such degradation due to activities such as pollution of rivers and lakes, depletion of forest resources, soil erosion and air pollution. Corporations, especially in the mining industry, are said to be faring poorly in adhering to sustainable environmental management practices. The main cause of the lack of adherence to environmental regulation is the poor institutional capacity at the key institutions entrusted with safeguarding the environment under the Environmental Management and Coordination Act (EMCA). These are the NEMA, municipal councils, government departments and the Kenya Bureau of Standards. In addition, environmental policies and laws do not provide incentives to avoid environmental degradation or for adequate sanctions to deter such behaviour. As an example, the CSAR documents the lack of comprehensive discharge standards for waste management, as well as a method to measure the quality and quantity of effluents discharged by corporations. Further, recycling programmes are not widely applied in Kenya. The country lacks a focal point mandated to popularise, coordinate and develop best practices in recycling.

NEMA has yet to disclose the results of its Environmental Impact Assessments (EIA). This has a negative impact on Kenyans. Many stakeholders perceive that NEMA is not aggressive enough in implementing programmes and policies protecting the environment. Moreover, while the EMCA Act (1999) provides for the establishment of the Public Complaints Committee, mandated to protect the environment, due to capacity constraints, the committee at present does not record the corrective actions NEMA is taking to deal with public complaints against individual businesses.

Gender Issues

The CSAR does not clearly articulate the status of Kenyan women in corporate life; although it refers to the fact that few women participate in boards as directors. No specific initiatives have been put in place to improve the capacities of Kenyan women and allow them to fully play their expected role in the development of the Kenyan economy. The CSAR also refers to the fact that women are often victims of sexual harassment.

ii) Findings of the CRM

Labour Laws, Employee

Rights, Rights to Unionise

The CRM was informed that the Ministry of Labour and Human Resource Development together with the International Labour Organisation (ILO) and the Confederation of Trade Unions (COTU) undertook a wide review process in 2003, to modernise labour laws. The review covered several broad issues, including labour disputes resolution, sexual harassment, and discrimination among others. However, the review results are yet to be communicated to the Law Reform Commission (LRC), which expects the Ministry of Labour to amend the existing labour laws and present them to Parliament on the basis of the report. This illustrates the lack of coordination between government bodies, which could be a source of potential contradictions between the Labour Law drafted by the Ministry and the Companies Act to be drafted by the LRC.

As has been noted, the Ministry of Labour lacks adequate capacity. This is especially true for inspections. The CRM observes that corruption is a real hindrance to the enforcement of Labour laws at the corporate level, especially during inspection.

The judicial system allows industrial court rulings to be appealed at the High Court, which is regularly done by employers. However, employees do not trust the judicial system because of rampant corruption, and in most cases, they are unable to afford the cost of litigation.

There is a minimum wage policy in Kenya, which is set per sector and by geographical area (higher in Nairobi), and adjusted yearly following tripartite agreement between the unions, employers and the Ministry of Labour. Although employees complain about the low level of wages, the regularity of the revision process to set this minimum wage (raises announced yearly on Labour Day) is a good practice. Further, the government has decided to revise and harmonise public sector wages dictated by wages in the private sector with a view to increasing productivity in the public sector and curtailing corruption in the public service.

The recent mushrooming of the informal sector is an additional factor contributing to infringement of employees' rights as employees working in this sector fall completely outside the ambit of the legal framework. Moreover, people working in small businesses in urban areas complain about the brutality of Local Authorities police staff, who sometimes crash into their kiosks, chasing hawkers away. Though it is important to clear the streets for security reasons, the authorities should provide alternative infrastructure, close to the main commercial areas, for relocation of hawkers and Micro and Small Enterprises (MSE).

Employees who are HIV/AIDS positive are usually not assisted by the business sector and they are stigmatised by the entire community. Nevertheless, some institutions, such as the Kenya National Governance

Council and the Federation of Kenyan Employers, have prepared guidelines which would commit corporations to HIV/AIDS sensitisation programmes for their employees and allocate financial resources to these projects. Further, the HIV/AIDS funds set up by the government do reach the regions, but local communities are currently not involved in the allocation and the decision making process for their communities.

During consultations in North-Eastern Province, the CRM found that there has been no data collection regarding HIV/AIDS in the region. Nomad pastoralists are left ignorant about the pandemic in their area. In addition, the establishment of military camps at the borders of North Eastern province has resulted in numerous cases of women being raped and these women are neither allowed to sue for redress nor provided with funds for treatment when infected with the HIV/AIDS virus.

There are two consumers associations in Kenya, but the stakeholders indicated to the CRM that their role in consumer protection has so far been marginal.

Corporate Social Responsibility (CSR)

There is no formal framework to allow communities to interact with corporations and allied businesses so as to initiate projects that could be mutually beneficial. During stakeholder consultations, the CRM learned about various examples of interactions that are not beneficial to local residents. In the Tsavo area, elephants have killed people from communities living near the national park. In Malindi district, there is a problem with salt production.

Stakeholders narrated how women work long hours at home producing salt and that these women are exploited by the companies that purchase salt. Companies pay only approximately 300 shillings for a batch of salt that may take 2-3 days to produce. Women often make their children stay away from school to assist. There has been a recent public hearing by Kenya Human Rights Watch over this issue, but this has yet to be resolved. Salt mining also has an environmental impact. Mangrove trees used to be abundant in the Malindi area, but as a result of salt contamination of the soil, the slow growing mangrove is nearing extinction. Salt has also contaminated the major sources of water, and potable water is now scarce in the area.

Environment

The laws regulating the environment are adequate, but there is definitely a need to empower and to build capacity at the National Environment Management Authority (NEMA). Capacity building needs to include both the infrastructure for protecting the environment as well as NEMA's enforcement capability.

The Kenyan industrial sector is concentrated in the Nairobi area alone, putting

unnecessary pressure on the environment. However, there is little incentive for business to be located elsewhere. The country does not have an investment code, which can promote different regimes like many other countries in the region. There is a need for fiscal incentives for businesses to locate outside the Nairobi area, as well as to encourage environmentally friendly activities.

The fight for survival in rural areas has taken its toll on the environment with the development of low value-added, extensive charcoal production and massive deforestation. It is estimated that in the Kitui region, 10 000 trees are felled each year, with earnings of a mere Ksh 500 per tree. This has resulted in erosion and severe drought in some cases.

The CRM was also informed that in North Eastern Province, there is the perception that some hazardous wastes have been buried under the cover of oil drilling activities in Garissa and Odia during the late 1980s. NEMA apparently investigated this claim but concluded that there was insufficient evidence of burial of toxic waste. However, the local community claims that the number of cases of children with birth defects and the incidence of cancer have drastically increased as a result. Moreover, residents noted that the recent proliferation of *mathenge*, - a robust plant that colonises the areas where it grows is toxic for the cattle. Residents also mentioned that the government plans to build an airport in Isiolo, although no prior environmental assessment has been carried out despite residents' requests.

In North-Eastern and other regions, the random disposal of polyethylene bags is a real threat to the environment, and can be a danger to children, cattle (suffocation) and the land (as they can remain in the environment for up to 400 years without degradation). The German organisation for technical cooperation and development (GTZ), and UNCHR have initiated a recycling programme in refugee camps. In the town of Mtwapa in Coast Province, there is a problem with the sewerage system that is causing a lot of danger to humans, including waterborne danger and disease, especially during the long rains.

There is a need for consultation with the community so that there is proper planning and corrective action. In Kilifi district in Coast Province, the CRM also noted that a cement company has been responsible for gas emissions and dust, which damage crops and trees. In Mombassa, a cement company has been able to control dust, and it may be necessary for the technology used to be shared with the company in Kilifi.

Gender and Youth

A task force which examined the status of women in 1990 had made some recommendations, especially regarding the issue of gender discrimination. Additional recommendations relating to domestic violence and matrimonial property were made when the Children' Act was drafted. The LRC informed

the Mission that they intended to review those reports with a view to determining the extent to which they could be implemented. More generally, they intended to carry out a broad review of all laws relevant to gender issues. The CRM is of the view that there is a need to accelerate the review process and enact the revised laws in Parliament.

COTU has a gender department, which is currently working on policies on sexual harassment and violence in the workplace. However, COTU still needs to build its own capacity to push for reform, mainstream gender and champion women's rights in the workplace. Capacity building needs to be carried out with the help of agencies such as the ILO.

Some so-called Capacity Building Organisations (CBOs) in the Mombassa region were reported to have misled some women in the area and collected pre-teaching fees for services they never rendered. These organisations need to be investigated and prosecuted.

The current government provides some financial support to rural areas through several schemes such as the CDF and LATF. But these resources are not used optimally to increase the level of Income Generating Activities (IGAs) especially for youths. Communities themselves need to get more involved in setting priorities. Women and youth groups should be included in such activity as well.

Youth complained about their inability to obtain jobs given the number of years of experience required. The government needs to consider expanding vocational and technical training for youth, as well as giving incentives to businesses to hire them.

Many traditional Kenyan societies perceive women as inferior to men, and this culture has permeated so deeply in the society that even mothers tend to educate their children in this manner. Cultural attitudes need to be changed through programmes of sensitisation that allow for women empowerment and capacity building.

The CDF provides for bursaries for pupils, but many believe that fund disbursements under the scheme are tainted with political patronage and discriminating against the poorest and the orphans who are mostly in need of these funds.

Despite the legal framework in place for the protection of children, child labour is still widespread in fisheries, agriculture, quarrying, mining and factories.

iii) Recommendations

The Panel recommends the following:

Labour Laws, Employee Rights, Rights to Unionise

- The Ministry of Labour to communicate the revisions to the Labour Act to the Law Reform Commission for consultative advice to ensure coherence and compatibility with the Companies Act, prior to submission to Parliament.
- Government to enhance the institutional capacities of the Ministry of Labour through adequate budgetary provisions for the recruitment of qualified inspectors and to equip them with adequate infrastructures
- Kenya Anti-corruption Commission (KACC) and COTU to put in place an alert mechanism so that corruption at the inspector's level of the Ministry of Labour could be rapidly detected and curbed ('whistle blowers').
- The ongoing review of public sector wages to be finalised so as to increase productivity on the part of public servants and curb corruption as part of a global civil service revamping exercise to increase productivity. The government needs to put up coherent indicators and incentives and career plans to ensure professionalism within the Civil Service.
- Trade union representatives to request the ILO to give them appropriate training (legal and regulatory – especially revised laws, financial training, fight against HIV/AIDS, environmental protection) to be able to adequately defend the rights of workers, especially those of women, those who are HIV/AIDS positive, and the disabled.
- A communication campaign to be mounted in addition to a special negotiation framework, which should be established so that the Ministry of Labour could consult with the unions to ensure that the terms of reference for privatisation account for the protection of workers' rights.
- Small businesses to be provided with information on corporate governance principles, especially best practices in relation to respecting the rights of workers. Many SMEs operate outside of the legal framework, and it is thus necessary for the vibrant Kenyan civil society to help defend the rights of those who work for them. [*Relevant authorities; CCG*]
- Government to reconsider the mechanisms for the use of HIV/AIDS funds so that communities could effectively be consulted when it comes to setting up specific projects for the HIV positive.
- Consumers' protection associations to be resourced so that they can investigate and advocate for the rights of consumers. This also applies to the Kenya Bureau of Standards, which is perceived as lacking adequate capacity to carry out its mission. [*Relevant authorities*]
- The authorities to enforce child labour laws and ensure those children's rights are protected. In this regard, a plan of awareness on the extent of child abuse and child labour in Kenya to be prepared.
- The Ministry of Labour to investigate the infringement

of labour laws in EPZs and severely punish all breaches of human rights by these entities.

Corporate Social Responsibility (CSR)

- The Government, and all the professional associations, together with COTU, to further develop awareness raising and advocacy when it comes to corporate social responsibility, so that member corporations are more involved in the communities in which they operate. Codes of conduct and policies (even for the informal businesses) have already been developed with respect to these issues. These should be disseminated with the help of the Ministry of Trade and Industry.
- At the community level, Community Based Organisations (CBOs) to initiate discussion with businesses in their localities on CSR, and jointly design CSR projects and programmes based on needs [*Ministry of Local Government and relevant local authorities*]

Environment

- NEMA's capacities be enhanced. These efforts are to be directed at staffing (proper training, recruitment of environment specialists) and infrastructure (vehicles, laboratories, ICT) The NEMA inspection teams be proactive and on alert constantly to environmental dangers so as to be able to resolve major environmental threats. [*Ministry of Environment and Natural Resources; NEMA*]
- NEMA re-opens the case regarding the North Eastern Province allegations of hazardous waste burial. There needs to be on-site research work conducted to assess the potential toxicity of soil in the area. To give credibility to this process, international environmental NGOs may assist in the process. [*NEMA*]
- Projects on recycling waste such as the one initiated by German GTZ and the UNHCR in refugees' camps be extended to all pastoralist areas. [*Ministries of Livestock and Fisheries Development; Environment and Natural Resources; Planning and National Development*]
- Given the recurrent drought that confronts the country, irrigation plans that use the main rivers and ambitious water drilling be designed by the Ministry of Water and Irrigation and relevant authorities especially for farming. These projects may be financed through the LATFs and CDFs.
- Government to provide tax incentives for businesses that invest in projects that will generate employment in rural areas.

Gender and Youth

The Ministry of Gender, Sports, Culture and Social Services and other bodies to:

- Take steps to include youth in more decision making bodies including the local constituency level.
- Provide tax incentives to corporations which employ and train young people.
- Support initiatives such as the newly launched ‘Young Kenyan Entrepreneurs’ association along with the Ministry of Trade and Industry and private sector institutions. A Youth Trust Fund be set up by the government to assist youth in start-up businesses.
- Set up mechanisms for reporting child labour violations and empower the police and other institutions to investigate abuses [*Ministry of Justice; Office of the Vice President*]
- Put in place specific initiatives to improve the capacities of Kenyan women to allow them to play their role in the development of Kenya
- To combat vigorously sexual harassment in the work place, including in the private sector

5.3.3 OBJECTIVE 3: TO PROMOTE ADOPTION OF CODES OF GOOD BUSINESS ETHICS IN ACHIEVING THE OBJECTIVES OF THE CORPORATION

i) Summary of the CSAR

Over the years, the country seems to have sacrificed its ethical standards at the altar of a “get rich quick” syndrome. The success in promoting acceptance of such codes and their adoption, application and implementation largely depends on the institutional capacity to advocate, train, enforce and police compliance with ethics codes.

Despite some actions taken, both in the public and private sectors, the level of corporate integrity (especially corruption, white collar crime, money laundering) can largely be improved in Kenya. Institutions such as the Centre for Corporate Governance (CCG) have prepared a number of codes of business ethics for both private and state owned enterprises, but the levels of efficiency in the implementation and application of those codes is unsatisfactory.

Both CCG and regulatory bodies such as the CBK and the CMA have designed training courses for corporate directors to ensure that they have the proper background to endorse their function as examples and teachers of good business ethics.

Ethics and Corruption

According to the self assessment, the fight to uphold the highest corporate integrity and fight corruption has been compromised in the following areas that affect this objective:

Public Sector

In the public sector, the Public Officers Ethics Act (2003) requires that all public officers declare their assets and liabilities on an annual basis. However, the declaration forms are not open to public scrutiny and follow up has not yet taken place. The CSAR also notes that “Guidelines in Good Corporate Governance of State Owned Corporations” were developed.

The Kenya Anti-corruption Commission (KACC) is charged with investigating cases of corruption under the Anti- Corruption and Economic Crimes Act (2003). However, only the Attorney General has been given the authority to prosecute cases under current legislation, which is seen to adhere to the principle of separation of investigative and prosecutorial powers. However, as of February 2005, of the 49 fully investigated cases forwarded to the Attorney General by the KACC, only 34 have been recommended for action.

The CSAR lists the following impediments to the adoption of good business ethics:

- Lack of commitment and the political will to fight corruption;
- The current constitutional framework;
- Lack of separation of powers;
- Public perception and expectations of benefits from public office;
- KACC’s inability to investigate, prosecute and independently handle allegations of corruption and abuse of office
- Judicial incapacity and inability to handle corruption issues expeditiously,
- Public Procurement and Disposal Act not yet having its impact
- Need for repealing the Official Secrets Act; and
- Excessive bureaucracy and red tape resulting in duplication of efforts, higher costs and highly diminished accountability within the Civil Service

Thus, in the absence of stiff penalties or effective mechanisms for detection and prosecution, corruption appears a low risk, high gain activity.

Private Sector

In 1999, the Centre for Corporate Governance developed a code of business ethics entitled “Principles of Corporate Governance”, which can be pointed out as best practice. However, the private sector lacks a mechanism for monitoring, policing and enforcing compliance with business ethics standards. A positive step was taken with the establishment of key institutions such as the Institute of Directors and the Shareholders Association, but they are still at formative stages, and need strengthening. The CRM is of the opinion that individual corporations can do more, as the adoption and enforcement of codes of good business ethics are partial and have mixed results. Moreover, the supply side of corruption such as bribery of public officials by corporations does not yet carry stiff penalties in law.

Fight against White-Collar Crime

The CSAR lists the main measures taken to combat white-collar crime as follows:

- The setting up of the KACC, and that of the Efficiency Monitoring Unit (EMU);
- The monitoring and investigation mechanisms developed by the CBK based on the Anti-Fraud Unit to track irregular movements of cash;
- The enforcement of best practices among the banks by CBK’s Bank Inspection Unit, including anti-money laundering initiatives, such as the “Know Your Customer (KYC) Guidelines”;
- The strengthening of internal audit by the government;
- The ratification of East and Southern African Anti Money Laundering Group (ESAAMLG) Memorandum of Understanding and its implementation; and
- The establishment of a special prosecution section in the Department of Public Prosecutions in the Office of the Attorney General, to specially prosecute terrorism, money laundering and organised crime.

Role of Media

The CSAR describes the Kenyan media as an effective ‘whistle blower’ for corruption cases as they have played an important role in identifying, investigating and reporting bad governance practices. But the enforcement of the application of good governance practices has been poor and sanctions are not yet in place due to inefficient oversight and implementation. Although the CSAR notes that there is still an element of sensationalism in the Press, it recognizes that the media has an important role to play in the improvement of governance in the country, and that the media needs an enabling

environment to carry out this role.

Training Programmes

The CSAR notes that many professional associations have a mandatory requirement that members attend continuing education courses every year, and have the powers to sanction those who do not comply. Further, many corporations have introduced induction and development programmes for their directors and senior managers, and the Central Bank of Kenya and the Capital Markets Authority require the directors operating in the financial and banking sectors respectively to undertake relevant induction courses upon appointment to ensure that they have the knowledge pertinent to the governance of business.

It nevertheless indicated that training opportunities on business ethics for directors are inadequate and too expensive for SME directors. It was also noted that there was an abundance of institutions fighting corruption and this split responsibility may create a lack of accountability.

The CSAR points out that it is necessary to enhance both the capacity and capability of relevant institutions to police and enforce compliance with self-regulatory mechanisms of good governance.

i) Findings of the CRM

Ethics and Anti-Corruption

Kenya has achieved significant progress in the development of codes of good business ethics. The banking industry, private sector operators, SOEs, cooperatives and listed companies already have some documentation available on this issue prepared either by the CCG, KEPSA, CMA or the Kenya Institute of Management. These principles are comprehensive with respect to international standards. But the dissemination process cannot be left aside as it is at the core of the success of these initiatives. The CSAR notes that the Kenyan hoteliers' professional association has developed a code of ethics against child abuse and sexual exploitation, with the assistance of UNICEF. But it is yet to be adopted by all operators in the tourist industry

The requirements in terms of capacity for the supervision, compliance with, and enforcement of guidelines of good business ethics are enormous and should be addressed. The next key issue after dissemination is that of enforcement. This cannot be done by way of legal sanctions, but rather by disciplinary measures taken at the professional association level (publication of the list of infringing members, penalties etc). This is especially important in the rural areas where people often are not aware of their rights and consequently do not hold their parliamentary and business representatives

accountable. For example, many cooperatives do not regularly vote for their bureau members. In this regard, the KACC should have i) a free-call telephone hotline which could be used by employees and business to report cases of harassment and corruption, and ii) a pool of investigators with the necessary equipment, able to intervene and catch corrupt officers, especially in the local authorities offices.

Best Practice - Box 5.2: The Centre for Corporate Governance

The Centre for Corporate Governance has been instrumental through participatory processes in developing generic and sector specific corporate governance codes of best practices, covering all companies generally, state owned enterprises, cooperatives, banks, reporting and disclosure and on the role, duties and obligations of shareholders and members.

The Centre also championed the creation of the Shareholders' Association and the Institute of Directors. It also offers training programmes, including Commonwealth Certification, for Directors drawn from the public, the private and cooperative sectors. These and other activities are improving the standards of good corporate governance in the country.

ii) Recommendations

The Panel recommends the following:

- The government to demonstrate a strong political will and a high degree of commitment in the fight against corruption. Trust and confidence in the government will be earned from the public if senior government officials, members of parliament, and well connected business men guilty of corruption are brought to book.
- Steps be taken to enforce the Public Procurement and Disposal Act. In this regard, the Act needs to be amended to provide for the criminalisation of bribery, kickbacks and all the other rent seeking activities [*Judiciary; Office of the Vice President; Ministry of Justice; GJLOS Programme Coordination Office*]
- The Official Secrets Act needs be repealed (or a Freedom of Information Law enacted) to ensure that all public official actions can be scrutinised. [*Parliament*]
- Engender more coordination to minimize or eliminate overlaps in the mission and mandates of the various institutions established to fight all forms of economic crimes [*Judiciary; Office of the Vice President; Ministry of Justice; GJLOS Programme Office*]
- Mechanisms be put in place for early detection and prosecution of all forms of economic crimes to dissuade seekers and make economic crimes high risk activities [*Judiciary; Office of the Vice President;*

Ministry of Justice; GJLOS Programme Office]

- The private sector organisations design mechanisms to monitor, police, and enforce compliance with business ethics standards [*Kenya Federation of Employers; KAM; KIM*]
- Enhance the capacity of self-regulatory organisations to detect, share information and report all forms of economic crimes, including insider trading and other white-collar crimes. [*Ministry of Finance*]
- Ensure that senior managers of State-owned enterprises implement the performance contracts as per adopted guidelines. [*Ministry of Finance; SOEs*]
- Kenyan professional associations continue to act as advocacy institutions for the dissemination of good business ethics and strive for good business ethics as part of their own strategies and to formally appoint Ethic Officers for the promotion of ethics policies. [*Centre for Corporate Governance (CCG); Institute of Certified Public Accountants Kenya (ICPAK), Central Bank of Kenya (CBK), Capital Markets Authority (CMA); Kenya Federation of Employers; KAM; KIM*]
- The hospitality industry to sign appropriate industry codes of ethics and training, and, in cooperation with local communities, to organize sensitization workshops to address ethics issues.
- The legal framework be revised to enhance the protection of investigative journalists as “whistle blowers” in reporting and denouncing economic crimes when they occur [*Law Reform Commission; Parliament*]

5.3.4 OBJECTIVE 4: TO ENSURE THAT CORPORATIONS TREAT ALL THEIR STAKEHOLDERS (SHAREHOLDERS, EMPLOYEES, COMMUNITIES, SUPPLIERS AND CUSTOMERS) IN A FAIR AND JUST MANNER

i) Summary of the CSAR

Introduction

Kenyan laws generally protect the rights of business stakeholders. However, the lack of enforcement capacities and the leniency of the Judiciary results in corporations loosely implementing regulations. Minority shareholders have, by law, the means to intervene in company’s decision-making processes, but this seldom occurs. The CSAR does not provide much information on the way the rights of creditors, suppliers, consumers and local communities are treated by corporations. This is likely to be due to the fact that these issues are

relatively new to the business environment in Kenya.

Accountability to Shareholders

According to the CSAR, provisions of the Cooperatives Act, bankruptcy, and receivership and liquidation laws are not effective enough for protecting shareholders' and other stakeholders' rights, while the State Corporations Act is seen as poorly or moderately protecting these rights. Moreover, the Companies Act (Cap 486) and the Cooperative Societies Act (Cap 490) do not adequately protect non-voting shareholders. The CSAR also notes that remedies available to shareholders upon infringement of their rights, such as seeking court intervention, are long and expensive processes. There is 'widespread shareholder apathy and ignorance' amongst minority shareholders, and 'even institutional investors are unwilling to be proactive and take management to task.

Responsibility to Stakeholders

According to the CSAR, expert's opinion indicates that the rights of unsecured creditors, members of cooperatives and those of savings and credit cooperatives (SACCOs), employees, pensioners, suppliers, local communities and consumers range from poorly to fairly protected.

There is no legal provision for stakeholder representation in company Boards, but the CSAR notes that representation ranges from fair to poor.

ii) Findings of the CRM

Accountability to Shareholders

Minority Shareholders

There is no provision for minority shareholders under the Companies Act (1962). Moreover, stakeholders informed the CRM that minority shareholders in Kenya often do not know their rights. As a result, they are unaware of their ability to influence nominations and other decision making through voting by proxy and forming coalitions of shareholders. As a result, minority shareholders in Kenya do not seek to influence decisions through proxy or turn up at the AGM. The CRM also learned that minority shareholders often do not actively trade their shares, and wait for companies to declare dividends. There is a need for shareholders to be trained on how to trade their shares and make capital gains.

Nomination committees and the memoranda of understanding of companies are all based on the Companies Act (1962). As a result, minority shareholders are not well treated under the law. At Annual General Meetings (AGMs),

minority shareholders often find that most nomination decisions have already been made by the majority shareholders. Decisions on nomination of Board members often require that minority shareholders issue a notice of nomination 28 or 21 days before the AGM, pending confirmation at the AGM. The issue is that even if all minority shareholders hold the majority of shares, for example 60% of shares, their holdings are so diffuse that nominated candidates are often not voted in.

Insider Trading

Insider trading is prohibited by law in Kenya. However, there are no known cases of prosecution, and this indicates the need for monitoring and enforcement of the insider trading laws. Stakeholders informed the CRM that there was an urgent need for capacity building at the Capital Markets Authority to strengthen detection and investigation procedures against insider trading and other corporate crimes.

Conflicts of Interest and Derivative Suits

Conflicts of interests are regulated under the Banking and Company's Acts. Procurements and loans to company management and loans to directors are prohibited by law and capital market regulations. However, there is no provision in Kenyan laws for derivative suits, where a minority shareholder can sue company officers and board members on behalf of the company.

Capacity Building for Directors and Shareholders

Guidelines for directors and shareholders are being developed by the Federation of Kenyan Employers. Training of banking directors is also compulsory under the banking industry regulation.

Responsibility to Stakeholders (Consumers, Employees, Communities and Suppliers)

Consumer Protection

Stakeholders informed the CRM that there was no clear policy for consumer protection in Kenya, for example, protecting consumers against 'software peddlers' who sell non performing software. The CRM was also informed that the Kenya Bureau of Standards needs to have better means of enforcing consumer standards as some companies produce poor quality goods and are not held accountable. The CRM found that there appeared to be no law against counterfeit or pirated goods. Such a law is in the process of being enacted, but some of the provisions in the draft are being resisted by the Kenya Association of Manufacturers.

Employees

Stakeholders also informed the CRM of instances where employee protection under the labour laws were not pursued by Ministry of Labour inspectors. For example in Kilifi district, a rubber plant employs only casual workers and very few permanent workers. These casual workers are exposed to chemicals with little safety protection. Complaints to various departments of the government have had no effect.

Stakeholders also informed the CRM that companies in the EPZ had not met all their obligations to their employees. Cases of human rights abuses by firms operating in EPZ have occurred, as observed under Objective 2.

Communities

During regional consultations with the CRM, stakeholders in the regions listed many instances of businesses harming the communities in which they operate. These include:

- In Tsavo East, approximately 65% of the district is covered by a national park. Very little farmland is left available to area residents. People living in the district complain of being victimised by elephants. Elephants from the Park have entered farms and destroyed crops and other valuables. NEMA has tried to assess this problem, but no solution has yet been found.
- In Tana River, due to the presence of a game reserve, residents from the area complain of an over-population of crocodiles, rhinos and buffalos, which are a danger to the community.
- In Nairobi, the concentration of employment and industry attracts thousands of migrants from the rural areas. This encourages the growth of slums such as Kibera. There is a need for a policy on rural revival that includes an emphasis on the agriculture and livestock industries and provides for availability of basic infrastructure in the rural areas including rural schools and hospitals in order to reduce pressure on urban slums in Nairobi.

Suppliers

The CRM noted through consultations with stakeholders that in the *jua kali* industry and other small and medium enterprises, business owners often find it difficult to supply larger companies. Therefore, there is a need for the government and the Federation of Employers to promote linkages between *jua kali*, small scale establishments and larger enterprises in support of job creation and small-scale industrialization. This policy should provide for subcontracting to allow SMEs to acquire skills, expertise and experience to transit to becoming large companies.

iii) Recommendations

The Panel recommends the following:

Accountability to Shareholders

- Kenya Authorities to reform the legal framework of corporate governance with a view to providing for the protection of the rights of creditors, suppliers, consumers, and local communities. Specifically, amend the Companies Act, the Bankruptcy Act, the receivership and liquidations laws, as well as the State Corporation Act and the Cooperative Societies Act to provide for the protection of the rights of shareholders and stakeholders [*Law Reform Commission (LRC); Parliament*]
- Ensure the revised companies' law includes the protection of the rights of minority shareholders. [The Law Reform Commission and the GLOS Programme Coordination Office]
- The LRC to draft legislation allowing for derivative suits (where a minority shareholder can sue company officers and board members on behalf of the company). [The LRC and Parliament]
- The authorities to reach agreement with the Kenya Association of Manufacturers (KAM) and enact the draft Bill against counterfeit and pirated goods. [Parliament and KAM]
- The government and the Kenya Association of Shareholders (KAS) to develop programmes aimed at ensuring that the shareholders are aware of their rights and that training opportunities exist for learning about how to trade their shares and make capital gains. A shareholding culture should be encouraged and capacity building is required for KAS and CMA to carry out these training activities. [*The Shareholders Association and the Capital Market Authority*].
- Design administrative mechanisms rather than court structures (for reason of access and cost) to facilitate recourse by shareholders in seeking redress when they experience infringement of rights (*Law Reform Commission (LRC); Parliament*)
- The Ministry of Finance to ensure that the Capital Markets Authority and the Central Bank of Kenya benefit from capacity building programmes to strengthen detection and investigation procedures against insider trading and other corporate sector crimes.
- Advocate prosecution of criminal behaviour by company directors and senior managers [CCG; KAM; KIM; CMA; NSE]

Responsibility to Stakeholders (Employees, Creditors, Suppliers, Customers, Government Bodies)

- The Ministry of Trade and Finance to draft and enact a clear policy for consumer protection in Kenya.
- The government to ensure the Kenya Bureau of Standards is adequately staffed and resourced to carry out its mandate, including any revised powers under a revised consumer protection law.
- The Ministry of Labour to put in place an adequate staffing policy and ensure it has the necessary resources in order to protect employees across the country.
- The Ministry of the Environment and Natural Resources to ensure that NEMA and the Kenya game park and reserve administrators are adequately staffed, resourced and have the necessary mandate to protect communities living near parks, reserves and companies producing toxic waste

- The Ministry of Trade and Industry in collaboration with the Ministry of Finance and the Ministry of Labour, to implement an industrial master plan, favouring the growth of SMEs including the *jua kali* small-scale industry. The industrial master plan to include incentives for industry to integrate SMEs including the *jua kali* industry into their supply chain.
- The Ministry of Agriculture, with the Ministries of Planning and National Development and the Ministry of Livestock, to implement a rural policy that includes an emphasis on the agriculture and livestock industries and provides for availability of basic infrastructure in the rural areas

5.3.5 OBJECTIVE 5: TO PROVIDE FOR ACCOUNTABILITY OF CORPORATIONS, DIRECTORS AND OFFICERS

i) Summary of the CSAR

Kenya recently adopted measures to reinforce corporate financial disclosure requirements. The KRA requires companies to submit their financial reports using the IFRS format, which is a good way to promote the IFRS standards. But businesses in the micro and small-enterprise sector (MSEs) find it difficult to comply with this requirement. Efforts have also been made to modernize the capacities of the Registrar of Companies so that more information could be made available to the general public.

But much remains to be done. Institutions such as the CCG and the ICPAK are providing valuable support in the process of improving transparency on corporations through the adoption of IASs by company auditors, training of directors and top managers, and the preparation of guidelines for the boards in

both the private and the public sectors. However, the CCG and ICPAK lack the resources needed to enforce these rules. Generally, the law separates clearly the powers at top management level, and specifies the minimum requirements for board composition.

Disclosure

The CSAR indicates that Company and Taxation Law are the main sources of disclosure requirements on the financial accountability of business enterprises, but there is limited requirement on disclosure for non-financial aspects in non-quoted companies and banks. It is noted that disclosure requirements and reporting for non-quoted companies, cooperatives and SMEs are inadequate. Moreover, enforcement for disclosure requirements is also weak. The Registrar of Companies, the Commissioner of Labour, the Commissioner of Cooperatives and Electricity Regulation Board were rated as relatively weaker than organisations such as the Kenya Revenue Authority, the Central Bank of Kenya, the Capital Markets Authority or the Retirement Benefits Authority, in ensuring compliance with reporting requirements. It is also noted that many companies do not make necessary returns or notify the Registrar of Companies of material changes in their constitutions or boards.

While the law is very strong, there is no known case in recent history where directors of a company have been charged for the presentation of false accounts. In general, it is noted that sanctions for non-compliance are moderately applied.

Some initiatives have been launched to support the culture for reporting, such as the fire (financial reporting) award by the Institute of Certified Public Accountants, the Capital Market Authority (CMA), and Nairobi Stock Exchange (NSE).

Auditing and Accounting Standards

The Companies Act prescribes that all companies should have their financial statements audited by a qualified person; whereas the State Corporations Act provides that the accounts of every state corporation shall be audited and reported annually by the Auditor-General. It is envisaged that the Auditor General's office could bridge its capacities constraints by outsourcing audit services. Micro and Small Enterprises (MSEs) have complained of the high costs of preparing accounts to comply with IFRS requirements.

Eligibility of Directors and Effectiveness of Boards

Several institutions train directors and senior management, with a view to upgrading their skills. The real challenge remains the establishment of the capacity and resources to educate directors of companies, cooperatives, MSEs and associations on corporate governance. While a large majority of Kenyans

hold the opinion that Boards of Directors and Management Committees are doing a good job, it is perceived that in the cooperative sector, Boards are generally ineffective and have failed to provide strategic direction and accountability to stakeholders and shareholders.

The Principles of Corporate Governance, issued by the Centre of Corporate Governance recommends a Board size of 7 to 11, with a balance of executive and non-executive directors, as well as a mix of gender, geographical distribution and various skills and competencies. However, the self-assessment notes that a review of public listed companies reveals that while Board size is within the recommended range, most Boards only have one or two women representatives. The Companies Act sets out clear eligibility criteria for Board membership, and also specifies minimum criteria for both private and public companies' Board composition. For the banking industry, the Central Bank of Kenya requires that a vetting process be carried out for all proposed directors, based on personal ethical values, interpersonal and business skills.

The appointment of Boards at SOEs involves some elements of political patronage. It is noted, however, that the onset of performance contracts should lead to the requirement for a level of competency and personal attributes to be met for servings in an SOE board. Further, the chairman of the Board of state-owned enterprises is currently appointed by the President of Kenya. The adopted Guidelines for Good Corporate Governance in SOEs s empower the Board to appoint the chairperson, but the State Corporation Act will need amendments to provide for this.

ii) Findings of the CRM

The various bodies involved with company's corporate governance such as the Institute of Directors, the Shareholders' Association, the Institute of Certified Public Accountants, and the Institute of Certified Company Secretaries, do not have formally established fora to exchange views and come up with common strategies on how to improve the status of corporate governance at the micro level.

There are very few cases of truly independent directors in Kenyan businesses. Most directors, even the non-executive ones, are being brought onboard by the majority shareholders, which compromises their independence. There has been only one case of a director's position being advertised, with a recruitment process through a specialised firm.

The Institute of Directors (See Box 5.3) is very active in training its members, and has developed its own codes, including evaluation criteria. But the issues of resource availability and capacity building remain acute. . Currently the Institute is located in the Centre for Corporate Governance's building and it benefits from CCG resources. Until the Company's Act is amended to account

for specific rules to do so, most companies assess individual and collective performance of Board members on the basis of the guidelines prepared by the CCG. These guidelines also present the rules for board's composition, for example the Nomination Committee, Audit Committee, and HR/Remuneration Committee.

Best Practice- Box 5.3: The Institute of Directors

The Institute of Directors (IoD) was established in 2003. Its practices are based on the South African and British IoD models. The Kenya IoD currently has about 230 members, with representation from all size organisations in Kenya including SMEs. The IoD had its first AGM in June 2005.

The Mission of the IoD is to promote professionalism and enhance the standards and effectiveness of directorship. The immediate organisational objective is to ensure that all directors are members within the next five years

The Kenya Shareholders' Association (See Box 5.4) is also a recently established institution. It is currently housed in the CMA offices and has about 100 members out of the approximately 1.2 million small shareholders in Kenya. The impressive total shareholding figure in Kenya can be explained by the long established culture of holding cooperative shares. The Shareholder's Association is currently registered under the Societies Act, so it does not have the ability to procure shares and assist in Annual General Meetings. The association is considering incorporation. It also needs more resources, as small shareholders are often not ready to pay for membership, due to a lack of a capital market culture. The Association has helped in raising awareness of minority shareholders' rights and the need to form minority shareholder coalitions. It has also designed training programmes for members on reviewing annual reports and other ownership tools. The Association will eventually need its own office space, competent and permanent staff and a designated CEO to implement the 5 -year strategic plan, currently under preparation.

Best Practice- Box 5.4: The Kenya Shareholders Association

The Kenya Shareholders Association is registered under the Societies Act. It is a young association, formed in July 2002, with a current membership of approximately 100 shareowners. Its mission is to offer corporate governance education, information, research and documentation services and advocacy to shareholders in Kenyan organisations. The eventual goal of the organisation is to create empowered shareholders able to play an effective role in the proper governance of the organisations whose shares they own

iii) Recommendations

The Panel recommends the following:

- The Shareholders' Association to complete its incorporation forthwith, to be able to purchase companies' shares and participate in Annual General Meetings [*Shareholders' Association*].
- The Companies Act to be revised to include provisions allowing minority shareholders to pool their votes to designate preferred Board members.[*Law Reform Commission*]
- The authorities to ensure the financial sustainability and institutionalisation of both the Institute of Directors and the Shareholder's Association.

CHAPTER SIX

6. SOCIO-ECONOMIC DEVELOPMENT

“Africa faces grave challenges and the most urgent of these are the eradication of poverty and the fostering of socio-economic development, in particular, through democracy and good governance. It is to the attainment of these twin objectives that the NEPAD process is principally directed.”

NEPAD/HSGIC/03-2003/APRM/MOU Annex 1

6.1 OVERVIEW

The pursuit of socio-economic development has long been the cornerstone of public policy in Kenya, although the strategy and focus have varied over the past four decades. Since attaining independence in 1963, Kenya has pursued various development paradigms aimed at attaining sustainable real growth. The policy thrust in the post independence period was anchored in employment generation through agricultural settlement, government participation in business activities, the indigenisation of the public and private sectors, investment in social infrastructure, and an extensive package of industrial protections for Kenyan businesses. However, while the development policies of the period did result in GDP growth averaging 6.6 % annually during 1964 - 73, that growth was not sustained due to bad governance, corruption, lack of political commitment to reforms, recurrent droughts and vulnerability to oil shocks, coupled with a bloated public sector and poor service delivery. Inevitably, post independence growth halted and the economy was in shambles. Consistently high inflation, widespread unemployment, especially among young people, and underemployment all contributed to unprecedented high levels of poverty.

In the 1980s, the public policy response was to review the interventionist economic development strategies of the previous decade. This led to the adoption of World Bank/IMF inspired Structural Adjustment Programme first in 1981 with dismal outcome. In furtherance of this market-oriented economic policy, the government introduced an economic liberalization and reform programme in 1993, removing import licensing, price controls and exchange controls. This package of measures was intended to re-focus the economy and integrate it into the global economy.

In the main, external donor support led to a brief turnaround in the economy during 1994-96. GDP grew by 4.8 % in 1995 and by 4.6 % in 1996. Inflation was briefly kept in check, but soared by 1996. Overall, economic performance did not seem to respond to the reforms and the growth rate stagnated throughout the last decade. The lack of sustained commitment to reform,

coupled with political instability, contributed significantly to the failure of the policies to stimulate economic growth. Towards the end of the 1990s, inadequacies in the infrastructure, such as electricity and water shortages and the decay of the erstwhile impressive road networks, contributed in no small measure to the stagnation of the Kenyan economy.

The new NARC government in Kenya was elected in December 2002, with an overwhelming mandate to revive the economy and carry out a bold programme of economic recovery. To halt the economic decline witnessed in the last two decades, the NARC government embarked on comprehensive economic, legal and institutional reforms. On assuming office at the beginning of 2003, the coalition government of President Mwai Kibaki took several steps in fulfilling its campaign promises to reduce official corruption and improve public sector governance. For example, early in its tenure the government launched an enquiry into a large corruption case (Goldenberg), sponsored the ongoing anti-corruption public awareness campaign, fired top judges, suspended procurement officials associated with corruption, and created the Kenya Anti- Corruption Commission (KACC).

More recently, it has nearly quadrupled the number of investigators employed by KACC, has launched investigations in a range of public departments, and has taken administrative actions against officers in the public works and the revenue departments, the police, the Judiciary and the military associated with corruption. It has also passed the Privatization and the Procurement Acts, both of which will close legal loopholes permitting corruption.

Kenya is making great efforts to implement far-reaching reform programmes needed to kick-start economic growth under the *Investment Programme for the Economic Recovery Strategy for Wealth and Employment Creation (IP-ERS) 2003-2007*, (which replaced its Poverty Reduction Strategy Paper). This is being done in an open spirit of consultation, partnership, and within the framework of popular participation in order to ensure national ownership. The government is committed to aligning the ERS, sectoral policies and programmes, and, by extension, the budgeting and monitoring and evaluation frameworks, to the Millennium Development Goals (MDGs) and the NEPAD/African Peer Review Mechanism (APRM)

There are some promising achievements under this strategy. On the social front, free primary education has been introduced, dramatically increasing enrolment, and the institutional framework to combat corruption has been established. The most recent budget has significantly increased allocations for IP-ERS priority programmes, and fiduciary controls are being strengthened to ensure future spending goes to intended areas. For example, the budgetary share of health expenditure has increased from 2.2 % in 2002 to 7 % in 2004. In late 2004, the government launched a results-based management approach for the public sector on the theme “Results for Kenyans.” Under this new

framework, ministries and parastatals are signing performance management contracts to help strengthen the monitoring and delivery of services.

The recent turnaround has been gradual and the government is building a better environment for development results to occur. It is therefore not surprising that economic growth has rebounded in recent years, albeit confined to a few sectors, such as tourism, horticulture, services, and manufacturing.

Nonetheless, there are several outstanding challenges. The primary drivers for growth—investment and savings ratio relative to GDP, and exports and imports growth—remain low though increasing since 2002. The incidence of absolute poverty remains high, as the number of the poor has increased from 12.5 million in 1997 to 15 million in 2005. An alarming 56% of the population lives in absolute poverty. The 2005 MDG progress report and the recently concluded needs assessment for Kenya show clearly that with the exception of primary education and HIV/AIDS, the country is not likely to meet the MDG targets. There are only limited prospects for achieving the MDGs at the current pace of economic growth, and more importantly for investments in key sectors of the economy, such as agriculture and health.

The national assessment, like the report of the millennium project echoes the message that MDGs are indeed achievable, but not with a business-as-usual attitude. The authorities need to act differently and rapidly in favour of rural areas, urban slums and especially women and children living in these areas. Building the capacity of women and addressing critical areas of gender inequality, especially in leadership and access to resources such as land, income, employment and property remain critical elements to wealth creation. There is an ever increasing need for the government, in partnership with development partners, to put the spotlight on the poor, making development resources available at the community level through innovative and effective service delivery mechanisms. This, however, calls for the promotion of good governance, the rule of law, and the protection and promotion of human rights generally.

The HIV/AIDS pandemic has been a major constraint on Kenya's socio-economic development process. The first case of HIV/AIDS was discovered in Kenya in 1984. By 1999, when the prevalence of HIV/AIDS in the country was at its highest point of 13 %, HIV/AIDS became a development rather than a health issue. As a response, HIV/AIDS was declared a national disaster, culminating in the setting up of a Cabinet Committee on HIV/AIDS and a National AIDS Control Council. The fact that the President chairs the Cabinet sub-committee on HIV/AIDS underscores the importance placed on the pandemic. The sub-committee strengthens policy formulation and oversight. A Strategic Plan on HIV/AIDS was developed around the five pillars of prevention and advocacy, treatment, mitigation of adverse socio-economic impact of HIV/AIDS, monitoring and evaluation, and management and

coordination. This was followed by a strategic plan to mainstream gender into the Kenya National HIV/AIDS Strategic Plan 2000 - 2005.

A general conclusion from this discussion is that Kenya has initiated and implemented programmes aimed at enhancing its socio-economic development. However, several problems still persist, including the rising poverty levels; the high level of unemployment, especially among the youth; poor infrastructure; lack of credit facilities and inadequate access to markets.

The next section examines the standards and codes, their implementation, and emerging issues. This is followed by a discussion of the six APRM Objectives in the area of socio-economic governance. This is done within the context of the Country Self-Assessment Report (CSAR), the APRM Background Paper and the findings of the Country Review Mission (CRM). Each Objective concludes with a set of recommendations from the APRM Panel of Eminent Persons.

6.2 IMPLEMENTATION OF STANDARDS AND CODES

i. Summary of the CSAR

Kenya has signed/ratified/adopted thirteen international standards and codes specifically aimed at promoting socio-economic development. They cover a wide spectrum of issues, from human rights to the interrelationships that exist between population growth, sustainable development and the environment. They include:

- *The Convention on the Right of the Child;*
- *The World Conference on Human Rights*
- *The International Conference on Population and Development;*
- *The World Summit on Human Development;*
- *The Fourth World Conference on Women;*
- *The United Nations Conference on Environment and Development (UNCED);*
- *The Right to Development in the African Charter and People's Right's including the Protocol on the Right of Women in Africa;*
- *The African Charter for Popular Participation in Development;*
- *The African Charter on the Rights and Welfare of the Child*
- *The World Summit on Sustainable Development;*
- *The World Summit on Social Development Plan of Action*
- *The World Food Summit; and*
- *The Convention on the Elimination of all Forms of*

Discrimination against Women

The government has made significant progress towards the implementation of a number of these codes. For example, in accordance with the goals of the *World Summit for Sustainable Development*, the government has made important strides in implementing anti-poverty programmes with an increased share of public expenditures in the social sector, especially towards basic education and community health services.

The CSAR notes that some experts and most of the public interviewed were not aware of these conventions and codes. Those who were aware of them believed that despite the efforts to achieve the Millennium Development Goals (MDGs) at the policy level, there was still a wide implementation gap and Kenya was unlikely to meet the set targets, except perhaps in education.

ii. Findings of the CRM

Kenya has adopted/ratified all the standards and codes listed in the APRM Questionnaire, which is highly commendable. However, the process of domestication of ratified instruments was not disclosed in the CSAR. Nonetheless, the CRM confirmed that domesticated codes were not translated into *Kiswahili*, the national language. There also tends to be a lack of awareness among the general public about the standards and codes. However, the CRM noted that it was generally accepted that the implementation of the codes' and standards' provisions could lead to higher standards of socio-economic development, raise awareness and help building consensus and ownership of reform processes. In this context, a number of institutions have indeed been created to reflect and promote these codes and standards. They include the Kenya National Commission on Human Rights, the National Commission on Gender and Development and the Economic and Social Council in the Presidency.

There is also a general understanding that greater awareness of the Codes and Standards is a first step toward implementation and compliance. The CRM was impressed by the evolutionary way in which a good understanding of codes and standards influenced the expectations of society, which were eventually reflected in the law. A good example was given by the impact the attention generated on gender issues by Beijing has had on drafting new bills and even on the constitutional review.

iii. Recommendations

The Panel recommends the following:

- Government of Kenya to publish and disseminate the adopted standards and codes at the national and district levels. Government

may also translate them into local languages and implement a sensitization programme to promote greater awareness among all citizens [*Government of Kenya*].

- Government departments and institutions be encouraged to fully report on compliance on these standards and codes in their reports [*Line Ministries and Government Departments*].
- Kenyan authorities to establish a systematic and comprehensive mechanism for collection and compilation of socio-economic data to assist in the assessment of compliance with the adopted standards and codes [*Government of Kenya*].
- The Government to sensitise Kenyans on the standards and codes, the objectives and the manner in which they are being implemented.

6.3 ASSESSMENT ON THE PERFORMANCE OF APRM OBJECTIVES

6.3.1 OBJECTIVE ONE: SELF-RELIANCE IN DEVELOPMENT AND CAPACITY-BUILDING FOR SELF-SUSTAINING DEVELOPMENT

i. Summary of the CSAR

The dynamics of international trade regimes and Kenya's heavy reliance on the export of raw agricultural products have made the country vulnerable to external economic shocks, thus limiting its self-reliance in development. The CSAR estimates that external assistance accounted for 70 % of the total development expenditure in the country in the not too distant past. It also suggests that trends in external resource flows indicate a steady build-up in nominal flows of ODA between 1970 and 1996, rising from US\$ 66 million to US\$ 743 million (a 1025 % increase) over the same period. This reached a peak in 1991 when (ODA) represented 14% of the GDP and 45% of government expenditure. These resources from development partners, in the form of loans and grants as well as Technical Cooperation (TC), were often used to supplement domestic savings, facilitate the acquisition of equipment and train personnel.

Donor support has slackened since the 1990s, leading to a sharp decline in aid inflows. Even though reliance on external aid is at a minimum, according to CSAR, most Kenyans are still concerned about it. The dominant belief is that externally funded government resources do not promote local ownership and often lead to the stalling of development projects. It may also promote dependency and ultimately, increase a country's indebtedness. A majority of Kenyans also believe that the government is not in full control of the country's development process due to the overarching representation of foreign ownership in the economy, particularly in the banking sector and Export

Processing Zones (EPZs).

The CSAR further underscores the absence of a strong civil society's participation in the design and implementation of development projects, and in the monitoring and evaluation of the development process.

ii. Findings of the CRM

Efforts have been made by the communities, supported by NGOs and encouraged by the Kenya government to achieve self-reliance in a number of ways. The existence of self-help groups has been a very positive aspect of self-reliance. This, for example, is reflected in a significant increase in food crops such as maize; a notable increase in the sales of vegetables by those who formerly had to buy them; and a reduction in hunger between successive harvests in many regions.

The CRM also noted the existence of group-based merry-go-round system (revolving funds for savings and loans), which has stimulated private savings and thus increasing self-reliance. These are also related to strong group finance schemes, such as Cooperatives and Rotating Savings and Credit Associations (ROSCAs), which have provided investment for community-based enterprises.

The CRM was also informed of self help groups established as informal or formal community associations with the aim of enhancing development through the provision of improved education. The groups bring together resources from villagers and local authorities through *barazas* and, with additional support from the Kenyan government, establish community polytechnics and primary and secondary level schools. Other group development initiatives led, for example, to the installation of water pipes and the extension of electricity supply to communities, all of which have greatly improved the quality of life for the poor. However, the underlying need to improve self-reliance in development and increase local incomes remains unmet.

The Mission confirmed that a majority of ordinary citizens felt that they did not have the opportunity to influence decisions regarding the provision of basic social services. The implication is that most of the service provision initiatives, especially in the provinces do not involve people in planning and implementation. These results also suggest that many Kenyans do not realize that it is both their right and duty to participate in decision-making processes that affect their lives.

As a mark of a country's autonomy, self-reliance in development is better achieved through the establishment of a broad tax base; it is therefore important for all Kenyans to understand the significance of taxation and the generation of revenue. It was apparent during the CRM that several

stakeholders did not fully understand or appreciate the taxation dynamics. Many of them were unaware of their rights and obligations as far as the taxation process is concerned. When large numbers of ordinary citizens have a clear understanding of the tax system and the fact that government expenditure comprises their taxed money, they will be more vigilant and concerned about government expenditure.

Discussions with stakeholders during the CRM confirmed that many Kenyans believed that the government was not in full control of the country's development process. They contended that foreigners controlled all the important sectors of the economy, and thus greatly influenced the country's development process.

Stakeholders generally agree that self-reliance in the social sector can be enhanced by:

- strengthening the capacity of management committees at ward levels to ensure good governance and prudent resource management;
- encouraging community participation in resource mobilization for initiation and maintenance of facilities;
- facilitating the establishment of income-generating activities;
- employing adequate skilled staff in local authorities; and
- establishing self-sustaining community programmes through the initiation of small-scale projects that do not overwhelm stakeholders in terms of planning and management.

iii. Recommendations

The Panel recommends the following actions be undertaken:

- Kenya to intensify efforts to promote self-reliance by mobilizing more domestic resources. Towards this end, Government of Kenya, with the assistance of CSOs, to undertake a national civic education and awareness campaign on the benefits of paying taxes [*Government of Kenya and CSOs*].
- The Authorities in collaboration with CSOs strengthen self-help groups by providing assistance in the form of advisory services and other incentives [*Government of Kenya and CSOs*].
- Accelerate the adoption and implementation of a sustainable bottom-up planning system to encourage participatory development [*Government of Kenya*].

6.3.2. OBJECTIVE TWO: ACCELERATE SOCIO- ECONOMIC DEVELOPMENT TO ACHIEVE SUSTAINABLE DEVELOPMENT AND POVERTY ERADICATION

i. Summary of the CSAR

The CSAR asserts that poverty has been rising in Kenya. The number of people classified as poor increased from 11.3 million (48.4 % of the population) in 1990 to about 15 million (56 % of the population) in 2005. Associated with the problem of wide-spread poverty is the issue of high levels of inequality. Poverty is an urban, rural and provincial phenomenon. Nyanza Province had a poverty incidence of 64.6 % while that of the Central Province was 31.1 %. Generally, five of the eight provinces have recorded poverty incidences of over 57 %.

According to the CSAR, the bottom 10 % of Kenyan households control less than 1% of the total income while the top 10 % of households control 42 %. This can be interpreted to mean that for every one Kenyan shilling (Kshs) earned by the former households, the latter earns more than Kshs 56. This ranks Kenya among the top five most unequal countries in the world.

The adverse effects of poverty and inequality are reported to be most severe among the landless, subsistence farmers, unskilled casual workers, women-headed households and the pastoralists in the Arid and Semi-Arid Lands (ASAL). Successive administrations have undertaken special programmes to address poverty reduction since independence. These include the Land Resettlement and Reform Programme, through which the government transferred land to about 5% indigenous Kenyans under special schemes.

A Special Rural Development Programme (SRDP) was initiated in 1969 to increase agricultural, commercial and industrial production in the rural areas and reduce unemployment through public works and wage employment in local enterprises. A slightly more successful programme was the promotion of social infrastructure projects. Its thrust of labour-intensive production rendered it more successful than the SRDP.

A Rural Works Programme, initiated in 1974, focused on creating rural employment by directing government finances to labour-intensive projects. It created jobs specifically for the rural poor while providing economically useful assets and stimulating local development efforts. In 1974, the government also implemented the Rural Access Roads Programmes, which employed labour-intensive methods for constructing rural access roads between farming hinterlands and major market centres. In its wake came the Rural Trade and Production Centres (RCPT), launched during the 1979/83 National Development Plan to promote greater rural-urban balance. The final strategy was the District Focus for Rural Development, launched in 1983 specially to allocate resources on a more geographically equitable basis.

The current government's poverty reduction strategy is set out in the ERS of June 2003 and its Revised Edition, *Investment Programme for the Economic Recovery Strategy for Wealth and Employment Creation 2003 - 2007* of March 2004. It emphasises poverty reduction and the narrowing of inequality through employment, empowerment and access to affordable and quality social services, and identifies poverty targeted programmes as part of achieving this objective. Other mentioned programmes/initiatives in the CSAR include: the Arid and Semi-Arid Lands (ASALs); the Social Action Fund; the Slum Upgrading and Low Cost Housing; and the Vulnerability Programme.

ii. Findings of the CRM

Evidently, Kenya has embarked on extensive initiatives to accelerate socio-economic development. All the programmes cited in the CSAR reflect the government's numerous efforts to alleviate poverty. However, a careful review shows that these initiatives have suffered from a number of weaknesses that have limited their effectiveness in achieving their goals. These include: inability to target the beneficiaries, insufficient involvement of stakeholders, lack of resources and poor monitoring and evaluation systems. Another major concern is that the programmes have not transcended the planning stage as there appear to be no concrete steps taken towards their implementation.

In general, the Government of Kenya should be commended for instituting the Local Authority Transfer Fund and the Constituency Development Fund. These are excellent instruments for accelerating socio-economic development to achieve sustainable development and poverty reduction. Monetary resources are channelled through these funds from the Central Government to the local level to meet locally identified project needs. Many Kenyans perceive the Constituency Development Fund as one of the most effective policies but one that is also being mismanaged by members of Parliament. This was confirmed by the communities in the rural areas during the CRM consultations.

Best Practice- Box 6.1: Local Authority Transfer Fund (LATF) and Constituency Development Fund (CDF)

The Central Government uses these resources to channel funds to the local levels to finance identified projects, thus promoting participatory development. The LATF is used to:

- *Facilitate local service delivery to all citizens;*
- *Enhance economic governance by improving financial management and revenue mobilisation; and*
- *Strengthen stakeholders' participation in local authority programmes and activities.*

The LATF is transparent and is subject to strict government financial and procurement regulations. Though the CDF faces less strict procurement regulations and is subject to controversy, its guiding principle is a worthy example of good fiscal federalism. It provides substantial funds to the constituency level for development, irrespective of the political party of the sitting member of Parliament of the constituency. The participation of ordinary citizens in the disbursement of these funds is an important check against mismanagement of resources.

The CRM consulted extensively with stakeholders in Kenya with regard to the existing legal frameworks established to promote the socio-economic development of children, youth and other vulnerable groups. Discussions held by the CRM suggested that the Children's Act of 2002 was committed to the development of all children in the country and through the Act, a Department of Children's Services is set up in the Office of the Vice President and Ministry of Home Affairs. The Act prohibits child labour, but government estimates indicate that child labour is about 1.3 million¹⁹ mainly in commercial agriculture, fisheries, mining, factories and domestic services.

Child trafficking and the treatment of child offenders are other areas of concern. Though there are no data on the trafficking of children to help determine the magnitude of the problem in the country, it is believed that Kenya is the centre for child recruitment, transit and receiving in the East African region. It is commendable that the Department of Children's Services has established individual treatment plans and national standards for child offenders. However, there have been instances where child offenders were held in the same facilities as adult offenders.

¹⁹ Republic of Kenya, Ministry of Planning and National Development: Investment Programme for the Economic Recovery and Strategy for Wealth Creation 2003 - 2007, Revised Edition, March 2004, p. 55.

Youth constitute the majority of Kenya's unemployed²⁰. Kenya's young population structure of 42 % being under 15 with a median age of 18.6 years suggests that the question of youth unemployment will persist unless steps are taken to reverse the current trend. In addition, the limited number of secondary schools and high cost of secondary education are likely to exacerbate youth unemployment. Lack of skills and access to capital has made it very difficult for the youth to start and run viable and sustainable self-employment. A National Youth Policy Bill is in Parliament, aimed at addressing some of these concerns. The Bill proposes the creation of a revolving youth fund for the promotion of self-employment. However, the youth are very frustrated, a situation that could degenerate into social instability.

The CRM discovered that several initiatives regarding people living with HIV/AIDS are being spearheaded by NGOs. The operations of the National AIDS Control Council and work of NGOs in the HIV/AIDS sector have created a high degree of awareness of the disease among the general public. Increasing numbers of people are undergoing voluntary tests, and both the infected and affected are open to discussing the disease.

The dominant NGO in the field is "The Association of People with AIDS in Kenya" (TAPWAK). It was founded in 1990 by 15 people living with HIV/AIDS to address their health problems, share their personal experiences and act as support and encouragement for each other. It conducts regular educational outreaches in schools, community groups, workplaces and public institutions, and shares personal experiences of the disease with them. Therefore, TAPWAK gives the disease a human face. TAPWAK has also set up AIDS clubs in schools to increase the awareness of the dangers of HIV/AIDS. Finally, it provides resource centres and clinics on HIV/AIDS, nutritional advice, voluntary counselling and testing, group therapy, home based care and hospital visits, advocacy and lobbying, income generation activities and microfinance to members.

During the discussion with Persons Living with Disabilities, it was indicated that there are nearly four million people living with disabilities in Kenya. The National Council for People Living with Disabilities has been formed, but people living with disabilities indicated that the Council's agenda had not been well articulated and did not cater for the needs of persons with mental disability. They complained that people living with disabilities were the first to be let go of during retrenchments and the last to be hired.

Some stakeholders suggested that many Kenyans living in the *Diaspora* were ready to contribute ideas towards the socio-economic development of the country, but the government had not made any attempts to contact them.

²⁰ Ibid, p.56.

iii. Recommendations

The Panel recommends the following:

- Government of Kenya to accelerate the implementation of the following programmes for alleviating poverty: *the Social Action Fund, the Slum Upgrading and Low Cost Housing and the Vulnerability Programme* [Government of Kenya].
- The Authorities to create the proposed revolving youth fund for the promotion of self-employment [Government of Kenya].
- Government of Kenya and CSOs to initiate, through public and private partnerships, integrated youth resource centres nationwide [Government of Kenya and CSOs].
- CSOs and the National Council on Disabilities to encourage people living with disabilities to form stronger lobbies and advocacy group [CSOs and National Council on Disabilities]
- Government of Kenya to create a desk for people living with disabilities in every ministry to ensure that national policies and programmes cater for the needs of people living with disabilities and ensure the enforcement of all national policies and programmes [Government of Kenya].
- Government of Kenya to set up a civil educational programme to sensitize local communities on the need for their involvement in the LATF and CDF management [The Executive in collaboration with Local Authorities].
- Government of Kenya is encouraged to involve Kenyans in the *Diaspora* in the development process of the country [Government of Kenya].

6.3.3 OBJECTIVE THREE: STRENGTHEN POLICIES, DELIVERY MECHANISMS AND OUTCOMES IN KEY SOCIAL AREAS, INCLUDING EDUCATION AND COMBATING OF HIV/AIDS AND OTHER COMMUNICABLE DISEASES.

i. Summary of the CSAR

Kenya has implemented a universal free primary education (UPE) since 2003. According to the CSAR, whereas enrolments in tertiary and university education have only expanded marginally, affirmative action policies, particularly at the university level, have led to substantial increase in female enrolment. Also, the education budget has been increased by 17.4 %; a school-feeding programme, which targets mainly the poverty-stricken Arid

and Semi-Arid Lands (ASAL) has been set up, and a textbooks fund, as well as a bursary fund, have been instituted to help poor students meet the cost of their education. Further, attempts have been made to enhance school management and to promote prudent financial management and accountability. While these accomplishments are commendable and should be sustained, the CSAR states that problems still persist in the following areas: declining quality of education, high learner/teacher ratio and inadequate classrooms,

The CSAR notes that within the health sector, the main focus has been to ensure adequate implementation of disease prevention programmes, promotion of primary and overall healthcare and improvement of health services. In the last five years, efforts to deal with infant mortality, HIV/AIDS, malaria and other communicable and infectious diseases have also intensified, though with limited success. The prevalence of HIV/AIDS has greatly aggravated the burden of tuberculosis (TB), making Kenya one of the 22 most highly affected countries. In recognition of this growing problem, at the end of 1999 the government declared HIV/AIDS a national disaster.

According to the CSAR, limited progress has been made in integrating population issues fully into sustainable development policy, planning and programming. In particular, sufficient attention has not been paid to the relationship that exists between population, environment and poverty, especially as these relate to the most vulnerable groups like children and people with disabilities. Population growth, poverty and environmental degradation are most closely linked to Kenya's rural areas, where a large majority of the rural poor are dependent on agriculture and natural resources for their livelihoods and sustenance. However, declines in per capita arable land and water supply, together with the degradation of soils, forests, grasslands and water quality, are making life increasingly difficult for the rural poor, thus accelerating rural-urban migration.

ii. Findings of the CRM

Kenya has no long-term vision document for development. A concept paper in this regard is being prepared. As stated elsewhere in this report, the current government's development framework is set out in a medium-term document, the ERS - which covers 2003 to 2007. There is a need for a vision document deriving from well articulated long-term development goals.

In the main, the CRM observed that while Kenya had very well-written and well-articulated policies on almost all aspects of socio-economic development, most of these policies were left unimplemented because of bureaucracy, long procurement procedures and a lack of systems for monitoring the implementation of policies. While the country is not short of good policies, it suffers from poor implementation of policies and programmes. Further, due to minimal communication and dialogue between

the government and civil society, ordinary citizens know very little about government policies and programmes. Consequently, the government lacks effective feedback mechanisms from the intended beneficiaries of its projects.

Kenya's free and universal primary education programme is a commendable development. . Though it is currently experiencing some teething problems, it nevertheless presents a well-connected and unified system of education as shown in Box 6.2.

Best Practice - Box 6.2: Kenya Universal Free Primary Education Policy

Kenya has a very commendable free and universal primary education policy. It presents a well-connected and unified system of education by successfully identifying and integrating the common elements of early childhood, primary, secondary and tertiary education. It also sets very realistic and achievable targets. For example, it sets up optimal staffing of learner- teacher ratio of 40:1, pupil- textbook ratio of 3:1 in early grades and 2:1 in senior grades. It establishes bursary programmes for at least 10 % of enrolled students, especially students in the arid and semi-arid lands areas and other vulnerable groups with great emphasis on girls. It also hopes to review the education curriculum to make it relevant to the changing socio-economic development to prepare students adequately for the labour market. These are the requisite steps needed to achieve the Millennium Development Goal on education.

There is a general thirst for education and willingness to learn as demonstrated by the world oldest pupil, Kimani Nganga Maruga, who returned to school at 85 years to take advantage of the free education programme introduced in 2004. It is instructive to note that he toured the United Nations Headquarters in New York in September 2005 to highlight the plight of over 100 million children worldwide who cannot attend school due to poverty.

All stakeholders positively acknowledge the benefits of the free primary education programme. Nevertheless, they indicated their deep concern over deteriorating standards because of higher learner/teacher ratios, inadequate infrastructure and favouritism in the award of bursaries. The government has plans for addressing some of these impediments, including increasing the number and quality of teachers.

The country is on course to achieve the Millennium Development Goal of universal primary education by the target year of 2015 (see Table 6.1).Although the target of eliminating gender disparities in the education system remains unmet, and though impediments as early marriages continue to constrain the educational advancement of girls, the gap between

the sexes at primary and secondary levels are narrow by any standard.

Best Practice-Box 6.3: Advances in Demography

Kenya was the first country in Sub-Saharan Africa to view runaway population growth as a serious impediment to economic prosperity, and it became the first, in the late 1960s, to develop a national family-planning campaign. The country's official population policy calls for matching population size with available resources, yet leaves decisions on family size up to individual families. While the Kenyan government formulates official strategies on family planning, promotion of the message and means of family planning falls mainly to local healthcare offices and nongovernmental organisations. By all accounts, the country's approach has been successful. The average number of children per woman has dropped to about four in 2002 from around eight in the 1980s, which constitutes one of the fastest-ever national declines in family size. Contraceptive use has grown from 7 % in 1978 to over 30 % in 2002. AIDS, which affects one in ten Kenyan adults, is a significant factor in both higher contraceptive use and the lower fertility rate.

Kenya has made giant strides in demography, as indicated in Box 6.3, although health standards are relatively low and vary from region to region. In 2003, life expectancy at birth was at 50 years for males and 49 years for females, while the child mortality rate was estimated at 126 and 120 per 1000 for males and females respectively. Although the general nutritional situation is not very bad, chronic malnutrition rates are very high, in some regions. For example, one-third (33.7%) of all children under-five in Kwale district in Coast Province are malnourished.²¹

The Government of Kenya has set aside limited funds for the immunization of infants, which finances only 5% of the vaccine budget for routine vaccines and 10% of the total immunization budget. The Global Alliance for Vaccines and Immunisation (GAVI) is instrumental in the provision of immunisation services in Kenya. The GAVI has committed \$67.4 million for a 5-year supply of pentavalent vaccine, yellow fever and DPT-HepB-Hib since 2001; a 5-year Immunisation Services Support (ISS) of \$10m and a 3-year injection safety supplies support, which ends in 2005. Kenya has confirmed the continuation of injection safety support after GAVI support ends. Current GAVI support for the pentavalent vaccine ends in 2006. Kenya will be

²¹ Government/development partners surveys

provided with a subsidy beyond 2006 under the bridge financing initiative approved by the GAVI Board in July 2005, on condition that the government agrees to increase contributions to vaccine procurement until 2015. The government has so far been unable to contribute to the financing of the pentavalent vaccine although commitments have been made since the 2004/5 financial year.

Kenya is however not on track to achieve the other MDGs within the stipulated time-frames due to a combination of several factors including poor infrastructure, weak service delivery mechanisms, poor governance and a weak science and technology base.

Table 6.1: Results achieved in terms of the Millennium Development Goals indicators

| Goal | Target | Indicators | Status | Year |
|--|---|---|--|--------------|
| 1. Eradicate poverty and hunger | Halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day | The proportion of the population below \$ 1 per day | 56% | 2002 |
| | | Poverty gap ratio | | |
| | | Share of the poorest quintile in national consumption. | 1:2 4.8% | 2003 2000 |
| | Halve, between 1990 and 2015, the proportion of children who suffer from extreme hunger | Prevalence of underweight in children under five years of age. | 19 | 2003 |
| | | Prevalence of stunting in children under 5 yrs of age | 31 | 2003 |
| 2. Achieve universal primary education | Ensure that by 2015, children everywhere, boys and girls, will be able to complete a full course of primary schooling | Net enrolment in primary education-boys girls, total | 82.2% (Boys) 82.0% (Girls) 82.1% (Total) | 2004 |
| | | Proportion of pupils starting grade 1 who reach grade 5 – boys, girls total | 81 | 2000 |

| | | | | |
|--|--|---|------------------|------|
| 3. Promote gender equality and empower women | Eliminate gender disparity in primary and secondary education preferably by 2005 and in all levels of education on later than 2015 | Ratio of girls to boys in primary and secondary education. | Primary (101.6%) | 2004 |
| | | | 90.5% | 2000 |
| | | Ratio of literate females to males among 15-24 years olds | 35% | 2003 |
| | | Share of women in wage employment in the non-agricultural sector. | 8.3% | 2005 |
| 4. Reduce child mortality | Reduce by two-thirds between 1990 and 2015, the under five mortality rate. | Under-five mortality rate | 115/1,000 | 2003 |
| | | Infant mortality rate | 77/1,000 | 2003 |
| | | Proportion of one-year old children immunised against measles. | 73% | 2003 |
| | | | | |
| 5. Improve maternal health | Reduce by three-quarters, between 1990 and 2015, the maternal mortality ratio | Maternal mortality ratio | 414/100,000 | 2003 |
| | | Proportion of birth attended by skilled personnel | 42% | 2003 |
| 6. Combat HIV/AIDS and other diseases | Have halted by 2015, and begun to reverse the spread of HIV/AIDS | HIV prevalence among 15 to 24 year old pregnant women. | 9 | 2003 |
| | | | 41% | 2003 |
| | | Contraceptive prevalence rate. | 1.8 million | 2004 |
| | | Number of children orphaned by HIV/AIDS | | |

| | | | | |
|---|--|--|--|-----------|
| | Have halted by 2015, and begun to reverse the loss of environmental resources. | Coverage of ITN for children below 5 yrs of age (%) | 5 | 2003 |
| | | Pregnant women accessing prophylaxis (%) | 4 | 2003 |
| | | Number of notified TB cases | 90,000 | 2002 |
| 7. Ensure environmental sustainability | Integrate the principles of sustainable development into country policies and reverse the loss of environmental resources | Change land area covered by forest (Gazetted Forests) | From 165,000 ha to less than 80,000 ha | 1988-2002 |
| | | Proportion of land area protected to maintain biological diversity. | 1.7 mn ha | 2004 |
| | Halve, by 2015, the proportion of people without sustainable access to safe drinking water. | The proportion of population with sustainable access to improved water sources | 55% | 2002 |
| | Have achieved, by 2020, significant improvement in the lives of at least 100 million slum dwellers. | Proportion of population with access to improved sanitation. | 86% | 2004 |
| | | Proportion of population with access to secure tenure, owned or rented houses. | - | - |
| 8. Develop global partnership for development | In cooperation with developing countries, develop and implement strategies for decent and productive work for youth | Unemployment rate of 15 to 27-years-olds for each sex and total | 29.5% for women | 2000-2003 |
| | In cooperation with private sector, make available the benefits of the new technologies, especially information and communication. | Telephone and cellular subscribers per 1,000 population | 100 lines for 1,000 population | 2005 |

Source: MDG Status Report for Kenya 2005 p.38.

Kenya is likely to meet the goal of achieving universal primary

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education, which will be assisted substantially by the government's policy of free primary education. The goals pertaining to health, however, are more disconcerting. The incidence of malaria is projected to increase by 2015, implying the need for Kenya to effectively implement the National Malaria Strategy (2001-2010). The Government has made remarkable efforts to reverse the incidence of HIV/AIDS by 2015, as shown in Box 6.4.

Best Practice - Box 6.4: Reduction in the Prevalence of HIV/AIDS

Kenya's ability to reduce the prevalence rate of HIV/AIDS from 13 % to 7 % between 1999 and 2004 is commendable. The government's efforts in this regard include declaring HIV/AIDS a national disaster, setting up a Cabinet Committee on HIV/AIDS and a National AIDS Control Council. The Committee, chaired by the President, strengthens policy formulation and oversight. A Strategic Plan on HIV/AIDS was developed around the five pillars of, prevention and advocacy, treatment, mitigation of the socio-economic impact of HIV/AIDS, monitoring and evaluation, and management and coordination. This was followed by a strategic plan to mainstream gender into the Kenya National HIV/AIDS Strategic Plan 2000 - 2005. The reduction in the monthly cost of Anti-Retroviral (ARV) treatment from about \$1,000 to \$1.40 within 5 years is a remarkable achievement, though buoyed by efforts to reduce treatments globally.

Interestingly, stakeholders in Garissa disputed the CSAR's assertion that the North Eastern Province had the lowest prevalence rate of HIV/AIDS while Nyanza Province had the highest rate. They suggested that the rate was much higher than the one officially reported because of the pastoral nature of the population of the North Eastern Province, which makes it difficult to obtain reliable data.

Some stakeholders expressed serious concerns about the rate of environmental degradation occurring in the country, particularly in the rural areas. An expert stakeholder indicated that about 10, 0000 trees are being felled every month for making charcoal in the Kitui district alone. At this rate, the district may lose close to 1.2 million trees in the next decade. The impact of this is manifold, considering the fact that charcoal making is not the preserve of the Kitui district alone. It could aggravate flooding and erosion, cause the silting of dams and the loss of bio-diversity and accelerate desertification. Kenya, more than most countries, is very aware of the issue of desertification since a larger proportion of its landmass is not arable. Besides, these examples suggest that Kenya has not taken advantage of the presence of the headquarters of the United Nations Environmental Programme (UNEP) in the country and the several initiatives undertaken and publicised by Nobel Laureate, Wangari Maathai, the vanguard of environmental programmes and activism in Africa.

In an effort to improve the safety net for its citizens, the Kenyan Government is converting the existing 2.9 million-member National Social Security Fund (NSSF), a provident fund for private sector workers, into a more comprehensive national insurance pension plan. Under a draft NSSF Act Amendment Bill, eligibility will extend to any person with a monthly or seasonal income. The new benefits will include lifetime old age, invalid, and survivors' pensions; a maternity grant; and a funeral grant. Additionally, the National Health Insurance Fund (NHIF) will eventually be restructured to provide universal compulsory social health insurance coverage for every citizen.

iii. Recommendations

The Panel recommends that Government of Kenya undertake the following:

- Initiate annual People's Assemblies to allow the President of the Republic to interact with the public and explain government's policies and programmes with a view to encouraging a culture of accountability. Commissioners to hold similar sessions in the provinces as well [*The President of Kenya and Provincial Commissioners*]
- Comprehensively address the issue of deteriorating standards in the education system by recruiting more teachers to reduce the high learner/teacher ratios, and improve the necessary infrastructure [*Government of Kenya*].
- Ensure that bursaries are awarded on the basis of demonstrable needs and establish transparent disbursement mechanisms [*Government of Kenya*].
- Continue to work towards the achievement of the MDGs, especially in the area of environmental sustainability and the reduction of the incidence of malaria [*Government of Kenya*].
- Consider providing alternative education models appropriate for children of nomadic groups with the involvement of stakeholders. [*Government of Kenya*].

6.3.4 OBJECTIVE FOUR: ENSURING AFFORDABLE ACCESS TO WATER, SANITATION, ENERGY, FINANCE, MARKETS, ICT, SHELTER AND LAND FOR ALL CITIZENS, ESPECIALLY THE RURAL POOR

i. Summary of the CSAR

Concerning housing, the CSAR indicates that there is a persistent housing

shortage in Kenya, despite the high returns on investments to private investors in housing in urban areas. As a result of the shortage, informal settlements are emerging in all the major urban centres of the country, such as Kibera in Nairobi, reputed to be the largest slum dwelling in Africa (See Box 6.5.). Decent housing is prohibitively expensive because of the high price of land and construction and building materials.

With regard to energy, the government's rural electrification programme has been constrained by limited funding. The World Bank's financial support to the Kenya Power and Lightning Company (KPLC), the sole power distributor, has not generated the desired boost in power supply to overcome the problem of power fluctuation in the country. Electricity blackouts occur intermittently, especially when drought reduces water flows and levels.

Concerning water and sanitation, several parts of Kenya face acute scarcity of potable water. According to the CSAR, only about 32 % of households, mainly in urban areas, are connected to piped e water. The rural areas experience an even more critical situation, where about 54 % of households lack potable water. They rely on wells, springs, rivers, streams, ponds, and lakes or dams to meet their water needs. Most of these sources dry up during the dry season. Water-quality problems in lakes, including water hyacinth infestation in Lake

Best Practice- Box 6.5: Slum Upgrading

Kenya's capital city, Nairobi, hosts some of the most dense, unsanitary and insecure slums in the world, including the Kibera slum, located on the outskirts of Nairobi, which has assumed the dubious distinction of being the largest slum settlement in Africa. Slum dwellers constitute the majority of the city's population; an estimated 60 % of the city's official total population of 2.5 million people lives in approximately 200 slums and informal settlements. The land area of the city covered by informal settlements is just over 5% of the total area used for residential purposes. This means that over half of the city's population lives on 5% of the residential land area. This is a very distressing situation as this scenario cuts right across the national urban landscape, where an estimated 47% of the urban population lives in inadequately constructed and poorly serviced settlements.

The government, in pursuit of its commitment to systematically upgrade slums in urban areas is, collaborating with the United Nations Human Settlements Programme (UN-HABITAT) to which Kenya is host country. The Kenya Slum Upgrading Programme (KENSUP) was formalised by a Memorandum of Understanding (MOU) signed between the Government of Kenya and UNHABITAT on 15th January 2003 to collaborate in the formulation and implementation of a long-term National Slum Upgrading Programme. The programme targets the production/improvement of about 45,000 units annually nationwide at an approximate cost of Ksh. 35 Billion (US\$ 440,000,000).

The Programme will cover the urban areas in Kenya, starting with selected slums within Nairobi City Council and Kisumu Municipal Council and Mavoko Municipal Council. It intends to address inappropriate policies that contribute to growth of informal settlements and worsening of living conditions in slum areas. The KENSUP will examine these policies and propose necessary reviews of the same to facilitate and promote the growth of physically, socially and economically sustainable urban settlements. Through a broad-based consultative process where four sites were identified for Nairobi, it was decided that the programme commences in the Kibera-Soweto village measuring about 24Ha. within the greater Kibera Slum settlement (Total area 239Ha.). A lot remains to be done as witnessed by the Country Review Mission in their field visit to Kibera.

Victoria, have contributed to a substantial decline in fishing output and endangered fish species. Urban sanitary conditions, particularly in the urban informal settlements, are deplorable.

The government has taken steps to address water shortage through institutional reforms. It instituted the National Water Policy in 1999, which redirected the government's role in water matters away from direct service provision to regulatory functions; leaving service provision to municipalities, the private sector and communities. The establishment of the Water Services Regulatory Board to oversee water service provision, licensing and the establishment of Water Services Boards are some current institutional reforms in the water sector.

The issue of land has been, and will continue to be a very contentious one in Kenya until it is addressed adequately. Only 20 % of Kenya's land is arable and, as indicated elsewhere in this report, much of it is held by a few prominent leaders and their families. Consequently, land issues have triggered severe crises and conflicts, not only among communities, but even between the communities and the government.

Access to finance is reported to be a major constraint to investment, particularly by small business owners. Many small business entrepreneurs rely on Savings and Cooperative Credit Organisations (SACCOs) and other less stringent and less exploitative sources of finance. Microfinance institutions are the main sources of funds in rural areas. The government is trying to speed up the adoption of the Microfinance Institutions law as a step towards enhancing competition in the financial sector to improve the participants' access to credit. Other measures include an increase in tax incentives to encourage more savings through pension schemes.

Notwithstanding these developments, over half of Kenyan microfinance experts and the society at large believe that government's efforts to enhance the availability of microfinance are inadequate. The lack of access to markets has also been noted as a serious hindrance to local level resource mobilization and sustainable development initiatives. Many perishable products are either wasted or are sold at give away prices that do not enable the producers to realize adequate returns on their investment. This situation arose partially from the adoption of the Structural Adjustment Programme, which liberalised marketing of agricultural products. The role of previous government marketing agents diminished, paving the way for other agents, especially middlemen, with scant regard for quality preservation.

ii. Findings of the CRM

The CRM confirmed most of the findings presented in the CSAR. Kenyans regard issues of water, housing and energy as very central to their self-reliance and sustainable development and heavily count on the government to initiate

and implement good policies to address the situation. The interaction with stakeholders indicated that there were considerable differences between the poor and the rich in Kenya in terms of access to water. Over 93 % of the richest 20 % of the population have access to potable water but only 28 % of the poorest 20 % have drinking water²². The disparities are even more pronounced on provincial basis. While 33 % of the households in Nairobi Province have piped water, only 0.6 % of households in North Eastern and Nyanza Provinces can access piped water.

The CRM noted, however, that the Kenyan Government had taken access to water as a priority. Cabinet ministers and high-ranking officials attended a four-day National Conference on Integrated Water Resources Management, held in Nairobi in March 2002. The meeting conveyed to Kenyans the message that Kenya was facing a water crisis, which threatened the very existence of the country, and that the reversal of the crisis would require the participation and support of all, including every sector that uses water. Building on this initiative, the current government mapped out an agenda of reform with water resources development and management as one of its priorities. In this context, the Ministry of Water and Irrigation established the new 2002 Water Act, intended to tackle the worsening water services experienced over the earlier decade. This Water Act established an autonomous Water Resources Management Authority, destined to manage and protect Kenya's resources. It also shaped an institutional framework that gave responsibility for providing decentralised services to seven regional Water Services Boards (WSB).²³

A similar trend prevails in the area of energy. For example, the percentage of households with electricity in Nairobi is far greater than that of the rest of the other seven provinces combined. Firewood, charcoal and biogas are the major sources of energy used in many parts of Kenya. Wood fuel accounts for about 70% of the energy consumed, and electricity counts for 9%.²⁴ Should this trend continue the effect on environment and therefore on sustainable development for future generations will be disastrous.

Kenya development partners identified several factors that could explain low access to modern energy supply by both households and the informal economy. This has increased the frustrations relating to the high cost and low quality experienced by those with access²⁵. These factors include: inefficient performance of public utilities; a weak legal and regulatory framework;

²² Society for International Development, *cit.*, p. 11.

²³ The Water Act

²⁴ PRSP, Kenya

²⁵ Joint Donor Statement For The Kenya Consultative Group Meeting - Energy Sector

incorrect pricing strategy of modern energy; inadequacy of proposed energy services; and lack of information to consumers.

These factors, for example, were the major causes of the delay in the implementation of the rural electrification programme initiated about 30 years ago to supply electricity to rural areas. Acknowledging the role of energy in both economic growth and the well being of the people under the ERS and the Energy Sector Recovery Project, the Kenyan government and its public utilities are now committed to passing a new Energy Bill before 2007. The Bill, among other things, will create an independent Rural Electrification Authority to manage the Rural Electrification Programme and the Rural Electrification Fund.

The situation is persistent because Kenya has yet to find hydrocarbon reserves on its territory, despite several decades of intermittent exploration. Tax and other concessions are planned to encourage investment in hydroelectricity and in geothermal energy, in which Kenya is a pioneer.

The CRM was informed that certain regions (Western and Nyanza), have their land classified as either 'high' or 'medium' potential, while all the track of land in North Eastern Province is classified as 'low'. Farm sizes are on the decline over time and the agricultural labour force is increasing faster than area under crop cultivation. The average land holding in the rural areas is less than four hectares per household across most provinces, except Rift Valley and Coast Provinces where it is substantially more than four hectares. These statistics corroborate the CSAR assertion that "the issue of land has been, and will continue to be a very contentious one in Kenya". Unfortunately, Kenya lacks a clearly and adequately designed land policy for addressing these issues.

On access to markets, farmers complained to the CRM that agricultural production costs were prohibitive in Kenya compared to neighbouring countries, especially those in the East African Community (EAC). This made it very difficult for their produce to compete favourably with produce from these countries when they entered the Kenya market. The government has taken steps to address some of the issues of markets. It is strengthening governance in the cooperative movement, and a new Cooperative Act has been enacted. The government has also revived a major milk processing and marketing cooperative to protect farmers from exploitation. A marketing department has been set up in the Ministry of Agriculture, which provides marketing information to assist in the marketing of farmers' products. A general observation is that these initiatives have not been adequately communicated to farmers.

Kenya's first EPZ was established in 1990. Since then the number of EPZs has been increasing. The zones are intended to increase foreign currency earnings through exports to the United States and Europe. They offer various

incentives to attract investors. In a country where official statistics put unemployment at almost 15 %, EPZs have been a major driver of employment creation. During consultations however, the CRM was informed of persistent poor working conditions and human rights abuses in the zones. In some areas, cases were cited of great mistreatment of women workers in particular.

Compared to a number of African countries, Kenya has a well- developed telephone system, but it is still far below world standards. Official statistics²⁶ show that by September 2004, there were 240,000 fixed telephone lines subscribers and 2.8 million cellular mobile subscribers. This translates into a teledensity of 0.75 per hundred inhabitants for fixed and 9.75 per hundred inhabitants for mobile telephones against the world average of 19 and 21 respectively. By April 2004, there were 73 registered Internet Service Providers (ISPs), 16 of which are active, with approximately 1,030,000 users and over 1,000 cyber cafes and telephone bureaus. There were also about 520,000 personal computers in active use at the beginning of 2004, giving the number of computers per hundred inhabitants as 1.6.

The government has licensed 16 television stations and 27 FM radio stations. On internet access, the CRM was informed that very low connectivity exists in rural areas. Though three regional operators have been licensed during the last three years, none of them has started operations in the rural areas making ICT penetration in Kenya generally an urban phenomenon. ISPs are concentrated in Nairobi, and in other mainly urban centres. A Universal Service Fund has, however, been put in place to encourage operators to move to the rural areas.

The prominence of the public sector in the economy suggests that effective reform will begin with the government itself adopting ICT to promote efficiency and transparency in governance. A commitment to “e-government” which would ensure seamless electronic communications between the public sector and the people would be the most convincing resolve of Kenya’s readiness of entering the Information Age. However, major impediments to the quick penetration of ICT in the country still exist. These include inadequate infrastructure backbone and ancillary facilities such as electricity, telephones and financial services and ICT skills. Also, the private sector has no motivation in investing in rural ICT, as this segment has not proven to be profitable relative to urban areas.

iii. Recommendations

The Panel recommends the following:

²⁶ National Information & Communications Technology (ICT) Policy

- Government of Kenya to improve upon the communications programme in the Ministry of Agriculture that provides regular market information to farmers [*Ministry of Agriculture*].
- Government of Kenya to accelerate the energy sector reform programme to ensure an adequate supply of energy [*Government of Kenya*].
- Kenyan Authorities to articulate a comprehensive ICT strategy for human resources development, especially in the public sector; enhance government's capacity to manage change entailed in the implementation of e-government; and address substantively the issue of universal access to ICT [*Government of Kenya*].
- Government of Kenya to develop a comprehensive strategy, involving all stakeholders, to deal with the problem of housing shortage, particularly in the urban areas. It is strongly advised that government, in collaboration with UNHABITAT, intensify the slum upgrading and low cost housing initiative [*Government of Kenya and UNHABITAT*].

6.3.5 OBJECTIVE FIVE: TO MAKE PROGRESS TOWARDS GENDER EQUALITY IN ALL CRITICAL AREAS OF CONCERN, INCLUDING EQUAL ACCESS TO EDUCATION FOR ALL GIRLS AT ALL LEVELS.

i. Summary of the CSAR

The CSAR notes that Kenya has made significant progress in mainstreaming gender issues in the development process and in the adaptation of international provisions into national policies and programmes. Major achievements in this area include:

- The formulation and implementation of the National Policy on Gender and Development;
- The implementation of gender mainstreaming strategies in socio-economic development and environmental management;
- The promulgation of the Domestic Violence and Equality Bills for the protection of women against violence and the promotion of equal opportunities for all people;
- The promotion of women self-help groups, CBOs, CSOs and NGOs; and
- An upsurge in the number of gender capacity-building initiatives at the national and local levels by government in conjunction with other

development partners.

Despite these accomplishments, gender disparities persist due to unequal access to productive resources, social attitudes, cultural differences, unequal educational opportunities and poor participation in the decision making process by women, both in the political and economic realms. The issue of gender marginalisation is underscored by women, who have remained vastly underrepresented in Parliament and in local leadership positions. They hold only 8.3 % of the seats in the National Assembly.

Legally, women are not adequately protected under the law. They are often excluded from inheritance settlements, particularly if married, or given smaller shares than their male counterparts. The practice of wife inheritance in some communities restricts a woman's right to choose her mate and places her at a high risk of contracting sexually transmitted diseases including HIV/AIDS. Perhaps the most affected women are widows. Overall, women have less access to social services and productive resources compared to men. This situation is changing for the better, though, as the current government has appointed several women to key posts in the Cabinet, the Civil Service and state corporations.

ii. Findings of the CRM

One of the electoral promises of the NARC government was to boost women's welfare and gender equity. While the gender dimension has gained momentum, as demonstrated by some policy initiatives - including the creation of the Ministry of Gender, Sports, Culture and Social Services in 2002 and the National Gender Commission in 2004 - it has not yet reached the level envisaged under the various gender conventions and declarations ratified by the Kenyan Government. Laws disenfranchising women are still intact and the values and cultures of the societies that foster gender discrimination have not changed either.

Though the current government highlighted the objective of equity and poverty reduction as one of the pillars of the economic recovery strategy, the ERS is not very explicit on the goal of reducing inequalities between men and women and empowering women. The CRM noted also that the gender dimension was not clearly incorporated into the development programmes in the ERS plan of action with regard to basic social services, access to infrastructure, productive and employment-generating activities, protecting women at the work place and reducing the time burden for women. However, it is noteworthy that a number of activities aimed at achieving gender equity have been funded under the Ministry of Gender, Sports, Culture and Social Services. It is also encouraging to note that the vote for gender mainstreaming has been on an upward trend in recent budgets.²⁷

²⁷ Public Expenditure Review 2005: Achieving the ERSWEC objectives, Ministry of Planning and National development

There is little or no understanding of either the actual contribution of women to the economy or the real impact of the few initiatives on the ground in support of women, such as microfinance initiatives, merry-go-round groups, self-help groups, or continuing literacy programmes. It is commendable, however, that the Central Bureau of Statistics (CBS) has recently initiated measures for the inclusion of data on women's contribution to Gross Domestic Product (GDP) into the national accounts. The CBS has also started to collect gender-disaggregated economic and social data to reflect the gender dimension.

Equal access to wealth remains a challenge for Kenyan women. Although, under the current Constitution, women can acquire, own and dispose of property, in rural areas customary laws prevent women from inheriting land. Culturally, women do not inherit from their fathers, especially if they are married. When the husband dies his brothers and parents in many cases disinherit the widow and children. Land being the most accepted form of security to acquire credit, this then means that Kenyan women's access to credit is highly restricted, even when the husband is alive, as the title deeds are almost always in the name of the husband.

Despite the recent introduction of Free Primary Education (FPE) by the government, documents made available to the CRM indicate that enrolment figures for girls is still low, especially in the North Eastern Province²⁸ where the enrolment of girls is a paltry 15.7% compared to 29.3% for boys. Overall, the situation of girls' enrolment has improved significantly even if disparities between boys and girls subsist slightly. Following the introduction of the FPE, girls' enrolment was 104 % and boys' 106 % in 2003²⁹. Consultations with stakeholders revealed that issues affecting girls' enrolment related to culture and adolescent pregnancy. The 2003 Kenya Demographic and Health Survey indicate that 23 % of women aged 15-19 were mothers or were pregnant with their first child. This phenomenon is likely to increase girls' dropout from school.

Statistics have shown that more women are infected with HIV/AIDS in Kenya. According to the Kenya National AIDS Control Council (NACC), out of the 1.4 million Kenyans living with HIV, about two thirds are women. In the 15-24 age range, the gender difference is more pronounced, with female prevalence nearly five times higher than that for males.³⁰

²⁸ Ministry of Education Science and Technology, 2004

²⁹ MDGs status report for Kenya 2005, Government of Kenya and UNDP

³⁰ Kenya National AIDS Strategic Plan 2005/6-2009/10

The CRM recognizes the efforts made by the National AIDS Control Council to integrate gender concerns into the national HIV/AIDS Strategic Plan. It noted, however, that some key special needs for women have not yet been sufficiently addressed. Examples include empowering women and unmarried girls to practise abstinence, and the popularization of condoms for women to enable them to freely decide on the most appropriate contraceptives.

iii. Recommendations

The Panel recommends the following:

- The Government of Kenya to initiate a gender sensitive approach in monitoring and evaluation of development programmes [*Government of Kenya*].
- Parliament to enact into law the Affirmative Action Bill, the National Gender and Development Bill, the Equality Bill, the Domestic Violence (Family protection) Bill, and the Gender and Development Policy Bill [*Parliament*].
- Government of Kenya and CSOs to initiate a dialogue with the different communities in Kenya on harmful cultural practices and outlaw all forms of discrimination in respect of the CEDAW Convention [*Government of Kenya*].
- Government of Kenya to provide ARV for treatment of children, enhanced affordability and increased supply of female condoms and adopt measures for the prevention of mother to child transmission [*Government of Kenya*].

6.3.6 OBJECTIVE 6: ENCOURAGE BROAD-BASED PARTICIPATION IN DEVELOPMENT BY STAKEHOLDERS AT ALL LEVELS

i. Summary of the CSAR

According to the CSAR, the introduction of a District Focus for Rural Development (DFRD) strategy in Kenya has been a watershed in the use of participatory methodologies in programme and project implementation. To encourage stakeholder participation, the government has undertaken a review of the various laws in strategic sectors. This process is clearly reflected in the Poverty Reduction Strategy Paper (PRSP).

Institutional reforms embodied in the ERS, such as public sector reforms and reviews of various laws in the country, are aimed at providing an enabling regulatory environment to enhance stakeholder participation. Other instruments for generating broad-based participation include Sessional Paper

No.2 of 2005 on the “Development of Micro and Small Enterprises for Wealth and Employment Creation for Poverty Reduction” with a focus on enhancing participation of the private sector in wealth creation and poverty alleviation

The CSAR states that the implementation of the above policies still remains a daunting task. . Experiences from the Constituency Development Fund (CDF) at the grassroots level suggest that lawmakers have yet to appreciate the importance of stakeholder participation. It indicates further that there is lack of adequate structures, especially at the grassroots, to enhance stakeholders’ participation in the development process. Stakeholder participation in the development processes is hampered by limited decentralization, a factor that does not promote the empowerment of the population.

Expert opinion shows that there has not been adequate capacity building and resource allocation to facilitate the implementation of participatory arrangements, thus rendering even the LATF and CDF ineffective. This has been a wide gap between articulated government policies and actions, and a disconnect between the different levels of policy-making, i.e., the central government, local authorities and the provincial administration. Overall, while several laudable initiatives have been taken, the majority of the interviewed experts and the general public do not feel that adequate efforts have been made to encourage broad-based stakeholder participation in the development process.

ii. Findings of the CRM

Consultations with government officials revealed that there was a strong political will to promote community participation in Kenya. Examples of participation led programmes include the participatory poverty assessment process, the MTEF budgeting process, the National Economic and Social Council (NESC), the Local Authority Transfer Fund (LATF) and the Constituency Development Fund (CDF), as previously mentioned.

However, the CRM's consultations with key stakeholders confirmed the findings of the self-assessment review that communities did not feel that they were adequately consulted in policy development and programmes implementation, either at the national or local level. The CRM noted that the lack of feasible mechanisms to attain effective beneficiary participation in development is still a major deficiency in programme planning and implementation in Kenya. There is a consensus that the main reason for many unsuccessful development programmes is the lack of active, effective and lasting participation of the intended beneficiaries.

The Constituency Development Fund (CDF) and the Local Authority Transfer Fund (LATF) are good examples of programmes where community participation could add value. In particular, the law subjects LATF allocations

to the development of Local Authority Service Delivery Action Plans (LASDAPs). The processes require local authorities to organize consultative meetings and to submit a list of community organisations or individuals in attendance. However, a recent study on the mobilization and management of resources in local authorities³¹ revealed that most local authorities had poor records of local residents' participation. About 85.8 % of respondents indicated that they had never been invited to any meeting to discuss development projects in the last three years.

Impediments to broad-based participation in development have both administrative and socio-cultural bearings in rural areas. Central or local administrative systems that control decision-making, resource allocation and information do not encourage participation from the grassroots. Instead, government officials and professionals perform a top-down planning. This results in rural development plans being generated in urban centres that are hardly based on need assessments in the field. Another serious obstacle is the widespread mentality of dependence on the government at all tiers among uneducated low-income rural households for the provision of all amenities.

For a culture of participation to persist in Kenya, politicians, officials, and experts need to accept, support or at least tolerate effective forms of participation of rural people and the disadvantaged in development, especially at the grassroots.

iii. Recommendations

The Panel recommends the following:

- Local authorities to encourage public participation in projects and programmes by soliciting inputs from members of the public early in the project planning process to ensure that the latter's concerns are taken on board [*Provincial and Local Authorities*].
- Government of Kenya to develop a national approach and common guidelines for public participation, to articulate needs and concerns, assist in the implementation of projects, and assess the progress and performance of projects [*Government of Kenya*].
- Government of Kenya to provide effective guidelines to local authorities for the selection of representatives in CDC, to ensure broad participation [*Government of Kenya*].
- Government of Kenya to enhance the engagement of CSOs and the public in the preparation of national budgets [*Government of Kenya and CSOs*].

³¹ Management of Resources by Local Authorities: the case of Local Authority Transfer Fund in Kenya, Morris Odhiambo, Winnie V. Mitullah and Kichamu S. Akivaga, 2005.

CHAPTER 7

7. CONCLUSION

“It is expected that country efforts will be enhanced and strengthened by the APR process and that, after the first review, countries will sustain their efforts to achieve the shared objectives identified in the APRM and their Programmes of Action. This will require updating these Programmes of Action on a regular basis on the basis of self-monitoring results of their own progress and lessons learned from sharing with other countries, which will be facilitated actively by the APRM...”

NEPAD/HSGIC-03-2003/APRM Guideline/OSCI, Section 6.5.

7.1 OVERARCHING ISSUES

The preceding four chapters of this report appraised Kenya in the four thematic areas of the APRM, namely; Democracy and Political Governance, Economic Governance and Management, Corporate Governance and Socio-Economic Development, based on the country self-assessment report, background information prepared by the Secretariat and the findings of the CRM. They also elaborated on the recommendations of the Panel in each of the thematic areas.

However, many challenges still remain. Without being selective or attempting to define priorities, there are areas of deficiency or shortcoming in the Kenyan systems that are of a recurring or cross-cutting nature. These more general problems, seemingly interlinked, may require a holistic, and perhaps more urgent approach because of the wider impact they have on the quality of governance in all areas of activity. These overarching issues are as follows:

- Managing Diversity in Nation Building
- Implementation Gaps
- Poverty and Wealth Distribution
- Land
- Corruption
- The Constitution
- Gender Inequality
- Youth Unemployment and
- Transformative Leadership

7.1.1 MANAGING DIVERSITY IN NATION-BUILDING

Like many other African countries, Kenya is a very diverse country. With more than 40 ethnic groupings³², the people of Kenya have different histories, traditions and culture, speak different languages and practice different religions. Tribal and ethnic identities are pronounced, with each major 'tribe' preferring its leader to be the next president. Too often, one's political base and support is dictated by tribal interests rather than social, economic, gender or professional interests. The emphasis on ethnicity has been a cause of tension and conflict. Differences over religion and gender and ethnicity have fed into the vulnerability and marginalisation of certain social groupings.

The dominance of 'tribal,' or ethnic, interests is a constant threat to national unity, as the experience of the former Yugoslavia or Rwanda in the not too distant past demonstrates. Kenya has so far avoided these extreme dire consequences, but ethnic competition and tensions are present, and the country has already experienced forms of ethnic cleansing³³.

More often than not, differences of opinion and belief in the political arena are expediently used to polarise and mobilise group action in order to protect or attack perceived interests. Some of the inflammatory ethnic based discourses in Kenyan politics have not been helpful in this regard. The CSAR is candid in acknowledging the issue of ethnicization of basic political issues. Indeed many stakeholders during the CRM consultations repeatedly drew attention to the need to place ethnicity on the table. A conscious effort must be made to draw all groups into the mainstream on an inclusive basis, as opposed to mere short term or goodwill gestures of tolerance. Fortunately, no single major ethnic grouping in Kenya constitutes a majority.

Globally, the typical devices often used to accommodate diversity include the following:

- Electoral representation, either through proportional representation, or the reservation of seats on ethnic electoral rolls, or special representation in second chambers of the legislature;
- Political representation sometimes granted by establishing councils of minorities, which have to be consulted on legislative Bills or policies which are of special relevance or interest to minorities;

³² The Kikuyu (22%) are the largest group followed by the Luhya (14%) who are the second largest group. Other significant populations include the Luo (13%), Kalenjin (12%), and Kisii (6%) along with smaller groups of indigenous peoples such as the Somalis, Maasai, and Turkana.

³³ See Yash Ghai, A Guide to the Kenya Constitution - National Unity and Ethnic Diversity: Striking the Right Balance, Chapter 11, <http://www.kenyaconstitution.org/docs/O3ad012.htm>

- Territorial autonomy/devolution, when an ethnic group or groups are geographically concentrated in specific areas, so that devolution gives them control over local affairs and resources;
- Ethnic balancing through constitutional provisions that oblige the President to ensure that Cabinet posts and appointment to key government positions reflects the geographical spread as well as ethnic diversity; and
- Recognition of minority languages as national or official languages.

Kenya may consider adopting and adapting some of these measures after close scrutiny. Further, the authorities may consider strengthening sanctions against ethnic incitement and deliberate anti-diversity gerrymandering. The best resolution to the challenge of 'diversity management' is the promotion and adoption of constitutional guarantees for equal opportunities and equality. The opinion and influence leaders should be at the forefront of espousing principles of national identity and unity in the face of identified challenges.

7.1.2 IMPLEMENTATION GAPS

A frequently encountered problem, and perceivably the greatest challenge to Kenya's democracy, is the poor implementation of policies and programmes. Kenya is well serviced with a body of laws, programmes, commissions and agencies that could make for the best-governed democracy in Africa. However, these policies and programmes have so far been poorly implemented. For instance, the Second MDG Status Report for Kenya 2005 indicates that the completion rate for major development projects was as low as 3 % in 2000. The Government's Public Expenditure Review indicates that the percentage of public capital budget that is spent has increased marginally from 48 % in 2003 to 54 % in 2004.

There are many reasons for the poor implementation record, some of which are interlinked. These include the lack of political will to implement the policies; the donor syndrome, whereby some policies are hoisted on Kenya so as to qualify for aid; a weak resource base and capacity constraints in institutions hoisted to implement these policies; and the exclusion of critical stakeholders and institutions in some cases. Others are poor coordination of efforts by institutions involved in policy formulation and implementation, including the government, civil society organisations and the private sector; budgetary problems, including lack of transparency and accountability, and poor governance.

The several initiatives taken in recent times must be stressed and encouraged to the extent that the government exhibits the political will to actually

implement them. Kenya needs an invigorated Executive working with a reform-oriented parliament to raise the bar of implementation. The media as well as the political parties need to be carried along as stakeholders in examining achievements as well as impediments at the policy implementation level. Ignoring them, or treating them as foes, is most likely to be counterproductive. The citizenry/critical stakeholders should be further encouraged to demand more accountability from their government. Coherent linkages and harmonisation also need to be established between national and local levels, including feedback mechanisms.

7.1.3 POVERTY AND WEALTH DISTRIBUTION

An emerging challenge throughout the four thematic areas is the rising poverty level in Kenya even though economic growth has been increasing. This is an urban, rural as well as provincial phenomenon. Five of the eight provinces have recorded poverty incidences of over 57 %, with Nyanza Province recording as high as 64.6 %, making it the poorest province in the country. The adverse effects of poverty are most severe among the landless, subsistence farmers, unskilled casual workers, women-headed households and the pastoralists in the Arid and Semi-Arid Lands (ASAL). Sufficient attention has not been paid to the relationship that exists between population, environment and poverty, especially as these relate to the most vulnerable groups like children and people with disabilities. Population growth, poverty and environmental degradation are most closely linked to Kenya's rural areas where a large majority of the rural poor are dependent on agriculture and natural resources for their livelihoods and sustenance. Declines in per capita arable land and water supply, together with the degradation of soils, forests, grasslands and water quality, are making life increasingly difficult for the rural poor, thus accelerating rural-urban migration.

A related overarching issue of concern is the levels of inequalities in Kenya, which currently ranks among the top five most unequal countries in Africa. For every one Kenyan shilling (Kshs) spent by the poorest 10 % households, the richest 10 % households spend about Kshs 52. With regard to basic needs, over 93 % of the richest 20 % of the population have access to potable water but only 28 % of the poorest 20 % have drinking water. Further, while 33 % of the households in Nairobi Province have piped water, only 0.6 % of households in North Eastern and Nyanza Provinces can access piped water. Similar situations exist in the area of energy. In addition, only 20 % of Kenya's land is arable, much of which is held by a few prominent leaders and families.

The government is encouraged to consider the urgency of addressing poverty through social and economic policy including fiscal, wage, credit and price

policies; land reforms and the fight against corruption; as well as to take concrete steps in addressing the inequitable wealth distribution.

7.1.4 LAND

Land is critical to the economic, social and cultural development of Kenya. It is crucial to the attainment of economic growth, poverty reduction and gender equity. Kenya is faced with landlessness on a large scale, and with recurrent land disputes among individuals and between communities.

As noted by the Report of the Ndung'u Commission (p.xvii):

Land retains a focal point in Kenya's history. It was the basis upon which the struggle for independence was waged. It has traditionally dictated the pulse of our nationhood. It continues to command a pivotal position in the country's social, economic, political and legal relations.

Kenya has been grappling with the land question since the colonial era, which subsequent regimes have been unable to, or unwilling to resolve. It was expected that the transfer of power from colonial authorities to indigenous elites would lead to the fundamental restructuring of the legacy on land. This did not materialise, and the result was a general re-entrenchment and continuity of colonial land policies, laws and administrative infrastructure. The land question has manifested itself in many ways, including fragmentation, the breakdown in land administration, disparities in land ownership and poverty. This has resulted in environmental, social, economic and political problems, including deterioration in land quality, squatting and landlessness, disinheritance of some groups and individuals, urban squalor, the under-utilization and abandonment of agricultural land, tenure insecurity and conflict.

Kenya currently does not have a clearly defined or codified National Land Policy in place. The problems posed by the lack of a policy have been exacerbated by the existence of many different land laws, some of which are incompatible. The result is a very complex land management and administration system.

To address this anomaly, the Government of Kenya recently embarked on the formulation of a National Land Policy through a widely consultative process. The draft National Land Policy, which was published in December 2005, is very comprehensive. It addresses the critical issues of land administration, access to land, land use planning, redressing historical injustices, environmental degradation, conflicts, unplanned proliferation of informal urban settlements, outdated legal framework, institutional framework and information management. It also addresses constitutional issues, such as *the eminent domain* and *the police power*, as well as tenure. It recognizes the need

for security of tenure for all Kenyans (all socio-economic groups, women, pastoral communities, informal settlement residents and other marginalised groups).

It is hoped that through this policy, the government will ensure that all land is put into productive use on a sustainable and equitable basis. The authorities are advised to expedite the passing into law and implementation of this policy.

7.1.5 CORRUPTION

Kenya has had, and continues to have, a significant and debilitating problem of corruption. Decades of endemic corruption has fundamentally perverted cultural values, with looters being admired as "tycoons" and honest public servants derided as failures. The country has consistently been ranked in the bottom 10 % of Transparency International's (TI) Corruption Perceptions Index. The evidence is corroborated by internal assessments conducted by Transparency International Kenya, the annual Kenya Bribery Index, and that of other groups such as Centre for Law and Research International (CLARION), the Kenya Anti-Corruption Commission and most recently, the reports of the task forces and commissions set up by the NARC administration.

Having been elected on a platform of zero tolerance for corruption, the NARC government has taken a variety of measures to minimise corruption and corrupt practices in the public sector. It has put in place extensive legal instruments, and investigative and enforcement machineries to combat corruption. The government has established the Kenya Anti Corruption Commission (KACC), special anti corruption courts and enacted the Anti Corruption and Economic Crimes Act. Evidently, and unlike his predecessor, President Kibaki has shown demonstrable courage and the required willpower to confront headlong the challenge of ending corruption and corrupt practices in the Kenyan public sector.

The actions of the President are also complemented by strong if not strident advocacy on the part of the Kenyan civil society movement, who have also managed to keep the anti-corruption drive permanently on top of the political agenda. The result, though perceptibly slow, has been the resignation of some Cabinet ministers accused of corrupt practices. The important point to note is the need for the government to consolidate current gains, and deepen the support base for the current moves by promoting the ascendancy of a public that is intolerant of official malfeasance as well as the asphyxiating culture of impunity.

Predictably, the current government campaign against corruption has come at a cost. The government has been weakened by the resignation of Cabinet

members as well as other senior government officials. How this will play out in the long run will remain a function of the ability of the government to make the anti corruption struggle a shared and collective enterprise between the people and the government. Hopes are high as are the fears of possible reversals of gains made in this respect, should the government collapse or lose popular support. . .

Government alone cannot hope to tackle corruption without the active support and involvement of its citizens. A successful campaign demands the full participation of all segments of society, particularly the organised civil society, including the business community as is already being demonstrated in Kenya. Civil society must also continue to play a watchdog role to ensure that the government, as well as other sectors, continue to be subject to the light of intense public scrutiny. The role of the media is also very crucial in this regard.

7.1.6 THE CONSTITUTION

Constitutional reform represents a crucial aspect of nation-building. In the framework of political and institutional reforms, the design of constitutions can play a critical role in ensuring the advancement and the sustainability of democratic systems, by providing adequate mechanisms to manage conflicts within limits of peaceful coexistence, and by promoting consensus around a set of core values.

Constitutional reform in Kenya has assumed great urgency. The current Constitution is a colonial constitution disfigured by post-colonial parliamentary amendments³⁴. Kenya has since experienced numerous social, political and economic changes over the last four decades of independence and the Constitution, in the same manner as all other operative laws, must be subjected to a normal process of reform and adjusted to the trends of social dynamics.

Perhaps, and more compelling, the Constitution, as the normative framework of politics, governance and public power, can only give satisfaction to the Kenyan population if it incorporates major new developments in national political preferences, in the people's evolving perceptions of good governance, and in the crystallisation of more progressive public management principles emanating from and popularised by international legal fora, such as those which bring all states together at the United Nations, or under the umbrellas of important new treaties and regional pacts.

³⁴ The 1963 Constitution was a compromise document reached by several parties. It has been amended about 30 times, on average once a year, which have created several anomalies in the document.

The constitutional review process in Kenya exacerbated political divisions within the country. Infighting over the constitution within NARC - a coalition of 16 opposition parties that united to unseat President Moi in 2002 - has produced significant political discord and policy gridlock. In the process, the attempt at producing a new constitution was dominated more by real politick than by an attempt at providing a document to guide and guard the realisation of the collective interest of Kenyans.

The build up to the referendum was intensely acrimonious without any concern for the post referendum health of the polity. Clearly, a more nuanced modality for adopting a new constitution must be adopted and launched, based on an elite consensus to respect and play according to the spirit and letter of the game.

The President, H.E. Mwai Kibaki, recently constituted a 15-member Committee of Eminent Persons, led by Ambassador Bethuel Kiplagat, through Gazette Notice CVIII-No 14 of 24 February 2006, to provide a road map for the conclusion of the constitutional process. The APR Panel sincerely hopes that this Committee will receive the support of all Kenyans.

7.1.7 GENDER INEQUALITY

The Government of Kenya has made significant progress in the area of gender policy initiatives, including the creation of a Ministry of Gender, Sports, Culture and Social Services and a National Gender Commission. Moreover, the current government has appointed several women to key positions in the Cabinet, Civil Service and state corporations. However, the government has not yet reached the level expected by the various gender conventions and declarations ratified by Kenya. The laws that disenfranchise women are still intact and the values and culture of the societies that foster discrimination against women have not changed either.

The Economic Recovery Strategy, which is the government's socio-economic development document, is not explicit enough on the objective of reducing inequalities between men and women, and on empowering women. The gender dimension is not clearly incorporated into the development programmes in the ERS Plan of Action, with regard to basic social services, access to infrastructure, productive and employment-generating activities, protecting women at the work place and reducing the time burden for women.

Equal access to wealth remains a challenge for Kenyan women. Though under the current constitution women can acquire, own and dispose of property - in rural areas customary laws prevent them from inheriting land. Culturally, women do not inherit from their fathers. When the husband dies his brothers

and parents, in many cases, disinherit the widow and children. As land is the most accepted form of security to acquire credit, this means that Kenyan women's access to credit is highly restricted, even when the husband is alive, as the title deed is always in the name of the husband.

The practice of wife inheritance in some communities restricts a woman's right to choose her mate, and places her at a high risk of contracting sexually transmitted diseases including HIV/AIDS. Statistics from the Kenya National AIDS Control Council (NACC) indicate that of the 1.4 million Kenyans living with HIV, about two thirds are women. In the 15-24 age range, the gender difference is more pronounced, with female prevalence nearly five times higher than that for males. .

The issue of gender marginalisation is severely underscored by women remaining vastly underrepresented in Parliament and in local leadership institutions. They hold only 8.3 % of the seats in the National Assembly. It is highly recommended that the Government of Kenya initiate a dialogue with the different communities in the country to find ways and means of eliminating all forms of customary discrimination against women, including those with respect to ownership, co-sharing and inheritance of land. The Government is further encouraged to take appropriate measures to outlaw all forms of discrimination in respect of the CEDAW convention.

7.1.7 YOUTH UNEMPLOYMENT

Issues surrounding the youth are of overarching concerns throughout the four thematic areas. The youth constitute the majority of Kenya's unemployed, and discontent among young urban dwellers now looms as potentially Kenya's biggest political risk, which could degenerate into social instability. Kenya's young population structure suggests that the question of youth unemployment will persist unless steps are taken to reverse the current trend. Also, the limited number of secondary schools and the high cost of secondary education are likely to exacerbate youth unemployment.

Lack of skills and the difficulty of accessing capital have made it very difficult for the youth to embark on viable and sustainable self-employment projects. A National Youth Policy Bill is in Parliament, aimed at addressing some of these concerns. The Bill proposes the creation of a revolving youth fund for the promotion of self-employment. The real challenge for Kenya is how to address this issue promptly. A convenient starting point is for Parliament to pass and hasten the implementation of the National Youth Policy Bill. The government also needs to create the proposed revolving youth fund for the promotion of youth self-employment

7.1.8 TRANSFORMATIONAL LEADERSHIP

Kenya needs transformational leadership, not just at the helm of affairs, critical though this is, but at all levels, including Parliament, the Executive, the Judiciary, business, political parties, religious organisations, non-governmental organisations and other facets of Kenyan life, all focused on common values and goals

Attributes of leadership have moved over time through notions about heroes towards attention to traits, context and advocacy of the importance of the leader having vision. Leaders must display conviction; emphasize trust; take stands on difficult issues; present their most important values; and emphasize the importance of purpose, commitment, and the ethical consequences of decisions. They must articulate an appealing vision of the future, challenge followers with high standards, talk optimistically and with enthusiasm, and provide encouragement and meaning for what needs to be done.

From national to local authorities, leaders are most effective when they are inclusive and proactive. They must have the courage to take risks and overcome obstacles. As much a matter of changing mindsets as it is of bringing people together around national priorities and processes, the onus for this will rest primarily on national leaders and their constituencies. Transformational leadership entails not simply directing change but managing it in a way that ensures broad ownership, legitimacy and self-directed sustenance and replication of change in all associated systems.

7.2 KENYA'S PROGRAMME OF ACTION (POA)

The POA is a major output of the review process. It serves to present and clarify the country's priorities, the activities undertaken to prepare and participate in the APRM, as well as the nature of the national consultations. The responsibilities of various stakeholders in government, civil society and the private sector are an integral part of the POA.

As indicated in the *Guidelines for Countries to Prepare for and to Participate in the African Peer Review Mechanism (APRM)*:

“The primary purpose of the National Programme of Action is to guide and mobilise the country's efforts in implementing the necessary changes to improve its state of governance and socio-economic development. In addition, the National Programme of Action is the key input delivered by the country into the peer review, and it, therefore, serves to present and clarify the country's priorities; the activities undertaken to prepare and participate in the APRM; the nature of the national consultations; as well as to explicitly explain the

responsibilities of various stakeholders in government, civil society and the private sector in implementing the Programme”.

NEPAD/APRM/Panel3/guidelines/11-2003/Doc8 P10.

Kenya has presented clear, time-bound commitments on key governance and socioeconomic development priorities over the next three years, including the identification of key stakeholders for implementation, and the estimated budgetary implications. This is appended to this document. It is hoped that all APRM stakeholders and the development partners will support Kenya in its implementation.

7.3 THE WAY FORWARD

The New Partnership for Africa's Development (NEPAD) and its Peer Review Mechanism are cornerstones to the realisation of good governance and sustainable human development in Africa. As has already been demonstrated during the Country Consultations in Kenya, it is both an exciting and challenging process. Stakeholders have responded to the APRM with great enthusiasm, understanding the potentially powerful impact it can make in helping to change their lives for the better. This exercise has provided an opportunity for all stakeholders in government, civil society, and the corporate sector to reflect on the problems of governance in Kenya, both within state and non-state institutions and systems. Far from being excessively procedural and impotent, as some critics have argued, the APRM is becoming a catalyst for policy enhancement and far-reaching change.

The extensive work done in Kenya to promote the ideals of the APRM, the programme for the sensitization of the people, the presentation of workshops and conferences, the self-assessment process and the drafting of the POA for the APRM have already provided a new initiative and inspired many of the people of the country to work together for the achievement of the objectives of the AU. It is hoped that this momentum and enthusiasm will be retained in the ongoing process of implementation.

The presentation of the reports, proposals, recommendations and the Programme of Action to the Forum is only the beginning of an ongoing process that must lead the country and all the people forward on the road to the destination of a better world for all, with less poverty and deprivation. With the life span of the 33- member Governing Council coming to an end, a key challenge for Kenya is to devise an implementation schedule for the Programme of Action that will involve all stakeholders.

It must be realised, however, that the APRM presents no miracle solution; neither does it provide a panacea for all the problems encountered by African countries in their search for sustainable growth and development. It is not a substitute for existing initiatives in Kenya, such as the Investment Program for the Economic Recovery Strategy for Wealth and Employment Creation (IP-

ERS), which represents Kenya's PRSP and the MDGs compact, but only a supplement to reinforce such initiatives aimed at the attainment of the common objective of building strong constituencies, restoring self esteem and confidence, mobilising collective synergies and resources to overcome poverty and promote the well- being of all Africans..

For the APRM to succeed in Kenya, it needs the consistent drive and determination of all stakeholders. The APRM takes cognisance of the fact that good governance is a culture, and as such must be embedded in every facet of society. The problem of governance cannot be solved by government alone; all sectors must be involved. It is for this reason that the APRM is founded on the participation of all stakeholders.

AFRICAN PEER REVIEW MECHANISM



**GOVERNMENT OF KENYA RESPONSE
TO THE APRM COUNTRY REVIEW
REPORT:**

- 1. RESPONSE FROM THE GOVERNMENT**
- 2. FINAL PROGRAMME OF ACTION FROM THE GOVERNMENT**

JUNE 2006

Submitted by the Government of Kenya on the 2nd of June 2006

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DEMOCRACY AND POLITICAL GOVERNANCE

STANDARDS AND CODES

CRT Recommendation:

The Government of Kenya sign and ratify the outstanding international instruments including the Convention on the Protection of all Migrant Workers and their Families.

Country Response:

Kenya appreciates the CRR's observation that it has ratified most of the codes and standards recommended under the APRM. It also appreciated the remarks made on the following conventions:

- i) *Optional Protocol on the Convention Against Torture (Not signed or ratified)*
- ii) *The Geneva Convention Relative to the Protection of Civilian Persons in Time of War- (not signed or ratified)*
- iii) *Convention on the Political Rights of Women (Not signed or ratified)*
- iv) *Protocol on the Rights of Women in Africa (Signed but not ratified)*
- v) *AU Convention on Preventing and Combating Corruption (signed December 17th- 2003 , not ratified)*
- vi) *The AU Peace and Security Protocol (signed July 7th, 2003, not ratified); and*
- vii) *The Convention for the Protection of Rights of Migrant Workers-(not signed or ratified).*

Having been elected on the platform of democratic governance and respect for human rights, the Kenya Government will consider signing and ratification of these protocols wherever relevant and applicable. In the meantime it would also like to emphasize that the requirements of these seven protocols are already being honoured by Kenya under either domestic law or other international protocols Kenya has already acceded too. For instance, Kenya has signed the *International Convention on the Elimination of all kinds of Discrimination against Women* which accords Kenya women the protection provided under iii) and iv) above. Kenya was among the first countries to ratify the UN Convention against Corruption which covers offences under v) above. In addition, Kenya has acceded to all the core ILO Conventions except convention 87 which safeguard the rights of migrant workers. *The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* has not been ratified as it outlaws capital sentence which is still in Kenya's Statute books. The government has however introduced a number of legal and other reforms to address aspects of this convention. In 1997 amendments were made to the Police Act to incorporate the crime of torture, prohibition of torture by police and training of police in investigation techniques that comply with human rights standards. Other

reforms ongoing in the Prisons Department are able to deal with issues stipulated in this convention

It is worth to note that past regimes had not been effective in complying with international obligations on reporting. The current Government, through the Ministry of Justice and Constitutional Affairs is committed to fulfilling all reporting obligations and is up to date in reporting under the UNCRC, CEDAW and The Convention against Torture, ICCPR and ICESCR. The Kenya National Commission on Human Rights was established by an Act of Parliament in 2002 as a watch-dog agency to protect and promote human rights and fundamental freedoms of Kenyans. The Commission is empowered to investigate human rights violations; and recommend to Parliament effective measures to promote human rights, among other things.

CRT Recommendation:

The Parliament of Kenya pass all laws reflecting the international norms and standards acceded to by the Government soon after ratification.

Country Response:

As in any democratic system it will be up to Parliament to deliberate and ratify the protocols according to its calendar and regulations. The Government will bring to the attention of Members of Parliament, the recommendation contained in the CRR and the action it was advised to take. In the meantime the Government is in the process of taking stock of all outstanding codes and standards for purposes of institutionalising them within line Ministries.

CRT Recommendation:

The Kenya National Human Rights Commission and CSOs conduct civic education for the citizenry with a view to entrenching its oversight role and inculcating stakeholder consciousness and responsibility.

Country Response:

The Kenya National Commission for Human Rights was established under Kenyan law as a watchdog institution on the observation of human rights, individual freedom, fairness and enforcement of the rule of law. Its programmes contain a strong participatory, public education programme that also includes sensitizing Kenyans to the international agreements in these areas that Kenya has committed itself to. The Government will continue to strengthen the Commission in all its work whether it pertains to local, regional or international protocols and codes. On their part, the Commission and CSOs undertake to intensify civic education for the citizenry with a view to entrenching their oversight role and inculcating stakeholder consciousness and responsibility.

OBJECTIVE1: TO PREVENT AND REDUCE INTRA AND INTERSTATE CONFLICTS

CRT Recommendation:

Government and political parties are encouraged to design and engage conflict resolution mechanisms to reduce factional frictions, build consensus on crucial national issues, defuse ethnic tension and promote tolerance.

Country Response:

The Government is fully committed to broad-based consultation between itself, political leaders and all political parties to reduce violent internal political conflicts of all kinds. The best example of this is the tragic death in Marsabit on 10th April, 2006, of a peace mission combining government and opposition MPs, a local Anglican bishop, police and civil servants—14 people altogether. This team had accomplished peace and reconciliation in a particularly tense region close to the Ethiopian border. In collaboration with the neighbouring countries, the Kenya Government has established peace committees involving administrators on both sides of all her international frontiers.

This combination of efforts will continue. A high-level Peace Committee has been established in the Office of the President to deal with violent conflicts within the country whenever they occur. The Government has been quick to provide security to communities affected by the violence associated with conflict as a first measure.

Since, as the CRR recognizes, intra- state conflicts arise due to competition for resources such as water, grazing land and cattle rustling, government has adopted the strategy of providing additional resources whose scarcity is likely to lead to conflict. This is particularly the case with water. In the period between 2003 and 2006, the Government has put over Kshs. 3 billion in the construction and rehabilitation of water storage facilities, laying water supply lines, drilling boreholes, dams and water pans—specifically in the dry and conflict-prone districts of North Eastern Province, upper Eastern Province, and Upper Rift Valley. In addition, the Government is supportive of the efforts of CSOs such as Actionaid, Red Cross etc which are involved in conflicts resolution in specific areas.

CRT Recommendation:

Government to take immediate legal and administrative steps to remove all forms of discrimination prevailing in Kenya.

Country Response:

Under the Kenyan Constitution, every Kenyan is guaranteed non-discrimination and respect for their human rights. The Laws of Kenya provide adequate mechanisms for safeguarding such rights and providing redress where appropriate. Administratively, the Government has issued guidelines to the respective line Ministries to integrate these laws and

regulations in their normal work. The Government is working on an integrated ICT-based registry of persons and passports that is expected to go a long way in removing the discretionary power of individuals who may have practised discrimination in the past. Moreover in collaboration with Kenya National Human Rights Commission and the CSO, the Government will continue to sensitise Kenyans through awareness campaigns in the media, *barazas*, and political pronouncements to remove all forms of discrimination are not permissible under our laws.

CRT Recommendation:

Government to establish a strong and enduring framework for the management of diversity

Country Response:

The Kenya Government recognises the ethnic, racial and cultural diversity of its people as an asset and not a liability. Its policy therefore, is to harness diversity into nation building and political stability by promoting values that promote non-discrimination on the basis of race, tribe, language, religion, region, gender, age or disability. The Government has also adopted a multi-faceted approach that addresses diversity issues in their social context on the basis of “the best practical solution” using legislation, affirmative action, political appointments, electoral reforms, and the targeting of budgetary resources to benefit disadvantaged groups and areas.

CRT Recommendation:

Existing conflict management mechanisms be reviewed and strengthened.

Country Response:

The Kenya Government has become increasingly aware that conflicts between its communities are also rooted in the cultural traditions and practices, religion, as well as competition for resources. The CSAR reinforced the Government’s belief that traditional and religious leaders play a significant role in peace-making and reconciliation. For that reason, the Government is now undertaking studies on the cultural, social dynamics and religious beliefs of communities that are involved in cross-border raids or domestic conflicts, in order to have a permanent solution to such problems. At the same time, through the Ministry of Gender, Sports and Social Services, the Government is strengthening the capacities of CSOs and all the traditional and community level structures involved in conflict resolution. Finally, Inter-governmental Security Teams have been established under the Ministry of State for Internal Security to deal with cross border and other conflicts, using a holistic approach that touches on policing and socio-cultural factors.

CRT Recommendation:

The land issue be addressed with greater political determination that goes beyond a merely legalistic approach. Government, as a

matter of urgency, to adopt and implement redistribution and reallocation policies to enforce equitable access to, and use of land

Country Response:

The Kenya Government agrees with the CRR that it needs a national land policy that guarantees equitable access to land for all. Kenyans have a strong affinity to land and the country's economic and political history has been strongly influenced by land disputes, and injustices committed in land allocation. It is true that for a long time since independence, successive Governments in Kenya have grappled with the issues relating to land distribution, ownership and use. To address this matter comprehensively, the Kenya Government has completed for the first time since independence, a comprehensive Draft National Land Policy. A Cabinet memorandum has been prepared to address such issues as land registration and administration, land use planning, environmental degradation, conflicts, the unplanned proliferation of informal urban settlements, outdated legal frameworks, institutional structures, and the use of ICT in all these areas.

CRT Recommendation:

The Media Council and other Media regulation bodies be legally empowered to sanction irresponsible media organizations and professionals.

Country Response:

Kenya appreciates the recommendation of the CRR on the need to balance freedom of the press with high standards of journalistic professionalism. At the moment, Kenyans are in the middle of an unprecedented national debate on the most appropriate legislation for the media industry that guarantees press freedom, self-regulation and sanctions against unprofessional and socially-destructive reporting. A draft Media Bill a proposed Information and Communications Technology Bill have been the subject of many stakeholder debates that have produced a divided opinion even within Kenya media. There are proposals for a regulatory and independent National Media Council. Once consensus is achieved, the Government will table revised versions of these bills for debate in Parliament. This is expected to improve professionalism, self-regulation and relationship between the media and Government.

CRT Recommendation:

The Parliamentary Commission is encouraged to set up an information desk and other coordinating mechanisms to facilitate a mutually beneficial engagement between the Parliament, the Media and the Public in general.

Country Response:

This recommendation from the CRR is accepted and it will be forwarded to the Speaker of the National Assembly to be handled by his office in conjunction with the Parliamentary Service Commission of Kenya.

CRT Recommendation:

In addition to the special Presidential Initiative, Government to ensure that communities in the North Eastern Province and other identified disadvantaged areas benefit from a multi dimensional range of affirmative action programmes.

Country Response:

The Government of Kenya accepts the CRR recommendation about the need for a multi-dimensional approach targeting North Eastern Province, Upper Eastern Province and Upper Rift Valley. Action on a broad front has already begun and the Government has been carefully monitoring implementation. In 2004, the Office of the President published the *Economic Recovery Programme for North Eastern Province, and Isiolo, Marsabit and Moyale*, committing the Government to a total of Kshs 10.7 billion development expenditure between 2004 and 2007, primarily in security, roads, water, livestock, electricity, education, health, local government, and credit. An audit on progress made has been conducted and on 22nd May, 2006, the Government produced a report (*Development Projects Implemented by the Government between 2002/03 and 2005/6 in North Eastern Province, Upper Eastern Province and Upper Rift Districts*) listing projects undertaken by each of the 24 districts in these regions. It describes the stage of implementation and the source of funding, which is mostly local. Over that period Kenya has invested Kshs. 11.35 billion in the region broken down as follows:-

| | | |
|------|-----------------------|----------------|
| i) | Education | ---- Kshs 3.3b |
| ii) | Water | ---- Kshs 1.6b |
| iii) | Health | ---- Kshs 487m |
| iv) | CDF/Special | ---- Kshs 2.2b |
| v) | Roads/Public Works | ---- Kshs 3.1b |
| vi) | Livestock/Agriculture | ---- Kshs 331m |
| vii) | Local Government | ---- Kshs 342m |

The Kenya Government accepts that it has a long way to go before it can correct the historic imbalances and inadequate development policies for the region in the last 43 years since independence. However, a historic beginning has been made and the Government is convinced that with local participation, Kenya's resources and those of its development partners, this region of Kenya will achieve the benefits recommended by the CRR and thus give this part of the country a greater sense of belonging to Kenya.

CRT Recommendation:

To check human rights transgressions of law enforcement officers. Citizens be sensitized about their rights to seek redress against such abuses and law enforcement agencies to undertake human rights training programmes for their staff

Country Response:

The Government accepts the need for greater human right awareness among Kenya citizens vis-à-vis all law enforcement institutions. Under the Kenya Police reform programme already adopted by the Government, police will be trained in greater human rights awareness. There will also be an independent Police Oversight Board to which aggrieved parties can appeal for any transgressions against their rights by law enforcement agencies. In the meantime the Government has been actively promoting the policy of community policing and better human relations between citizens and the police. The Government has continued to encourage public education campaigns on human rights by the Kenya National Commission on Human Rights, local human rights groups and NGOs, the private sector, private security companies, and the press, who have been principle stakeholders in the police reform programme.

OBJECTIVE 2: TO REACH CONSTITUTIONAL DEMOCRACY, INCLUDING PERIODIC POLITICAL COMPETITIONS AND OPPORTUNITY FOR CHOICE, RULE OF LAW, CITIZEN'S RIGHTS AND SUPREMACY OF THE CONSTITUTION

CRT Recommendation:

Parliament is encouraged to speed up the adoption of the Political Parties Bill, which prohibits the registration of political parties based on ethnic, age, tribal, religious or regional membership

Country Response:

The Government has already drafted a Kenya Political Parties Bill that will govern the registration of political parties, and that intends to prohibit parties based exclusively on the promotion of ethnic, religious or regional considerations. It will be tabled in Parliament in accordance with its schedule. The draft bill contains affirmative action provisions with regard to gender.

CRT Recommendation:

Government and the Judicial Service Commission as well as GJLOS to embark on enhancing the capacity of the Judiciary through the continuous training of personnel, provision of research facilities, improvement of information and communications technology and setting up performance-based contracts for the Judiciary

Country Response:

The Government through its institutions, notably the Judicial Service Commission as well as GJLOS has embarked on a programme to enhance the capacity of the Judiciary through continuous training of personnel, provision of research facilities, improvement of information flow, and access using ICT. These programmes will be accelerated as more funds are made available.

CRT Recommendation:

Government to coordinate reform efforts of the Civil Service Reform Unit at the Vice- Presidency, and the Public Service Commission to ensure coherence and effectiveness.

Country Response:

The Public Service Reform & Development Secretariat is housed in the Office of the President, which attests to the importance that the Government attaches to this programme. The Public Service Commission is a principal stakeholder to Kenya's public service reforms and it is currently realigning its programmes, recruitment, promotion and training with the new reforms. To that end, the commission is implementing its own reforms in two phases: first a review of departmental staff sizes; pay and benefits reform; performance improvement; and integration of ICT practices in Government. The second phase which entails effective programme planning implementation and monitoring is expected to bring the Civil Service to even higher levels of performance. The Public Service Commission is thus a player, not a regulator in the Public Sector Reform Programme.

CRT Recommendation:

Local authorities with CSOs to conduct sensitization campaigns on LATF and CDF funds. The campaigns may focus on the structures, management, implementation and monitoring mechanisms of the funds.

Country Response:

The Government accepts this recommendation but also wishes to state that a considerable number of public awareness campaigns have already been conducted. A recent study conducted by KIPPRA on the use of these "devolved" funds, found that the public was largely aware of the funds, even though they tended to associate them with MPs or Councillors. Stakeholders meetings have since been held to discuss the best ways to promote greater public awareness on citizens' rights and entitlements. The requirement for local participation in the Local Authority Service Delivery Action Plan (LASDAPs) in order for local authorities to receive funding under the Local Authority Transfer Fund (LATF) has engendered enhanced participation. Other decentralised funds including the Road Maintenance Levy Fund, Secondary School Bursaries and funds meant for HIV-AIDS are also increasingly brought under public spotlight. The Ministry of Local Government has installed the machinery between local authorities and CSOs to sensitize communities on the LATF funds. In the draft bill on CDF funds, greater numbers of elected committee members will be made mandatory.

In addition to all this, the print press and FM Radios have played a major role in educating the public about their right under the devolved funds.

CRT Recommendation:

The role of Members of Parliament in the CDF and CDCs be limited to raising/disbursing and monitoring the flow of funds under the

authority of committees. More transparency is required in the appointment of the committee members, through elections, to ensure full participation of the communities.

Country Response:

The Government will table amendments to the CDF Act in a manner that will limit the role of Members of Parliament in the control of such funds. The CDF Act amendments should be able to address the issue of transparency in the appointment of the committee members, through elections, to ensure full participation of the communities

OBJECTIVE 3: TO PROMOTE AND PROTECT ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND CIVIL AND POLITICAL RIGHTS AS ENSHRINED IN AFRICAN AND INTERNATIONAL HUMAN RIGHTS

CRT Recommendation:

Economic, social and cultural right are crucial to individual well being and overall national development. In effect, the authorities are encouraged to accord them the necessary recognition and relevance.

Country Response:

The Government is committed to economic, social and cultural rights of all the citizens. It recognises that individual well-being depends on these rights. These are part of the laws of Kenya and the Government remains committed to property rights of individuals or groups, and to the social and cultural rights of any threatened communities. The Ministry of Gender, Sports and Culture has the special mandate to promote these rights. The Government acknowledges the challenging fact that a large proportion of Kenyans live below the poverty line, and that this situation will not be solved without paying attention to cultural and social rights. The Economic Recovery Strategy of the Government articulates clear measures designed to address this concern.

CRT Recommendation:

The Universal Health Care Plan be reviewed by Cabinet and subsequently legislated upon by Parliament to facilitate access to medical care for all Kenyans.

Country Response:

The Bill on the National Social Health Scheme is currently before Parliament, for review and another round of debate. The Government recently launched the Health Sector Strategic Plan which contains a five year investment programme for the sector. The policy priorities under the plan entail a phased implementation of the NHSIF the targeting of resources towards promoting preventive care, basic health services that will benefit the poor, the involvement of other service providers under a

sector-wide arrangement and increased budgetary allocation towards the sector. It is expected that with the implementation of the plan, the country's health indicators will improve in line with the MDGs.

CRT Recommendation:

The Ministry of Health is to regard private healthcare providers as well as health providing NGOs as partners in health care delivery and support them in their endeavour.

Country Response:

The Mission of the Ministry of Health is to promote and provide quality healthcare services to Kenyans. Under its Mission Statement, the Ministry promises to go out of its way to promote the participation of other providers including the private sector, religious bodies and NGOs. As a practical demonstration of this, the current Strategic Plan of the sector was developed under a Sector Wide Approach (SWAP). Under this approach the interest of all providers and stakeholders are accounted for in programme planning, implementation, monitoring and financing.

CRT Recommendation:

The HIV/AIDS Prevention and Control Bill be passed by Parliament.

Country Response:

Kenya agrees with this recommendation. The HIV/AIDS Prevention and Control Bill is already before Parliament awaiting debate, enactment and implementation.

CRT Recommendation:

Kenya Authorities review its communication strategy and ensure that Kenyans are made aware of the achievements and constraints in addressing governance issues.

Country Response:

The Government accepts the need to communicate to its citizens the many achievements the country has made in various sectors and on plans already in place to deal with outstanding national problems. Action has already been taken to put in place a reliable mechanism for addressing the problem. The Government continues to disseminate information to Kenyans, through a broad-based strategy conducted through the Public Communications Office (Government Spokesman.) This involves the print press, electronic media, community forums and *barazas*, and information directed to elected leaders, community-based groups and associations.

OBJECTIVE 4: TO UPHOLD THE SEPARATION OF POWERS INCLUDING THE PROTECTION OF AN INDEPENDENT JUDICIARY AND AN EFFECTIVE LEGISLATURE

CRT Recommendation:

Members of the bench to work under performance-based contracts in order to improve efficiency, accountability and monitoring of judicial functions.

Country Response:

The Government accepts the need for more efficiency and accountability in the judiciary, but after prolonged discussion on this subject with all stakeholders, it has decided that the recommendation is not the best way to promote these objectives. In a stakeholders' conference on the National Anti-Corruption Plan held on 30th May, 2006, in fact, many reputed jurists thought the recommendation would be counterproductive if adopted.

The answer to the problem of efficiency in the judiciary lies in stronger professional commitment, higher motivation and hard work on the part of the Kenya bench. The Chief Justice is already looking into this and considerable progress has been made since reforms began in 2003. Judicial Reforms and administrative measures that are being established are expected to enhance the performance of the members of the Bench. Due to the specialised nature of the work of the members of the Bench, it may not be technically feasible to set a definite performance indicators relating to their work. In addition, there are few international standards relating to legal adjudication process since no case is like any other.

CRT Recommendation:

Government reconsider the separation of Portfolio Ministers from the Legislature in order to guarantee separation of powers between the Executive and Legislature.

Country Response:

The current constitution of Kenya is hybrid between the presidential and parliamentary systems. Until a new constitution is approved it will not be possible to appoint ministers from outside the body of legislators. However, within parliament, Cabinet Ministers always make it clear whether they are speaking as members of the Cabinet or as individual MPs. Kenya has had a strong tradition of Parliamentary Speakers who have enforced that rule in the National Assembly over the years. The Government also wishes to note that appointment of legislators to Cabinet portfolios need not be inconsistent with separation of powers as we can see in the UK, India and South Africa.

CRT Recommendation:

Effective assistance be provided to Parliament for capacity building, research and use of information and communication technology.

Country Response:

The Government is committed to enhancing the capacities of members of Parliament through administrative and research support, personal offices and provision of ICT facilities. The Parliamentary Service Commission is in the process of implementing a comprehensive ICT strategy. There are in addition, various specific forums and seminars aimed promoting legislators' ICT skills, and understanding of the budgetary process and its implications; parliamentary procedures and regulations; and project management as it relates to the application of CDF funds.

CRT Recommendation:

Parliament be made accountable to the electorate through the introduction of recall laws and Private members to present this law in the face of Parliament's reluctance to do so.

Country Response:

The Kenya public has debated this issue over the years, and it continues to interest the public. However, the current constitution does not support the recall of MPs and that will remain the case until it is changed.

CRT Recommendation:

The Panel recommends that modalities for determination and review of emoluments of all public office holders be entrusted to a constitutional agency that is independent of both the executive and the legislature. The recommendations of such an agency will however require the joint consent of both arms of government.

Country Response:

This recommendation is in line with the opinions which many Kenyans have made in public, in the press, in places of religious worship, and in their homes. For this reason the Kenya Government is exploring various measures in consultation with parliament to produce an independent body that would be responsible for remuneration and benefits of Kenyan legislators. The recommendation is therefore accepted.

CRT Recommendation:

The oversight functions of Parliament be reinforced through checks and balance mechanisms on the basis of legislations such as the Public Audit Act (2003), the Government Financial Management Act (2004), and the Public Procurement Bill (submitted in 2004).

Country Response:

The Government has already put in place checks and balance mechanisms through already existing legislations such as the Public

Audit Act (2003), the Government Financial Management Act (2004), and the Public Procurement and Disposal of Assets Act (2005).

CRT Recommendation:

Parliament to support the necessary reforms by voting adequate funds to agencies such as the Kenya Anti-Corruption Commission, Law Reform Commission, the Kenyan Human Rights Commission and GJLOS, among others.

Country Response:

This recommendation is acceptable to the Government of Kenya subject to overall fiscal constraints. Under the Medium Term Expenditure Framework (MTEF), mechanisms have been established indicating the expected funds over the next three years by department and function. Under the respective budgetary sectoral working groups, therefore, all efforts will be made to provide sufficient funds to agencies such as the Kenya Anti-Corruption Commission, Law Reform Commission, the Kenyan National Commission on Human Rights and to support the GJLOS reform programme.

OBJECTIVE 5: TO ENSURE ACCOUNTABLE, EFFICIENT AND EFFECTIVE CIVIL SERVANTS AND OTHER PUBLIC OFFICE HOLDERS

CRT Recommendation:

The government is advised to align the enactment of laws, policies and programmes with adequate and sustained funding so as to secure implementation.

Country Response:

As with all areas of the Government, it will continue to provide as much funding on a sustained basis as it can, to fund the enactment of laws policies and programmes, subject to fiscal limitations.

CRT Recommendation:

Kenyan Authorities initiate a strategic plan that would harmonize different initiatives

Country Response:

As part of the ongoing Public Sector Reforms, all Government Ministries and Public Agencies are required to develop their respective strategic plans articulating sector priorities and programmes. This has been done. These plans are consistent with ERS objectives and projections. The Government therefore does not deem it necessary to develop a unified strategic plan as this would duplicate already-completed work.

CRT Recommendation:

Anti-corruption programmes, including the use of ‘whistleblowers’ and anti-corruption monitoring units in each Ministry, be stepped up.

Country Response:

The Government accepts this recommendation and wishes to state that action has already been taken. The “Whistleblowers Bill” is before parliament awaiting debate and approval. In addition, there are Anti-Corruption prevention committees established in Government Ministries. The National Anti-Corruption Campaign Steering Committee, which was established by the government, has also established District Anti-Corruption committees to create awareness and inculcate a national culture against all forms of corruption.

CRT Recommendation:

The Attorney General’s office to speed up the strengthening of capacity for investigating and evidencing cases.

Country Response:

The State Law Office is hiring more state prosecutors and there are plans to turn the prosecution department into an autonomous body.

OBJECTIVE 6: TO FIGHT CORRUPTION IN THE POLITICAL SPHERE

CRT Recommendation:

Kenyan leadership at all levels (political, private, judiciary, religious, academia, NGOs, community leaders etc) to unite on a national front in the fight against corruption, as a matter of national moral regeneration and pride. A broad and long-term programme to promote values of honesty, integrity and committed service be devised and implemented;

Country Response:

The Government has established various mechanisms for addressing corruption. At the National level, the National Anti-Corruption Steering Committee, a National Advisory Board, and the Kenya Anti Corruption Commission (KACC) have been established. In addition, various legal instruments investigative and enforcement machinery have been established including the Anti Corruption and Economic Crimes Act. Considerable progress has been made to produce a united national front against corruption through the combined efforts of the Government, the private sector, human rights groups, independent anti-corruption organizations and civil society groups. At the National Anti-Corruption Conference held on 30th May, 2006, the National Anti-Corruption Plan was adopted. It provides for a common approach. The diverse stakeholders constituted themselves as a new Kenya Integrity Forum.

CRT Recommendation:

Any person accused of corruption, irrespective of status or standing in the society be subjected to legal processes, with fair trial guaranteed. The Government may re-launch the “book of shame” and give it greater prominence.

Country Response:

The Kenya Government wishes to remark that this is under progress. It has established the GJLOS programme for enhancing the capacity of legal structures to prosecute offenders charged with corruption. Administrative and legal hitches which have previously impeded more rapid prosecution of offenders have been removed through action by the Chief Justice. However it must be understood that the general perception that delays are deliberate and indicative of lack of political will on the part of Government are misplaced. The Government has gone to great lengths to strengthen the prosecutorial capabilities of the AG Chambers and will hire private prosecutors as and when necessary. There are currently over 70 high profile corruption related cases before the courts; involving high ranking Government officials such as CEOs, Permanent Secretaries and politicians. The Government has not been opposed to any exposure of corruption whatever form it may take. But in all cases it is dedicated to the due process of the law.

CRT Recommendation:

Kenyan Authorities to develop an effective government information, education and communication strategy to enhance information sharing across the sectors and line ministries responsible for corruption.

Country Response:

The Government is in the process of creating interlinked ministerial websites with information on, among other things, corruption and action taken to counteract it. The information websites will be extended to the district level in the near future for the public to access timely information. In addition, the Office of Public Communications has commenced an information dissemination programme on the internet.

CRT Recommendation:

The Government of Kenya enact an Access to Information Law guaranteeing access to information to the public, which can also assist the fight against corruption.

Country Response:

The Kenya Government notes this recommendation from the CRR. The Kenyan Public is actively debating the need for this bill prior to any decision being taken on it.

CRT Recommendation:

The Authorities are encouraged to pursue the establishment of integrity clubs in schools, workplaces and religious institutions in

order to institutionalize an ethical and values based culture in the country.

Country Response:

The National Anti-Corruption Campaign Steering Committee and the Ministry of Education have put in place integrity clubs in schools in order to institutionalise an ethical and value-based culture. Officers have been selected from the Ministry's headquarters, provincial, and district levels and trained on issues of integrity and ethics. The last group of officers completed their training at the end of May 2006. These officers are expected to train school Heads and Teachers who will in turn initiate the formation of integrity clubs in schools as a measure to institutionalise the process.

CRT Recommendation:

The Public Officers Ethics Act be enforced to its full extent to ensure that public officials failing to declare their assets and liabilities as stipulated in the act, are sanctioned accordingly.

Country Response:

The Public Officers Ethics Act is being enforced by the respective service commissions. The Ministry of Justice and Constitutional Affairs is developing regulations for the better implementation of the Act.

CRT Recommendation:

The Attorney General's Office and the Judiciary are encouraged to speed up mechanisms to eliminate legal challenges arising against corruption prosecutions.

Country Response:

The Office of the Chief Justice has already announced steep measures that will stop the abuse of the legal process to delay prosecution of corruption cases. The Department of Public Prosecutions is in the process of recruiting additional state counsel to strengthen its prosecutorial capacity. The Police have hired trained lawyers to speed up investigation and charges of suspected offenders.

CRT Recommendation:

Authorities may consider introducing minimum educational qualification requirements for Councillors.

Country Response:

The Government notes this recommendation.

OBJECTIVE 7: TO PROMOTE AND PROTECT THE RIGHTS OF WOMEN

CRT Recommendation:

The Government design and adopt expeditiously a comprehensive affirmative action policy to address the structural challenges and imbalances faced by women at diverse levels in the political, civil, economic, social and cultural spheres. Measures identified to counter these problems should filter down to all districts and local authorities.

Country Response:

The Government accepts that Kenya has a serious imbalance in gender representation at various levels of our government and society. Action is being taken under specific ministries. The government has set sector specific targets for instance the Ministry of Education intends that 30% of top managers in universities be women by 2010. The Government is also determined to correct the gender imbalance through provision of more equitable education and public services wherever gender inequalities are observed. It is also determined to eliminate the cultural biases and prejudices that prevent women from access to male dominated offices and professions. The National Gender and Development Commission has been given the mandate to develop and act on an overall affirmative action programme.

CRT Recommendation:

Parliament to pass the Political Parties Bill expeditiously and section 6 (2) which requires gender and ethnic equity in all parties be strictly enforced.

Country Response:

The Political Parties Bill is ready and will be tabled in parliament on a date to be determined by the House Business Committee. It has provisions for gender and ethnic diversity.

CRT Recommendation:

Funding conditionalities of parties by Government, as envisaged in section 22 of the Political Parties Bill, to require the inclusion of a percentage of women for funding eligibility.

Country Response:

The Draft Political Parties Bill contains adequate provisions for affirmative action and also makes public funding of political parties subject to fulfilling this requirement.

CRT Recommendation:

Civic education to be conducted by all the relevant institutions to emphasize women's participation in politics.

Country Response:

There is a National Civic Education programme and the Ministry of Justice and Constitutional Affairs through the Democracy and Governance Sector Programme (DGSP) which is conducting civic

education nationally with an emphasis on women's participation. This also applies to the NGOs and CSOs involved in civic education.

CRT Recommendation:

The Law Reform Commission, together with the Ministry of Justice and Constitutional Affairs amend the current Inheritance Laws to allow men and women equal rights to inheritance.

Country Response:

The Law Reforms are ongoing and current laws already provide for both men and women to inherit property, as long as they document this in their wills.

CRT Recommendation:

Laws prohibiting FGM be enforced. Government and other relevant institutions to strengthen their surveillance and enforcement capacities.

Country Response:

National campaigns to educate and sensitise communities that practice FGM regarding the inimical effects of the practice are being undertaken both by Government and civil society agencies. The relevant legal framework is in place to protect the rights of the girl child.

CRT Recommendation:

Practical tools at the district level be designed to ensure the education of the girl child. Local authorities be required to identify all the girls in their localities and distribute school bursaries to girls on an equal basis as boys.

Country Response:

It is the Government policy to give girls equal rights to education with boys. The Ministry of Education has issued specific guidelines to Constituency Bursary Committees regarding the management of the Constituency Bursary Funds. It is a requirement that 95 % of the Fund be equitably distributed between boys and girls who may be bright and needy. The remaining 5 percent is specifically earmarked for girls' education.

CRT Recommendation:

The Government of Kenya and CSOs to promote the elimination of negative cultural attitudes against women in all spheres of Kenyan society and communities

Country Response:

Through combined efforts of the Provincial Administration, CSOs, voluntary groups, religious leaders, and NGOs, the Government will strengthen the already existing campaign against ingrained negative cultural attitudes against women.

OBJECTIVE 8: TO PROTECT AND PROMOTE THE RIGHTS OF THE CHILD AND YOUNG PERSONS

CRT Recommendation:

Kenyan Authorities to develop a time-bound national action plan to combat child trafficking and other forms of child labour. In addition, border security, training for law enforcement officials and anti-trafficking public awareness campaigns be increased.

Country Response:

The Government acknowledges the need to eliminate the problem of child trafficking and child labour. The Children's Act which was passed in 2002 and the adoption of regulations published in May 2005 are expected to streamline the adoption process and deter traffickers from smuggling children out of the country. While there are no specific anti trafficking laws, law enforcement officials rely on constitutional provisions which prohibit slavery as well as penal laws which outlaws forced detention. The government has also embarked on a process to draft comprehensive bill to deal with child trafficking and child labour.

CRT Recommendation:

Kenyan Authorities to devise a multi-dimensional programme to tackle the issue of Youth addressing issues such as education, training, employment and integration into productive life. This will enhance national stability and social cohesion.

Country Response:

The Kenya Government created a Ministry of Youth Affairs at the end of 2005. Since then it has developed a strategic plan to deal with the country's youth in the following areas: employment, small-scale enterprises, health, sports, national values, recreation facilities, leadership and moral guidance, HIV-AIDS education, education, and gender issues. The National Youth Service has been put under this new ministry.

CRT Recommendation:

Local authorities and Constituency Committees to devote specific amounts of money to youth projects, with youths in a locality included in the design and planning of all constituency projects.

Country Response:

The Government of Kenya concurs with this recommendation of the CRT. Under the Ministry of Youth, plans are being made to match its own funds with those of the LATF and CDF funding, for projects that specifically target youth with emphasis on job creation and attitudinal change.

CRT Recommendation:

The Government to earmark a special fund for youth just as it has done in the case of HIV/AIDS and road funds. This special fund could facilitate access to finance for youths through such mechanisms as collateral free loans, with a view to tapping into their entrepreneurial potentials.

Country Response:

The Government acknowledges this recommendation. For the first time in the history of independent Kenya, the national budget this year will contain a ministerial vote dedicated exclusively to the problems of youth.

CRT Recommendation:

The Government of Kenya to develop and implement a concerted and targeted youth policy.

The Draft Strategic Plan on Youth in Kenya will be subjected to a national stakeholders' forum before it is adopted. The Ministry of Youth is in the process of finalizing a National Youth Policy Paper that will be subsequently presented to Parliament for debate and adoption.

OBJECTIVE 9: PROMOTE AND PROTECT THE RIGHTS OF VULNERABLE GROUPS, INCLUDING INTERNALLY DISPLACED PERSONS, REFUGEES AND DISABLED PERSONS.

CRT Recommendation:

The Government of Kenya to enact and implement a clear policy on refugees and internally-displaced persons

Country Response:

The Republic of Kenya is currently home to some 250,000 registered refugees from virtually all the neighbouring countries and beyond. Kenya has offered refuge to people fleeing conflicts in Africa since independence and it takes its African and international responsibilities in this regard seriously. To that end the country recently created a Department of Refugees in the Ministry of Immigration specifically to deal with the problem of refugees. The Government has already drafted a Refugees Bill, whose principal objective is to provide the recognition protection and management of refugees in Kenya and covers all the legal provisions under the 1951 convention relating to the status of refugees. In addition under IGAD Kenya is taking steps to strengthen policies and institutions to deal with forced displacements at national level.

CRT Recommendation:

The Government of Kenya to prioritise basic infrastructure projects targeted at improving the lives of vulnerable groups, including tribal minorities.

Country Response:

The Kenya Government shares the views of this CRT recommendation, and wishes to state that a considerable amount of funding has already been made available to meet this goal. More funding will be provided for vulnerable groups and ethnic minorities in future. The publicity given to these efforts, however, has not been as effective as it should have been and many Kenyans (including some from the small minorities) are not fully aware of them. The recently compiled list of projects dedicated to North Eastern Province, Upper Eastern Province, and Upper Rift Valley provides many examples of such projects.

CRT Recommendation:

The Government to set up security in conflict-prone areas and to strengthen the response capacity of law enforcement institutions.

Country Response:

This Government agrees with this recommendation and further states that security has already been stepped up greatly in practically all the conflict-prone areas. This is evident today in West Pokot, Samburu, and upper Marsabit.

CRT Recommendation:

Organizations and representatives of marginalized and vulnerable groups to coordinate their advocacy efforts for greater coherence.

Country Response:

Kenya accepts this recommendation and it will be communicated to the groups and associations concerned. The Government will continue to uphold the freedom of association, assembly and speech in order to provide a supportive environment for such groups.

CRT Recommendation:

The Government to streamline immigration screening procedures for entry of refugees into the country, and eliminate all discriminatory screening practices within the country.

Country Response:

The Kenya Government is committed to upholding the rule of law and non-discrimination between nationalities, citizens, races or religions in all its operations including the screening of refugees. As in all aspects of government, Kenya is strengthening the machinery to check any abuses, corruption or infringement of these regulations in the administration of its refugees policy. The Ministry of Immigration has made this clear to the Department of Refugees.

ECONOMIC GOVERNANCE AND MANAGEMENT

STANDARDS AND CODES

CRT Recommendation:

Complete a detailed principle by principle or article by article assessment of each standard or code listed in the APRM questionnaire.

Country Response:

The government of Kenya views the recommendations on standards and codes under the Economic Governance and Management as useful and undertakes to implement these recommendations.

OBJECTIVE 1: PROMOTE MACRO-ECONOMIC POLICIES THAT SUPPORT SUSTAINABLE DEVELOPMENT

CRT Recommendation:

Design a comprehensive policy directed squarely at the issue of diversification of the domestic production structure and of exports.

Country Response:

An appropriate policy, geared towards the productive sectors is the core of the Government's Economic Recovery Strategy (ERS). The ERS contains elaborate strategies that deal with a wide spectrum of economic sectors that seeks to promote diversification of the economy. This is because the government acknowledges and appreciates the fact that these sectors account for 50% of the GDP. To this end, deliberate policies have been put in place targeting the various sub-sectors. These policies have continued to bear fruit as demonstrated by the sustained momentum of these sectors, which have continued to record accelerated growth in 2005 with real GDP growing at 5.8%. The issue has also been addressed through the maintenance of a stable macro-economic framework within the context of structural reforms aimed at wealth and employment creation and poverty reduction.

A draft national Vision 2030 to focus on dynamic, high and the unexploited potential has been developed. This National Vision is expected to be operationalised before 2007.

CRT Recommendation:

Assess the autonomy of the Central Bank in the light of current challenges and policy intentions

Country Response:

The Government considers that the Central Bank currently enjoys autonomy and works with other relevant institutions like Parliament and Ministry of Finance. The Governments Economic Recovery Strategy in its

focus on monetary policy reforms has undertaken to ensure enhancing the analytical as well as the operational capacity of the Central Bank of Kenya in order to improve overall monetary policy management, and to ensure that the Central Bank is more responsive to the needs of the Economy.

To support these measures, a Monetary Policy Advisory Committee was formed and gazetted in July 2005 with membership drawn from various stakeholders with expertise in financial and monetary policy disciplines. The Government intends to allow Central Bank of Kenya to be empowered to be responsible for issuing banking licenses and revoking them when necessary. The Central Bank of Kenya will continue to rely largely on open market operations (OMO) to implement monetary policy. The Government will continue to assess the autonomy of the CBK in light of current challenges and policy intentions with a view to enhancing it.

CRT Recommendation:

Do a detailed study of credit markets and policies in Kenya, to better comprehend the effects of credit availability, including its distribution, and its cost on economic growth and the socio-economic well being of Kenyans.

Country Response:

The Government agrees with this recommendation. It is noteworthy to point out that a wealth of information exists on credit markets including its distribution and implications for economic growth and socio-economic well being of Kenyans. There is also an ongoing study aimed at measuring access to financial services by the various groups in Kenya. In addition the government is currently undertaking reforms under the Financial and Legal Sector Technical Assistance project (FLSTAP) aimed at strengthening the efficiency of the financial sector. These reforms are aimed at raising productivity and expanding access to affordable credit through development of institutions that are well placed to provide credit. Measures include: Development of Micro-Finance Institutions (MFIs) and strategy for development finance institutions. A deposit taking micro finance Bill aimed at strengthening the operations of the MFIs and facilitate expansion of credit availability through development of a legal and regulatory framework is currently being finalised in the State Law Office before submission to Parliament for approval.

The above measures anchor on the appreciation by government that an efficient financial sector operating with a framework of sound fiscal and monetary policy is essential to achieve the desired economic growth and poverty reduction objectives. To this end the government has prepared a comprehensive financial sector strategy aimed at improving efficiency in financial intermediation. At the core of the fiscal policy is the government desire to increase the availability of credit to the private sector.

CRT Recommendation:

Do a comprehensive survey of implementation problems throughout government and public sector, with a view to characterizing the nature and the sources of problems, obtain a clear picture of their incidence and how deep-seated they are, and design strategies and actions to deal with them, both on a grand scale and in specific contexts.

Country Response:

The Government acknowledges that there are a number of implementation problems; the country is trying to establish an institutional framework of implementation through the M & E policy with a view to identify bottlenecks. The M & E component of the government recovery strategy is aimed at establishing an appropriate institutional framework for M & E of the Recovery Strategy, and the Millennium Development Goals. An elaborate matrix providing a logical framework for M & E with specific targets and indicators has been developed, to be disseminated at the lowest levels i.e. National, District/Local Authority and Community Levels.

OBJECTIVE 2: IMPLEMENT SOUND, TRANSPARENT AND PREDICTABLE GOVERNMENT ECONOMIC POLICIES**CRT Recommendation:**

Parliament to take appropriate steps to effectively perform its oversight role in the budgetary and planning areas.

Country Response:

While parliament is currently exercising its oversight job, however capacity building needs to be done. Parliament will continue to perform its oversight role within the provisions of the law. Capacity building is being addressed through establishment of a research department of parliament which is now functional and dialogue is on-going on the establishment of a Budget Office. In addition, the strategy for the revitalization of public financial management provides an elaborate framework with adequate funding to improve the oversight role of Parliament. This strategy is being implemented.

CRT Recommendation:

Constituency Development Committees (CDCs) be made fair, Transparent and revolving in their membership, and should be more transparent in their operations.

Country Response:

The recommendation is agreed, however greater professionalism should be incorporated and especially in the area of procurement.

CRT Recommendation:

Develop an integrated approach in the management and utilization of local development funds such as LATF, Bursary fund, Roads Fund and CDCs so as to maximize impact.

Country Response:

The recommendation is in line with Government policy on management of devolved public resources and is therefore acceptable. The government has developed a strategy on harmonization and strengthening of District and Constituency Development. The strategy is being discussed by various stakeholders to solicit for consensus and ownership. The strategy has also taken on board the fourth edition (revised) of the District focus for Rural Development (DFRD).

OBJECTIVE 3: PROMOTE SOUND PUBLIC FINANCIAL MANAGEMENT**CRT Recommendation:**

The Government and the Parliamentarians to seek consensus on the devolution plans for local government contained in the draft constitution.

Country Responses:

The process of enactment of the New Constitution is not yet finalized and the Government considers the provision of this recommendation will be addressed as the process of constitution making is finalized.

CRT Recommendation:

The Government to address immediately capacity constraints in Local Authorities, which have been accused of financial recklessness.

Country Response:

There are already efforts to address the inefficiencies and capacity constraints within the local authorities through the on-going Kenya Local Government reform program. Measures linked to the LATF system have been introduced to improve Local Authorities capacity to manage their finances and service delivery. One such initiative is the Local Authority Integrated Financial Management & Operations System (LAIFOMS), being implemented at Local Authorities. Reviewing the Local Government Act aims at giving the Local Authorities more autonomy and enhancing their capacity to perform their roles and remove conflicts with central Government. These measures are aimed at ensuring efficient utilization and in an accountable manner of public resources to achieve the desired needs and priorities.

CRT Recommendation:

Implementation problems in policy must be overcome to improve public financial management and increase the efficiency of public

sector service delivery. The proposals made earlier for a study of implementation problems are extremely relevant in these contexts.

Country Response:

The Government is already implementing Public Financial Management Reform Program to overcome the current shortfalls to strengthen financial management. The objective is to achieve the 28 best practice indicators under the Public Expenditure and Financial Accountability (PEFA) Programme. This is complimented by deliberate policies aimed at improving Public Administration and enhances efficiency in service delivery. To this end, the Government has been carrying out a wide range of reforms of the Civil Service. Similarly, specific actions to reduce the role of government in commercial activities, has continued through accelerating the privatization exercise.

OBJECTIVE 4: FIGHT CORRUPTION IN PUBLIC ADMINISTRATION AND MONEY LAUNDERING

CRT Recommendation:

The Kenya Anti-Corruption Commission (KACC) is encouraged to issue a detailed report on the state of the fight against corruption and the factors that have slowed down implementation. The Attorney General and the Head of KACC should hold a news conference to release the report once it is completed.

Country Response:

The government views this recommendation as useful and will undertake to ensure that the public is regularly informed on the progress in the fight against corruption by the Kenya Anti-corruption commission and AG through the local media.

CRT Recommendation:

As regards Anti-Money Laundering and the Authorities should earnestly commence the task of operational sing the Proceeds of Crime Act 2005. the Government of Kenya to do a self-assessment as soon as possible to ensure that the Kenya National (institutions, organizations and operational procedures) for combating money laundering and terrorist financing comply with the forty recommendations of the Financial Action Task Force (FATF)on money laundering. The Authorities would thereafter be encouraged to invite peer review of its systems via technical assistance from the international financial institutions, namely the IMF and ADB as desired.

Country Response:

A draft Anti-Money Laundering and Proceeds of Crime Bill is in the process of being finalized and the government will make effort to have it finalized and enacted. In addition the government shall continue to ensure that the systems that are developed comply with the forty

recommendations of the Financial Action Task Force (FATF) on money laundering. Similarly available technical assistance will be explored as appropriate.

OBJECTIVE 5: ACCELERATE REGIONAL INTEGRATION BY PARTICIPATING IN THE HARMONISATION OF MONETARY TRADE AND INVESTMENT POLICIES AMONG THE PARTICIPATING STATES.

CRT Recommendation:

Together with other actors in Tanzania and Uganda continue to reinvigorate the EAC.

Country Response:

Kenya is committed to the process of strengthening the EAC. The Customs Union was launched on 1st January 2005 and its implementation is progressing well. The East African Community has launched the Programme of fast tracking the establishment of a political federation and country consultations are on-going.

CRT Recommendation:

Do an analysis and address the issue of rationalization with a view to designing a strategy to avoid or to cope with possible policy conflicts between EAC and COMESA over the medium term.

Country Response:

The issue of multiplicity of Regional Economic bodies' membership is being addressed within the AU under the framework of Rationalization of Regional Economic Communities. In this way the conflict between EAC and COMESA will be addressed. There is on-going dialogue between EAC COMESA and SADC to harmonize policies and programmes.

CRT Recommendation:

The general Public to be sensitized about Kenya's activities in regional integration. The traditional ways of going about such sensitization be utilized, namely publications, radio and television programmes informing the public about government objectives and activities; and engaging the public in open forums, discussions and debates on the integration issues.

Country Response:

The process is on-going and the EAC secretariat has been tasked with the responsibility of sensitizing the stakeholders in the individual member states. Kenya Government through the Ministry of East African Community will also undertake elaborate measures in collaboration with various Government agencies to sensitize the Kenyan public on regional integration.

CORPORATE GOVERNANCE

STANDARDS AND CODES

CRT Recommendation:

Corporate governance regulatory institutions provide for the enforcement and effective application of the codes and standards to which the business sector may have already voluntarily subscribed

Country Response:

The Capital Markets Authority (CMA) issued instructions requiring all quoted Companies in their annual reports to report on corporate governance. Compliance levels with these instructions and enforcement have been good.

Similarly, the Central Bank of Kenya (CBK) has strengthened its inspection capacity and has issued several guidelines among them Anti-money laundering. In furtherance of this initiative, the Government will continue to review, strengthen and demand that the regulatory bodies enforce compliance within their respective sectors.

CRT Recommendation:

The revised Companies Act be passed and enacted expeditiously by Parliament. The revised Companies Act should include provision for:

- a) Safeguarding the effective practice of good corporate behaviour;***
- b) Protection of minority shareholders' rights;***
- c) Training and education of shareholders and the public, especially on the benefits of transparency and ensuring effective performance; and***
- d) Proper assessment of directors and the boards.***

Country Response:

The Government is committed to updating its business laws to support business development in the country. At the national level through GJLOS and LRC, it has engaged the public and private partnership in continuous review of the business laws among them the Companies Law, Investment law, etc all aimed at improving business environment. National workshops have been held to look at all business laws and there is national consensus that a number of laws are in need of review. Other task forces have been established to review specific laws. For example a "Working Committee on regulatory reforms for business activities in Kenya" has been working using the proven 'regulatory guillotine methodology' to reduce business licences and permits. The Committee will be completing its work by July 2006.

CRT Recommendation:

The Accountants Act and related regulations be revised by government to achieve a legal and regulatory framework under which the use of financial statements, auditors, and regulators will be required to ensure high quality financial reporting.

Country Response:

Review of Accountants Act has been under discussion and the revision will be concluded to strengthen quality of financial reporting.

CRT Recommendation:

Appropriate legal and institutional steps be taken by the public authorities and corporate sector organisations to differentiate between financial reporting requirements for listed companies and financial institutions and those for small and medium size enterprises. In this regard, the International Accounting Standards (IAS) be made legally mandatory for large enterprises and financial institutions and simplified reporting requirements be established for SMEs.

Country Response:

It has been noted that SMEs find the requirements to comply with IFRS in their financial reporting complicated and too expensive. Compliance level is also low among SMEs. Government acknowledges the need to develop a reporting standard for SMEs different from IFRS which will continue to be mandatory for apply for large enterprises, listed companies and financial institutions. **OECD has been developing a simplified standard of reporting for SMEs. The country will consider adopting and domesticating those standards.**

CRT Recommendation:

An adequate insurance industry regulatory framework be developed with the enactment of an Insurance Act, which will provide amongst many other institutions, the Insurance Institute of Kenya as planned, and include provisions for regulating the NSSF and RBA.

Country Response:

Kenya has ratified most of the significant international standards and codes on Corporate Governance (CG). It has however not ratified the Principles of Insurance Supervision and Regulations. The Commissioner of Insurance is aware of the Insurance principles and is **in** the process of becoming a member of International Organisation of Securities Commission (IOSCO) so that the country can sign, ratify and commence implementation. The Government also acknowledges that the regulatory and legal framework of the Insurance needs strengthening. A decision to establish an autonomous Insurance Regulatory Authority has been taken and a taskforce force is currently studying modalities of implementation. **The ultimate objective is to establish an autonomous insurance Regulatory Authority after the taskforce has submitted its report.**

CRT Recommendation:

Labour Laws and Codes be revised to strengthen enforcement and compliance. The revised code to include incentives and protection for whistleblowers reporting the mistreatment of children and workers. Kenya to consider ratifying ILO Convention 87 relating to the freedom of association in order to maximize the realisation of workers' rights.

Country Response:

Through a participatory process, review of the Labour laws has been on-going. Kenya has a strong labour movement and the citizens have publicly acknowledged enjoyment of wider democratic freedom of association especially since NARC Government came into power. The country will study ILO convention 87 before signing and ratifying. **The issue of whistleblowers is covered under the Witness Protection Bill under preparation.**

CRT Recommendation:

The capacity of organisations involved with corporate governance regulation, especially the Centre for Corporate Governance (CCG), the Institute of Certified Public Accountants Kenya (ICPAK), the Central Bank of Kenya (CBK), the Capital Markets Authority (CMA), and others, be strengthened through awareness creation and deployment of relevant skills.

Country Response:

The Country accepts that institutions engaged in corporate governance regulation and capacity building need to be strengthened. Government will look at modalities of strengthening and engaging these institutions in enhancing corporate governance in the country.

CRT Recommendation:

An inter-institutional task force be established to review the state of implementation and reporting of all standards and codes acceded to, adopted, signed and ratified by Kenyan authorities, institutions and organisations, and act expeditiously to address weaknesses where ratification and compliance is incomplete.,

Country Response:

Ministry of Labour reports on ILO Conventions and other Ministries or regulatory institutions report on standards relevant to them. For example CBK reports on Core Principles of Effective Banking Supervision (Basel Principles). Government accepts need of coordinated review of the state of implementation and reporting of status of standards and codes that the country has acceded to and ratified.

OBJECTIVE 1: TO PROMOTE AN ENABLING ENVIRONMENT AND EFFECTIVE REGULATORY FRAMEWORK FOR ECONOMIC ACTIVITIES

CRT Recommendation:

Legal and Regulatory Framework

The Government of Kenya to undertake the following:

- (i) Provide regulatory agencies (NEMA, Ministry of Labour, the Monopolies and Prices Commission etc) and the Judiciary with adequate financial and human resource capacity so as to be able to regulate their sectors adequately;*
- (ii) Introduce ADR as an alternative to commercial courts while ensuring ADR is properly placed in the legal framework;*
- (iii) Reinforce the regulatory framework of the pension industry;*
- (iv) Strengthen the regulatory framework of the insurance industry, including setting up an insurance regulator;*
- (v) Develop a comprehensive legal framework of social protection. The framework should include protection of informal workers, the retrenched workers of various policies, especially in the case of donor supported programmes and the privatisation and investment promotion programmes.*

Country Response:

The Government agrees with the recommendations to strengthen the legal and regulatory framework for the Corporate Sector. To this end, it will continue to provide sufficient resources for the regulatory agencies to effectively regulate their respective sub-sectors. The Government acknowledges that the existing **business** regulatory framework imposes significant costs on business and is a major hindrance to the development of the sector. In this regard, the Government will review all business related regulations covering both legal and institutional aspects.

The Arbitration Act of 1995 is meant to address many of the constraints relating to arbitration and the inefficiencies in the judicial process. Within the ongoing reforms under GJLOS, mechanisms are being developed to give effect to the Act.

The Ministry of Justice and Constitutional Affairs has formulated a Bill which seeks to entrench Alternative Dispute Resolution (ADR) in the legal systems part of the overall GJLOS reform programme. The Government will endeavour to ensure that the Bill is enacted by Parliament. In addition under the Investment Act of 2005 the Government has instituted

clear measures to reducing the number of procedures and time required to register a business.

There is sufficient legal provision for regulating the pensions industry in Kenya. The Government will however strengthen the enforcement mechanisms. Regarding the setting up of an Insurance Regulator, a Task Force has been established under the auspices of the Commissioner of Insurance for this purpose.

Though the Capital Market Authority (CMA) has an investor compensation fund for listed companies, the Government has noted the recommendation relating to the need to develop and strengthen legal framework on social protection.

Law Reform Commission:

- (i) Expand the mandate of the Law Reform Commission to include proposal/coordination of all new laws, and ensure that the commission has the resources and capacity to propose and coordinate the drafting of all new laws in collaboration with representatives of the Ministry of Finance and other line ministries.***
- (ii) Establish a special sub-committee within the **Legal Reform Commission (LRC)** to deal exclusively with the reform of laws relevant to corporate governance. The sub-committee will focus on laws and regulations that are outdated, such as the Companies Act, laws governing insolvency and bankruptcy, and laws relating to commercial disputes.***
- (iii) Enact the new Companies Act into law with any public requested changes to the draft law, and monitor and evaluate the effect of the Companies Law.***
- (iv) Take steps to develop an internal capacity for legislative drafting.***

Country Response:

Regarding the operations of the Law Reform Commission (LRC), the Government is utilising some resources from the GJLOS programme to supplement the capacity of the Commission. This is in response to the capacity constraints experienced by the Commission in the area of legislative drafting. In this regards, the Law Reform Commission is able to hire consultants and state counsels on short term arrangements.

Line Ministries including the Ministries of Finance, Education and Labour are currently undertaking major legal reviews of their respective frameworks. The process is participatory and transparent and the LRC has seconded its legal experts to these sectoral initiatives.

Through the GJLOS programme the LRC is in the process of securing technical assistance to revise the Companies Act and related laws. This exercise will be undertaken through a sub-committee within the LRC. The revision of the Companies Act will be undertaken as a participatory and transparent process. Consequently, the views of the public will be taken into account.

Under the GJLOS programme, the capacity of the Law Reform Commission for legislative drafting will be enhanced through training.

Working Committee on Regulatory Reforms for Business Activity

The Working Committee to:

- (i) Finalise the on-going business license reform process and ensure that the Single Business Permit is accessible across the country, and decentralise the Single Business Permit by enacting the new Local Government Act and remove provisions that require its renewal every year in the regions***
- (ii) Ensure that the Working Committee has the resources, capacity and government support to effect the needed changes to business license requirements***
- (iii) Accelerate the work on license reform and transform the Working Committee into a structure with monitoring and evaluation responsibilities.***
- (iv) Simplify business license registration for small scale traders, including registration in the regions so as to avoid the prospect of travelling to Nairobi for business licenses.***

Country Response:

The Government has developed a Private Sector Development Strategy which will be a major milestone in the improvement of the business environment including infrastructure, security, licenses reforms etc. The Government remains fully convinced that the private sector should play a leading role in national economic development. Therefore in additions to privatisation and public enterprise reforms, it will streamline the business licensing system and review competition laws to bring them in line with regulatory best practices.

In this regard, the current 600 licenses in Kenya which directly affect trade and investment will be rationalised with a view to scaling them down. Already 17 licenses have been identified for elimination while 30 others will be amended. These measures are aimed at making the private sector more competitive and to enable it contribute to economic growth and poverty alleviation.

The Working Committee on Regulatory Reforms for business activity is made up of representatives from the Attorney Generals Office, The Ministry of Trade and Industry, Ministry of Finance and the Law Reform Commission. Budgetary resources for the smooth operation of this Committee have been assured.

The working Committee has established a timetable for the review of trade licenses. Phases I and II entail the actual review of the respective licenses while Phase III entails the institutionalisation of a monitoring and evaluation capability within the Committee.

The Government recognises the problems faced by small scale traders who have to travel to Nairobi to obtain their licenses. This problem will be addressed as part of the ongoing work of the Committee.

Revised Labour Laws:

- (i) Parliament to enact all the revised labour laws*
- (ii) Ensure that the Ministry of Labour is empowered to implement the laws*
- (iii) Monitor/Evaluate effects on service delivery of the revised Labour Laws,Including at the Industrial Courts.*

Country Response:

The revised Labour Laws which were developed under a broad based tripartite consultative process are awaiting parliamentary enactment into law. Once enacted the Ministry of Labour will oversee implementation.

Investment Climate:

- (i) Introduce penalty fees payable by KRA in the case of late VAT refunds [KRA];*
- (ii) Introduce guidelines for foreign investors' applications for agricultural land [Ministries of Agriculture; Trade and Industry ;Lands and Housing];*
- (iii) Increase capacity at anti-corruption institutions [Ministry of Justice];*
- (iv) Increase the capacity of inspection of regulatory agencies such as the KRA and municipal authorities;*
- (v) Enforce public service codes of conduct more publicly. [Public Service Commission Ministry of Justice];*

- (vi) Ensure that the GJLOS and other reform programmes have the resources, capacity and government support to improve corporate governance and service delivery [Public Service Commission; Ministry of Justice];**
- (vii) Expand the GJLOS programme to include Ministries and SOEs with poor service records, including NEMA, the Ministry of Labour and Kenya Telecom [Ministry of Justice, GJLOS Programme Coordination Office];**
- (viii) Monitor and evaluate the effect of GJLOS, CBK and other government reform programmes, including the usage of GJLOS indicators already identified, such as measurement of incidence and prevalence of bribery, increased compliance with anti-corruption rules and reduced public perception of corruption; better safety in public place, greater public confidence in the police; reduced domestic violence and household crime; lower cost of doing business as measured in cost, time and financial terms. [Line Ministries and parastatals; Ministry of Justice, GJLOS Programme Coordination Office];**
- (ix) Given the importance of the GJLOS Programme Coordination Office, extend the mandate of this Office [Ministry of Justice];**
- (x) Enhance the effectiveness of government and self-regulatory agencies in monitoring, and supervision, to ensure the proper discharge of their duties. The list of agencies includes regulators of all the sectors. [CCK, ERB, CMA, CBK, NEMA, the Ministry of Labour and the Kenya Bureau of Standards];**
- (xi) The Ministry of Trade and Industry to develop policies that benefit economic development in the regions, including the Indian Ocean fisheries and Tana River irrigation scheme.;**
- (xii) The Ministry of Trade and Industry to also develop benchmarking schemes for the SME sector that include performance measurements for national and international competitors;**
- (xiii) The Ministry of Lands and Housing to facilitate land titles registration outside of Nairobi so as to minimise travel times for citizens from other provinces.;**
- (xiv) Strengthen capacity at the Commercial Courts and extend it to regions beyond Nairobi [Judiciary].**

Country Response:

The Government acknowledges the complaints and difficulties faced by the private sector regarding delays in VAT refunds and to this end has factored adequate budgetary resources. In addition, KRA has been provided with enough monthly resources to meet current refund claims and avoid a recurrence of this problem. KRA has also been instructed to carry out an audit to ensure that genuine claims are settled in a timely manner.

In an effort to improve the investment climate, the country has made serious efforts over the last three years to improve the business climate. In 2004, the Investment Promotion Act was enacted in order to provide the legal framework for the growth of the sector.

Government is aware of the need to further improve the business environment including the issue of agricultural land allocation to foreign investors and will address this issue under the proposed Land Policy.

The Government recognises that bad governance has been a major constraint to investment and growth. To reduce opportunities for corruption and to deter corrupt practices, the government will continue to strengthen governance institutions, and enforce fully the anti-corruption laws and regulations. To this end, the Government has prepared an action plan for a comprehensive anti-corruption strategy. Measures in the plan include enhancing the effectiveness of anti-corruption investigative agencies and building adequate prosecution capacity to handle corruption related case loads. Similarly, wealth declaration forms will be made public in order to discourage abuse of public offices. Other measures will include continuing to vigorously investigate economic crimes and to recover illegally acquired assets.

The passing into law in May 2003 of a key legislation, the Public Officers Ethics Act is aimed at providing for codes of conduct for all public officers including members of parliament, the Executive and the judiciary. This Act compels all officers to declare their wealth including that of their spouses and dependent children.

The GJLOS programme is one of the sector priorities of the Public Safety, Law and Order Sector was initiated in November 2003. The overall objective of the programme is to attain effective service delivery in 32 Government departments and 5 Ministries on the issues of governance, corruption and human rights abuses. To improve the efficiency and the effectiveness of legal and judiciary processes, the Government has initiated various reform measures including; allocating additional budgetary resources, recruitment of more professional legal staff for the administration of justice and enhanced training, modernising administration of registries in the sector by accelerating ongoing computerisation of registries, facilitation of the creation of alternative

dispute resolution mechanisms including arbitration and ensuring these decisions are recognised in law.

Regarding the need to monitor and evaluate the effects of GJLOS, CBK and other Government reform programmes, appropriate monitoring and evaluation plans have been developed and will use the established indicators to monitor programme performances.

The Ministry of Trade and Industry has developed a Private Sector Development Strategy (PSDS) (2006-2010) which comprehensively articulates the policies and strategies that will be employed to enhance investment in Kenya. The investment potential in the Indian Ocean Fisheries and Tana River Irrigation Scheme and other Schemes will be exploited under this strategy.

The Government plans to allocate additional resources to Commercial Courts too facilitate recruitment of additional judges and establishment of regional commercial courts to speed up determination of commercial disputes.

Competitiveness of the Private Sector:

- (i) The Federation of Kenya employers and Ministry of Trade and industry to include HIV/AIDS education and awareness in programmes developed for workplace sensitisation. The aim of such programmes would be to educate employees on the pandemic and so reduce infection rates nationally.*
- (ii) The Ministry of Trade and Industry to monitor the KMAP Programme, once it is revived under the PSDS.*
- (iii) The Government to take steps to address the specific issues raised by segments of the business community such as SMEs, the Asian community members, and hawkers.*

Country Response:

Regarding the issue of Private Sector Competitiveness, the Government through the Private Sector Development Strategy will address all the concerns raised by the Country Review Team.

Access to Finance and Financial Services:

- (i) Enact into law the Microfinance Bill [Parliament];*
- (ii) Modernise the Registrar of Companies offices to ensure access to accurate information;*
- (iii) Strengthen capacity at the Commercial Courts and extend services to provinces beyond Nairobi [Ministry of Justice];*

- (iv) Develop a Rural Banking Strategy, including incentives for banks and MFIs to set up rural branches. [Ministries of Local Government; Planning and National Development; Finance; Regional Development Authorities];**
- (v) Reform ownership of land such that women have equal access to land titles as men [Government of Kenya];**
- (vi) The Ministry of Labour and Human Resources to address the need for financial literacy for the end borrower, and coordinate these actions with those of the Ministry of Trade and Industry.**
- (vii) Integrate SACCOs and other financial cooperatives into the financial regulatory system as they currently carry out banking services without banking licenses [Ministry of Finance];**
- (viii) Publicise and disseminate programmes put in place to strengthen SMEs [Government, MHLRD];**
- (ix) Put in place a Small Business tax code (separate from the individual and corporate codes) to allow easy implementation of favourable tax policy for Small and Micro Enterprises (SMEs) sensitive to their growth stage and general size. [Ministries of Finance and Labour & Human Resource Development];**
- (x) The Government of Kenya to establish (i) a national debt collection body with specific legal powers to collect the bad loans from bankrupt banks and indemnify depositors, and (ii) to set up an insurance deposit schemes with greater supervision of the banks to avoid perverse effects.**

Country Response:

The Government appreciates the critical role of access to affordable credit. To this end, the Government through the Financial Sector Assessment Programme (FSAP) is reviewing the institutional framework with a view to encouraging development of institutions that are well placed to provide credit i.e. micro finance institutions and the revival of the Agricultural Finance Corporation. Towards this end, the microfinance Bill has been submitted to parliament and is awaiting enactment.

Regarding the development of a Rural Banking Strategy, the Government intends to address this matter under the Comprehensive Reforms that it is implementing to improve the performance of the Banking sector. However, the Government is also sensitive to the fact that small businesses and the informal sector that characterise the rural areas traditionally experience problems in accessing formal credit. In this

regard, the Government will deliberately promote the growth of micro-finance institutions and develop an enabling regulatory framework for Savings and Credit Cooperatives (SACCOs) through a SACCO Bill.

Regarding the Small Business tax Code, Government notes this recommendation and intends to address it under the ongoing tax reforms in the Kenya Revenue Authority.

Regarding the establishment of a national debt collection body by banks, the Central Bank of Kenya is strengthening its bank supervision and developing a programme to deal with non-performing loans.

Capital Markets:

The Capital Market Authority to:

- (i) Take steps to lower the costs of listing on the NSE [NSE; CMA];***
- (ii) Publicise the benefits of listing on the NSE, including the tax incentives. [NSE; CMA]***

Country Response:

Kenya's Capital Market is relatively well developed compared to other markets in Africa. The operations of the market are regulated by the Capital Markets Authority (CMA) whose responsibility is to promote an orderly, efficient and dynamic Capital Market in Kenya. The Nairobi Stock Exchange in 2005 implemented the Central Depository system of trading in shares which has improved the transaction period from the previous long period to one day. Other reforms include the re-organisation of the Stock Market into independent market segments in order to address the diverse needs of the various issuers and investors. The CMA is committed to continue encouraging more enterprises to list by putting an enabling environment, **such as reviewing the listing requirement for Medium Sized Enterprises.**

Privatisation of State Owned Enterprises (SOEs):

The Ministry of Finance to:

- (i) Implement the privatisation strategy in a more open manner and in consultations with key stakeholders, including the Ministry of Labour and Human Resource Development and COTU;***
- (ii) Provide the appropriate budgetary allocation and human resources to the Privatization Commission so it can effectively discharge its duties and responsibilities in a transparent manner;***
- (iii) Clarify the mandate and mission of the Privatization Appeals Tribunal.***
- (iv) Undertake a major sensitisation campaign on the government privatisation policy. This campaign may be based on***

comparative studies of privatisations carried out in other countries in order to better inform the public, especially the trade unions and parliamentarians who are strongly opposed to the privatisation of state entities.

- (v) Put in place mechanisms to monitor the performance of the privatised SOEs in order to assess whether government and national objectives have been achieved.***
- (vi) Consider floating shares of state-owned enterprises on the NSE as a means of privatisation.***

Country Response:

The Government is undertaking the privatisation of state owned enterprises under the Public Enterprise Reform Programme. To improve accountability and efficiency in this programme, the Privatisation Act 2005 which provides a legal framework for divestiture and privatisation was enacted. Various other reforms include restructuring, rationalisation and good governance.

The privatisation legislation is aimed at ensuring that public confidence in the process is maintained by ensuring maximum transparency. The legislation requires among other conditions, competitive bidding, wide advance publication of firms to be privatised, clearly publicised privatisation criteria, public process of opening bids and publication of results.

The Government notes the recommendations relating to proposed composition of Privatisation Commission and the Privatisation Appeals Tribunal. The issues raised in the recommendation will be addressed.

OBJECTIVE 2: ENSURE THAT CORPORATIONS ACT AS GOOD CORPORATE CITIZENS WITH REGARDS TO HUMAN RIGHTS, SOCIAL RESPONSIBILITY AND ENVIRONMENTAL SUSTAINABILITY

CRT Recommendation:

Labour Laws, Employee Rights, Rights to Unionise

- (i) The Ministry of Labour to communicate the revisions to the Labour Act to the Law Reform Commission for consultative advice to ensure coherence and compatibility with the Companies Act, prior to submission to Parliament.***
- (ii) Government to enhance the institutional capacities of the Ministry of Labour through adequate budgetary provisions for the recruitment of qualified inspectors and to equip them with adequate infrastructures.***

- (iii) Kenya Anti-corruption Commission (KACC) and COTU to put in place an alert mechanism so that corruption at the inspector's level of the Ministry of Labour could be rapidly detected and curbed ('whistle blowers').**
- (iv) The ongoing review of public sector wages to be finalised so as to increase productivity on the part of public servants and curb corruption as part of a global civil service revamping exercise to increase productivity. The government needs to put up coherent indicators and incentives and career plans to ensure professionalism within the Civil Service.**
- (v) Trade union representatives to request the ILO to give them appropriate training (legal and regulatory – especially revised laws, financial training, fight against HIV/AIDS, environmental protection) to be able to adequately defend the rights of workers, especially those of women, those who are HIV/AIDS positive, and the disabled.**
- (vi) A communication campaign to be mounted in addition to a special negotiation framework, which should be established so that the Ministry of Labour could consult with the unions to ensure that the terms of reference for privatisation account for the protection of workers' rights.**
- (vii) Small businesses to be provided with information on corporate governance principles, especially best practices in relation to respecting the rights of workers. Many SMEs operate outside of the legal framework, and it is thus necessary for the vibrant Kenyan civil society to help defend the rights of those who work for them. [Relevant authorities; CCG]**
- (viii) Government to reconsider the mechanisms for the use of HIV/AIDS funds so that communities could effectively be consulted when it comes to setting up specific projects for the HIV positive.**
- (ix) Consumers' protection associations to be resourced so that they can investigate and advocate for the rights of consumers. This also applies to the Kenya Bureau of Standards, which is perceived as lacking adequate capacity to carry out its mission. [Relevant authorities].**
- (x) The authorities to enforce child labour laws and ensure those children's rights are protected. In this regard, a plan of awareness on the extent of child abuse and child labour in Kenya to be prepared.**

(xi) The Ministry of Labour to investigate the infringement of labour laws in EPZs and severely punish all breaches of human rights by these entities.

Country Response:

The key objective of the Labour Policy is to promote acquisition of skills, harmonious industrial relations and ensure healthy working conditions for the workforce. The revisions to the Labour Act by the Ministry of Labour have been completed in consultation with the Law Reform Commission and other stakeholders in a participatory and transparent manner. The Government is strengthening the capacities of all Ministries including Labour Ministry with a view to enhancing their ability to effectively deliver services.

With regards to the review of the public sector wages, the Government has taken cognizance of the need to implement a pay structure that recognises the rising cost of living. Specific measures include; the implementation of the Pay Policy for the Public Service whose key elements are enhancing basic pay in tandem with the cost of living; relating pay to performance; aligning the pay structure in the civil service; harmonising the various pay regimes in the public service and relating remuneration to ability to pay. A draft Pay Policy has been submitted to Cabinet for approval.

Regarding the need for Trade Unions to solicit support from ILO for various interventions in training, the Government find this recommendation acceptable.

Regarding the need to provide small businesses with information on Corporate Governance Principles, the Government will encourage and support civil society organisations involved in this sector to play this role.

Regarding the need for involving communities in decisions relating the use of HIV and AIDs funds, the Government in collaboration with civil society organisation is implementing a community awareness campaign which will engender increased community participation in decision making.

The Government takes note of the recommendations relating to consumer's protection associations; enforcement of child labour laws and the application of labour laws in EPZs. All these concerns will be addressed within the framework of existing labour laws of Kenya.

In addition through the Kenya Bureau of Standards (KeBS) the Kenya National Commission on Human Rights, Ministry of Labour, the Federation of Kenyan Employers (FKE), representatives of consumer groups, NGOs, various corporations are working through what is called a

National Mirror Committee to develop input into the international Standardization Organization's (ISO) SR 26,000 (Social Responsibility Guidelines) which will be adopted as the overarching framework through which organizations will be encouraged to engage to engage in socially responsible management, business practices and relations with stakeholders.

Corporate Social Responsibility (CSR):

- (i) The Government, and all the professional associations, together with COTU, to further develop awareness raising and advocacy when it comes to corporate social responsibility, so that member corporations are more involved in the communities in which they operate. Codes of conduct and policies (even for the informal businesses) have already been developed with respect to these issues. These should be disseminated with the help of the Ministry of Trade and Industry.*

- (ii) At the community level, Community Based Organisations (CBOs) to initiate discussion with businesses in their localities on CSR, and jointly design CSR projects and programmes based on needs [Ministry of Local Government and relevant local authorities].*

Country Response:

Regarding the recommendation on Corporate Social Responsibility, the country has witnessed an upsurge in activity by corporations. A number of these corporations have established various schemes to benefit the communities in which they operate and the society at large. The Government is in support of this initiative and will encourage Professional Associations and Trade Unions to recognise this development and positively engage corporations with a view to expanding this initiative. In the same vain it will encourage community based organisations to engage businesses in their localities to jointly design and undertake CSR projects and programmes.

Environment:

- (i) NEMA's capacities be enhanced. These efforts are to be directed at staffing (proper training, recruitment of environment specialists) and infrastructure (vehicles, laboratories, ICT) the NEMA inspection teams be proactive and on alert constantly to environmental dangers so as to be able to resolve major environmental threats.*

- (ii) NEMA re-opens the case regarding the North Eastern Province allegations of hazardous waste burial. There needs to be on-site research work conducted to assess the potential toxicity of soil in the area. To give credibility to this process, international environmental NGOs may assist in the process.*

- (iii) Projects on recycling waste such as the one initiated by German GTZ and the UNHCR in refugees' camps be extended to all pastoralist areas.***
- (iv) Given the recurrent drought that confronts the country, irrigation plans that use the main rivers and ambitious water drilling be designed by the Ministry of Water and Irrigation and relevant authorities especially for farming. These projects may be financed through the LATFs and CDFs.***
- (v) Government to provide tax incentives for businesses that invest in projects that will generate employment in rural areas.***

Country Response:

Government agrees with recommendations to strengthen NEMA's capability for sustainable environmental management. NEMA was established by an Act of Parliament, The Environmental Management and Coordination Act (EMCA) of 1999 and became operational in July 2002. The Act contains adequate provisions relating to the management of natural resources and the control of pollution. It also provides for mechanisms for establishing environmental standards and the tools for enforcement. In addition to the Act the Minister for Environment gazetted Environmental Impact Assessment and Audit Regulations in 2003 which is a key management tool for ensuring compliance with the required environmental standards. Measures will be taken to fully make EMCA operational.

The Ministry of Environment and Natural resources has also drafted regulations which are to be forwarded to the Attorney General's office for gazetting relating to water quality regulation and standards; conservation of biological diversity and resources; access genetic resources and benefit sharing; control substances regulations 2006; waste management regulations; Regulations on toxic and hazardous chemicals and management of wetlands, riverbanks and lakeshores are to be developed.

Capacity enhancement to NEMA will also entail training; technical assistance and infrastructural support in environmental planning, coordination, regulation and compliance.

Gender and Youth:

The Ministry of Gender, Sports, Culture and Social Services and other bodies to:

- (i) Take steps to include youth in more decision making bodies including the local constituency level.***

- (ii) Provide tax incentives to corporations which employ and train young people.***
- (iii) Support initiatives such as the newly launched 'Young Kenyan Entrepreneurs' association along with the Ministry of Trade and Industry and private sector institutions. A Youth Trust Fund be set up by the government to assist youth in start-up businesses.***
- (iv) Set up mechanisms for reporting child labour violations and empower the police and other institutions to investigate abuses [Ministry of Justice; Office of the Vice President].***
- (v) Put in place specific initiatives to improve the capacities of Kenyan women to allow them to play their role in the development of Kenya.***
- (vi) To combat vigorously sexual harassment in the work place, including in the private sector.***

Country Response:

The Government has developed elaborate programmes in respective strategic plans which contain the strategies for involving the youth and gender in development activities at various levels.

The Strategic Plan of Youth (2006-2011) establishes objectives and strategies relating to youth empowerment; education and training youth and employment, youth and information and youth and environment. It is on the basis of the planned activities that the concomitant budgetary resources will be provided within the MTEF Framework.

Regarding sexual harassment, parliament passed the Sexual Offences Bill which is now awaiting Presidential Assent to become law. There are efforts to strengthen the capacity of the Judiciary to handle disputes of environmental nature.

OBJECTIVE 3: TO PROMOTE ADOPTION OF CODES OF GOOD BUSINESS ETHICS IN ACHIEVING THE OBJECTIVES OF THE CORPORATION

CRT Recommendation:

The government to demonstrate a strong political will and a high degree of commitment in the fight against corruption. Trust and confidence in the government will be earned from the public if senior government officials, members of parliament, and well connected business men guilty of Corruption are brought to book.

Country Response:

The Government agrees with the recommendation on the need to demonstrate a strong political will and a high degree of commitment in the fight against corruption. This is in recognition of the fact that corruption and poor management of public resources are some of the key impediments to economic and social development as they hamper the country's ability to attract investment; and they also constrain the effectiveness of institutions.

As already intimated, under the Pillar on Democracy and Political Governance, the Government has established the requisite institutional framework for addressing issues of corruption in Kenya. Current efforts are now targeting the strengthening of the prosecutorial capacity of the judiciary particularly the office of the Director of Public Prosecutions. It is noteworthy to add that the National Anti-Corruption Action Plan was launched by KACC in May 2006 with clear strategies on addressing the issue prosecutions comprehensively. Finally, Performance Contracts by Government Ministries and specialised Agencies demand that the organisations report on the measures taken to address corruption in their areas.

CRT Recommendation:

Steps be taken to enforce the Public Procurement and Disposal Act. In this regard, the Act needs to be amended to provide for the criminalisation of bribery, kickbacks and all the other rent seeking activities [Judiciary; Office of the Vice President; Ministry of Justice; GJLOS Programme Coordination Office].

Country Response:

An appropriate response relating to this recommendation has already been provided under the Economic Governance pillar.

CRT Recommendation:

The Official Secrets Act needs be repealed (or a Freedom of Information Law enacted) to ensure that all public official actions can be scrutinised. [Parliament]

Country Response:

Regarding this recommendation, Kenya notes the intention of the recommendation as being to ensure public scrutiny of official actions. However, it is important to observe that every country has national secrets particularly those relating to its security. **In addition, a Media Bill is being developed.** In this respect therefore, a review of the operations of the Official Secrets Act will suffice.

CRT Recommendation:

Engender more coordination to minimize or eliminate overlaps in the mission and mandates of the various institutions established to fight all forms of economic crimes.

Country Response:

Kenya finds this recommendation acceptable as its implementation will minimise tradeoffs and diminished accountability in actions by the institutions involved in the fight against economic crimes

CRT Recommendation:

Mechanisms be put in place for early detection and prosecution of all forms of economic crimes to dissuade seekers and make economic crimes high risk activities.

Country Response:

The implementation of this recommendation will strengthen the ongoing initiatives by the Government to establish zero tolerance to corruption environment in public organisations. The deepening of legal, policy and institutional frameworks on transparency in the public sector is ongoing; and for example the Public Officers Code of Conduct and Ethics Act, the Economic Crimes Act, Anti Money Laundering **Bill**, Witness Protection Bill, the Procurement Regulatory Act, and Staff Performance Contracts are some of the initiatives the Government is implementing in this direction.

CRT Recommendation:

The private sector organisations design mechanisms to monitor, police, and enforce compliance with business ethics standards.

Country Response:

The Government in collaboration with the Kenya Private Sector Alliance (KEPSA), Kenya Association of Manufacturers and the Kenya Federation of Employers will design mechanisms for enhancing transparency and accountability in the private sector. For example, events that recognise good business practices such as the presentation of business awards will be encouraged.

CRT Recommendation:

Enhance the capacity of self-regulatory organisations to detect, share information and report all forms of economic crimes, including insider trading and other white-collar crimes

Country Response:

The Country plans to enact the Witness Protection Act (Whistleblower), The Central Bank has issued instructions to the financial institutions regarding money laundering and the Banks themselves enforced practices such “know your customer”. The **Government** has also gazetted a national task force on anti-money laundering and CFT which has drafted the Anti-Money Laundering and Proceeds of Crimes Bill.

CRT Recommendation:

Ensure that senior managers of State-owned enterprises implement the performance contracts as per adopted guidelines.

Country Response:

This recommendation is supportive of the ongoing initiatives by the Government to enhance performance in the Public Sector by employing result-oriented strategy. The Economic Recovery Strategy for Wealth and Employment Creation underscores the need improve performance in the Public Sector. The enabling legislation for performance contracting was gazetted in August 2004. To date 123 State Corporations have been put on Performance Contracts. It is planned that those Government Ministries and Public Corporations whose reporting period will fall in June 2006 provide comprehensive assessments of their accomplishments. The pilot SOEs whose performance contract has been evaluation demonstrated tremendous improvement in performance.

CRT Recommendation:

Kenyan professional associations continue to act as advocacy institutions for the dissemination of good business ethics and strive for good business ethics as part of their own strategies and to formally appoint Ethic Officers for the promotion of ethics policies. [Centre for Corporate Governance (CCG); Institute of Certified Public Accountants Kenya (ICPAK), Central Bank of Kenya (CBK), Capital Markets Authority (CMA); Kenya Federation of Employers; KAM; KIM]

Country Response:

Kenya recognises the importance of this recommendation as it seeks to enforce good practices and ethics in professional bodies and associations. It is noteworthy to report that the country has made significant progress in this area, with the banking industry, private sector operators, state owned enterprises, cooperatives and some private companies, having institutionalised mechanisms for disseminating good practices in their operations. The government will therefore build on these experiences to replicate and expand the culture.

CRT Recommendation:

The hospitality industry to sign appropriate industry codes of ethics and training, and, in cooperation with local communities, to organize sensitization workshops to address ethics issues.

Country Response:

This recommendation is in tandem with the advocacy and awareness creation initiatives of the government and in this regard therefore, the government will promote the increased participation of the hospitality industry in observing ethics.

CRT Recommendation:

The legal framework be revised to enhance the protection of investigative journalists as “whistle blowers” in reporting and denouncing economic crimes when they occur.

Country Response

The Media Bill which is currently under discussion will address all matters relating to the professional conduct of media persons.

OBJECTIVE 4: TO ENSURE THAT CORPORATIONS TREAT ALL THEIR STAKEHOLDERS (SHAREHOLDERS, EMPLOYEES, COMMUNITIES, SUPPLIERS AND CUSTOMERS) IN A FAIR AND JUST MANNER

CRT Recommendation:

Accountability to Shareholders:

- (i) Kenya Authorities to reform the legal framework of corporate governance with a view to providing for the protection of the rights of creditors, suppliers, consumers, and local communities. Specifically, amend the Companies Act, the Bankruptcy Act, the receivership and liquidations laws, as well as the State Corporation Act and the Cooperative Societies Act to provide for the protection of the rights of shareholders and stakeholders.*
- (ii) Ensure the revised companies' law includes the protection of the rights of minority shareholders.*
- (iii) The LRC to draft legislation allowing for derivative suits (where a minority shareholder can sue company officers and board members on behalf of the company).*

Country Response:

The Country agrees with the recommendations. The Companies Act **is being** reviewed to address adequately the rights of shareholders including minority shareholders. The Country is reviewing and planning to consolidate the Bankruptcy Act, the receivership and liquidations laws. These are being undertaken under the GJLOS programme.

CRT Recommendation:

The authorities to reach agreement with the Kenya Association of Manufacturers (KAM) and enact the draft Bill against counterfeit and pirated goods.

Country Response:

A taskforce consisting of the KAM, Kenya Bureau of Standards and the State Law Office have been addressing the issue of counterfeits and pirated goods. A draft bill has been drafted. The Government accepts to have this Bill enacted.

CRT Recommendation:

The government and the Kenya Association of Shareholders (KAS) to develop programmes aimed at ensuring that the shareholders are aware of their rights and that training opportunities exist for

learning about how to trade their shares and make capital gains. A shareholding culture should be encouraged and capacity building is required for KAS and CMA to carry out these training activities.

Country Response:

The Kenya Association of Shareholders has been registered under the Societies Act. Interim officials are in place but their operations are currently dormant due to lack of seed funds. The need to strengthen the KAS is acknowledged and modalities will be worked on how it should be funded.

CRT Recommendation:

Design administrative mechanisms rather than court structures (for reason of access and cost) to facilitate recourse by shareholders in seeking redress when they experience infringement of rights.

Country Response:

The issue of administrative mechanisms for shareholders seeking redress outside the court system will help to speed up administration of justice. The Country Plans to adopt Alternative Dispute Resolution (ADR) mechanisms in our justice administration and some issues of shareholders redress could also be addressed through ADR.

CRT Recommendation:

The Ministry of Finance to ensure that the Capital Markets Authority and the Central Bank of Kenya benefit from capacity building programmes to strengthen detection and investigation procedures against insider trading and other corporate sector crimes.

Country Response:

These institutions as part of their regulatory role are always on the lookout for insider trading. However, this is a dynamic area and there is therefore need for them to continually upgrade their human and technical capacity for early detection.

CRT Recommendation:

Advocate prosecution of criminal behaviour by company directors and senior managers.

Country Response:

The Company Law and the Penal Code puts down the obligations and liability of Directors. However, due to how long the court process takes, most aggrieved parties prefer not to seek redress. With the Law reform taking place, prosecution of Directors and Senior Managers for criminal behaviour will become an option.

CRT Recommendation:

The Ministry of Trade and Finance to draft and enact a clear policy for consumer protection in Kenya.

Country Response:

The Government agrees with the spirit of this recommendation that there is need to strengthen the Consumer protection legal framework and its enforcement. In this regard, the Sale of Goods Act will be enforced.

CRT Recommendation:

The government to ensure the Kenya Bureau of Standards is adequately staffed and resourced to carry out its mandate, including any revised powers under a revised consumer protection law.

Country Response:

This recommendation is in tandem with Government's plan to strengthen the Kenya Bureau of Standards with adequate enabling powers under a revised consumer protection law. **Kenya Bureau of Standards has also taken measures to decentralize to the Provinces.**

CRT Recommendation:

The Ministry of Labour to put in place an adequate staffing policy and ensure it has the necessary resources in order to protect employees across the country.

Country Response:

It is important to reiterate Government's acceptance of this recommendation that resources will be put at the disposal of the Ministry of Labour for the purpose of protecting employees across the country.

CRT Recommendation:

The Ministry of the Environment and Natural Resources to ensure that NEMA and the Kenya game park and reserve administrators are adequately staffed, resourced and have the necessary mandate to protect communities living near parks, reserves and companies producing toxic waste.

Country Response:

The Government finds this recommendation acceptable and has put in place a legal framework and a programme to enhance the institutional capacities of NEMA.

CRT Recommendation:

The Ministry of Trade and Industry in collaboration with the Ministry of Finance and the Ministry of Labour, to implement an industrial master plan, favouring the growth of SMEs including the jua kali small-scale industry. The industrial master plan to include

incentives for industry to integrate SMEs including the jua kali industry into their supply chain.

Country Response:

Sessional paper No. 2 of 2005 on SMEs has been published and its implementation is now being done. A strategic framework for the “Private Sector Development” has also been developed aimed at spurring the growth of both SMEs and other businesses.

CRT Recommendation:

The Ministry of Agriculture, with the Ministries of Planning and National Development and the Ministry of Livestock, to implement a rural policy that includes an emphasis on the agriculture and livestock industries and provides for availability of basic infrastructure in the rural areas.

Country Response:

This recommendation is in tandem with the various sectorial programmes of the above Ministries.

OBJECTIVE 5: TO PROVIDE FOR ACCOUNTABILITY OF CORPORATIONS, DIRECTORS AND OFFICERS

CRT Recommendations:

- (i) The Shareholders’ Association to complete its incorporation forthwith, to be able to purchase companies’ shares and participate in Annual General Meetings.***
- (ii) The Companies Act to be revised to include provisions allowing minority shareholders to pool their votes to designate preferred Board members.***
- (iii) The authorities to ensure the financial sustainability and institutionalisation of both the Institute of Directors and the Shareholder’s Association.***

Country Responses:

- (i) Both the Institute of Directors of Kenya (IODK) and Kenya Association of Shareholders (KAS) have been registered under Societies Act. The KAS is still to be operational.
- (ii) The Government through the MOF to will come up with modalities of financing these associations

SOCIO ECONOMIC DEVELOPMENT

STANDARDS AND CODES

CRT Recommendation:

Government of Kenya to publish and disseminate the adopted standards and codes at the national and district levels. The Government may also translate them into local languages and implement a sensitization programme to promote greater awareness among all citizens.

Country Response:

The Government of Kenya appreciates the CRT's recommendation and recognizes the need for citizens to understand and know the standards and codes. The Government will strive to disseminate those that are critical to our development as widely as possible to all stakeholders. This will be done through the use of popular versions in English and Kiswahili (national languages), seminars, conferences, public meetings, and other relevant dissemination strategies. The rest of the standards and codes that are of a generic nature will be embedded in the overall national policy framework.

The Kenya National Commission on Human Rights has distilled the fundamental in the various human rights standards and codes and through the Human Rights Approach to Development (HRAD) is working with various ministries to reflect the HRAD principles in their strategic plans; including the governments overarching development blueprint the ERS. The Ministry of Roads has adopted this approach and will use it for its Roads 2000 Programs in the country.

CRT Recommendation:

Government departments and institutions be encouraged to fully report on compliance on these standards and codes in their reports.

Country Response:

Over the next three years, the Government of Kenya will progressively incorporate the reporting of the standards and codes into its monitoring and evaluation systems.

CRT Recommendation:

Kenyan authorities to establish a systematic and comprehensive mechanism for collection and compilation of socio-economic data to assist in the assessment of compliance with the adopted standards and codes.

Country Response:

The Government acknowledges the CRT's recommendation by noting that while most of the socio-economic data is collected in routine or ad hoc

surveys nationally, it is not often analyzed and reported in a systematic and comprehensive manner. To enable the systematic and comprehensive reporting on socioeconomic standards and codes, the Government will devise the required methods for the systematic and comprehensive collection and compilation of socioeconomic data within the ongoing strengthening of the national statistical system at the Central Bureau of Statistics (Ministry of Planning and National Development) through the five year Strategic Plan and the Statistical Capacity Building project.

CRT Recommendation:

The Government to sensitise Kenyans on the standards and codes, the objectives and the manner in which they are being implemented.

Country Response:

Kenya accepts the CRT recommendation on sensitization. However it should be noted that the country has implemented several legal and policy interventions that comply with the standards and codes. These include among others the Children's Act, Free Primary Education Policy and the National Gender Policy. Kenya has a dynamic media and civil society that is continuously monitoring and holding the Government to account on implementation and meeting the initial objectives of such programmes and policies. The Government acknowledges that it needs to communicate more effectively with its people on what has been achieved and what needs to be done.

OBJECTIVE 1: SELF-RELIANCE IN DEVELOPMENT AND CAPACITY-BUILDING FOR SELF-SUSTAINING DEVELOPMENT

CRT Recommendation:

Kenya to intensify efforts to promote self-reliance by mobilizing more domestic resources. Towards this end, Government of Kenya, with the assistance of CSOs, to undertake a national civic education and awareness campaign on the benefits of paying taxes.

Country Response:

Since coming to power in 2003, the Government has created a greater awareness of the benefits of paying taxes to the people of Kenya. There is continuous advertising on radio, television, and national newspapers emphasizing in Kiswahili the need for everyone to pay taxes so that the country can be free or liberated. It is also important to note that 95 percent of the national budget is funded by domestic resources, donor funds are not factored into the budget, and revenues have risen from Kshs. 255 billion in 2003/4 to Ksh 325 billion in 2005/6. These developments have enabled Kenya to be among the most self-reliant countries in Africa.

CRT Recommendation:

The Authorities in collaboration with CSOs strengthen self-help groups by providing assistance in the form of advisory services and other incentives.

Country Response:

The role of self-help groups in Kenya is nearly four decades old, and can be traced back to the Harambee and cooperatives movements in the 1960s and 1970s. From then to the present, the Government of Kenya through the Department of Social Services has implemented programmes to register, regulate, strengthen and promote self-help groups. During the same period, the Government licensed CSOs and allowed them to operate freely throughout the country. By doing so, it has manifested its commitment and willingness to work hand in hand with both CSOs and self-help groups to improve the quality of life for Kenyans. It is also worth noting that there is an entrenched culture of self help groups in the country in virtually all sectors.

CRT Recommendation:

Accelerate the adoption and implementation of a sustainable bottom-up planning system to encourage participatory development.

Country Response:

The government's commitment to rural development started in earnest with the publication of the Sessional Paper No. 10 of 1965 on *African Socialism and Its Application to Planning in Kenya*. The Sessional Paper led to the first regional development initiative in Kenya, which covered the Special Rural Development Programme (SRDP) in 1967, which later became the District Focus for Rural Development (DFRD) strategy. The DFRD is a decentralized administrative system, through which the authority of the Central Government to plan, finance, manage and implement rural development activities was transferred to field agents. In the past decade, there has been an expanded use of participatory approaches to both planning and selection of development programmes culminating in the formation of constituency level committees that now manage millions of shillings on roads, HIV/AIDS, bursaries, and other development projects. The Ministry of Planning and National Development has initiated the process of improving use and management of decentralized funds with a view to strengthening their application at the lower levels such as the districts and constituencies. In addition the Kenya National Commission on Human Rights is working with the Ministries of Roads and Public Works, Agriculture, Livestock, Health and Water in using the human rights approach to development which is having appreciable effect on citizens' participation and empowerment in the various programmes.

OBJECTIVE 2: ACCELERATE SOCIO- ECONOMIC DEVELOPMENT TO ACHIEVE SUSTAINABLE DEVELOPMENT AND POVERTY ERADICATION

CRT Recommendation:

Government of Kenya to accelerate the implementation of the following programmes for alleviating poverty: the Social Action Fund, the Slum Upgrading and Low Cost Housing and the Vulnerability Programme.

Country Response:

The Government is in the process of establishing the Kenya Social Action Fund (KENSAP). Preliminary discussions have been held with the African Development Bank on modalities of operationalizing the fund. It was noted though that the envisaged objectives under KENSAP are somehow similar to those being addressed through the CDF. In view of this, KENSAP will be used to compliment the existing initiatives particularly those geared towards social development and enhancement of specific groups such as the youth. On slum upgrading, a number of initiatives are being implemented such as the low cost housing scheme. The government has allocated Ksh 488 million during the financial year 2005/2006 for the programme towards slum upgrading and low cost housing and infrastructure fund under the Ministry of Housing. A further Ksh 500 million is being considered in the financial year 2006/2007 towards this fund. **This programme is planned to continue in the future.**

CRT Recommendation:

The Authorities to create the proposed revolving youth fund for the promotion of self-employment.

Country Response:

The government established the Ministry of Youth Affairs established to deal specifically with youth issues. The government has made deliberate efforts towards enhancing participation of the youth who constitutes about 75% of the Kenyan population by endeavouring to channel substantial resources to youth related programmes to provide opportunities for the youth to be meaningfully engaged in economic development process. Resource allocation in this area will be guided by the National Youth Policy, which seeks to address, among other things: issues of unemployment; health related problems; crime; abuse; housing

The Ministry of Youth has started engaging private sector under Public Private Partnership (PPP) framework in order to raise additional resources for youth related activities. Specific measures aimed at addressing youth issues include establishment of National Youth Council to coordinate, monitor, advocate, and promote youth issues and youth led initiatives. Resource centres for youth will be developed. Similarly youth organizations will be coordinated to ensure exploitation of youth potential through structured organizations, collaborations and networking. Youth polytechnics and National Youth Service will be rehabilitated and promoted. All these measures to promote anchor on the determination by

Government to promote youth development through elaborate designing of policies and programmes aimed at building the capacity of youth to resist risk factors and enhance protective factors.

Importantly, the Government is establishing a Youth Enterprise Fund from which enterprising young people can access affordable capital to establish or expand their businesses.

CRT Recommendation:

Government of Kenya and CSOs to initiate, through public and private partnerships, integrated youth resource centres nationwide.

Country Response:

The Ministry of Youth has begun engaging private sector under Public Private Partnership (PPP) framework in order to raise additional resources for youth related activities. Resource centres for youth will be developed.

CRT Recommendation:

CSOs and the National Council on Disabilities to encourage people living with disabilities to form stronger lobbies and advocacy group.

Country Response:

The government agrees with this recommendation and acknowledges the need to encourage people living with disabilities to form stronger lobbies and advocacy groups so that they can optimally exploit their potential to contribute to national development. To this effect, the government is in the process of implementing the Disabilities Act which with a view to involving persons with disabilities in meaningful economic activities.

CRT Recommendation:

Government of Kenya to create a desk for people with disabilities in every ministry to ensure that national policies and programmes cater for the needs of people living with disabilities and ensure the enforcement of all national policies and programmes.

Country Response:

The government is addressing issues of concern of people with disabilities in a comprehensive manner through policy and strategic approaches within the Disabilities Act.

CRT Recommendation:

Government of Kenya to set up a civil educational programme to sensitize local communities on the need for their involvement in the LATF and CDF management.

Country Response:

Both the Ministries of Local Government and the CDF Management Committees with assistance from the Ministry of Planning and National

Development have been engaging stakeholders at various levels through a structured dialogue to sensitise them and promote effective and efficient utilization and management of resources earmarked for LATF and CDF respectively.

CRT Recommendation:

Government of Kenya is encouraged to involve Kenyans in the Diaspora in the development process of the country.

Country Response:

The government of Kenya agrees with this CRT recommendation and acknowledges the important role of the Kenyan Diaspora in social economic development of the country. To this end, the government through the Ministry of Labour has constituted an Inter-Ministerial Committee to address the role of the Kenyans in the Diaspora in socio economic development in the country. This will address issues relating to facilitation of remittances, developing strategies to attract them to invest in the country and look into ways of making transfer of monies to the country cost effective.

The African Brain Gain Kenya Chapter has been established to mobilize Kenyans in the Diaspora. The government will also address issues of dual citizenship to encourage the Kenyans in the Diaspora to invest in the Country. The government will also explore available options such as tax rebates to encourage investments by Kenyans in the Diaspora.

OBJECTIVE 3: STRENGTHEN POLICIES, DELIVERY MECHANISMS AND OUTCOMES IN KEY SOCIAL AREAS, INCLUDING EDUCATION AND COMBATING OF HIV/AIDS AND OTHER COMMUNICABLE DISEASES.

CRT Recommendation:

Initiate annual People's Assemblies to allow the President of the Republic to interact with the public and explain government's policies and programmes with a view to encouraging a culture of accountability. Commissioners to hold similar sessions in the provinces as well.

Country Response:

The government has set aside days when the President addresses citizens such as during National Days and during official delegations to State Houses among other forums. Due to the diversity of the country, these are the most ideal forms of interaction.

CRT Recommendation:

Comprehensively address the issue of deteriorating standards in the education system by recruiting more teachers to reduce the high student/teacher ratios, and improve the necessary infrastructure.

Country Response:

It is acknowledged that implementation of Free Primary Education in 2003 initially posed serious challenges to quality of education due to an upsurge in School enrolment. However, this situation is being reversed as the government continues to inject additional resources to the sector. Virtually all public primary schools have attained the desired Textbook Pupil Ratios of 1:3 for lower primary and 1:2 for upper primary. The issue of high Pupil Teacher Ratios is being addressed by the Ministry of Education. In this regard, TSC has completed a teacher balancing exercise which involved transferring teachers from overstaffed areas to those that are understaffed.

The Ministry has also completed a Staffing Norms Study and is in the process of implementing some of the recommendations. The issue of hiring of more teachers is also being addressed.

CRT Recommendation:

Ensure that bursaries are awarded on the basis of demonstrable needs and establish transparent disbursement mechanisms.

Country Response:

The Government through the Ministry of Education is providing support to the needy and bright students through secondary schools bursaries. This includes the support in the implementation of affirmative action in secondary education to address the needs of the marginalized and/or those in difficult circumstances including the girl child. Further, the identification criterion is currently under review to devise better and efficient methods of targeting the needy in the disbursement of the bursary funds.

Financial resources targeted to the girl child and children in urban and ASAL areas have been enhanced. Hence there is a basis against which bursary is awarded and the government is currently reviewing disbursement of the bursary funds. The government has established mechanisms such as the Constituency Bursary Committees to address issues of disbursement of bursaries. There are however mixed results and these will be used to inform the on-going review. Finally there is need to build capacity at the lower levels or the grassroots to enhance decision making processes.

CRT Recommendation:

Continue to work towards the achievement of the MDGs, especially in the area of environmental sustainability and the reduction of the incidence of malaria.

Country Response:

Environment and natural resources management receives central place in overall sustainable development strategy of the country. A comprehensive

framework environmental law was enacted in 2000. The Act creates various institutions that oversee environmental management in the country. These institutions include the National Environment Management Authority (NEMA), Public Complaints Committee (PCC) and National Environment Tribunal all of which provide a firm basis for environmental management. The PCC and the Tribunal are quasi-autonomous bodies that receive and address stakeholder concerns on environmental issues.

A new Forestry Policy is to be discussed by Parliament for approval however the Forest Act was enacted in 2005 to reverse decline in forest cover and guide the country towards attainment of the recommended coverage of 10% of the country's land area.

Some specific steps undertaken include:

- (i) An Action Plan prepared for the attainment of the World Summit on Sustainable Development (WSSD) targets.
- (ii) Many programmes and projects have been initiated and are ongoing in the different aspects of environment including combating desertification; adaptations to climate change; wetlands conservation; and coastal and marine environmental management.

On plastics and garbage management, NEMA has since 2003 initiated a stakeholders' consultative forum to address the issue in close collaboration with the Kenya Association of Manufacturers (KAM). The consultations have resulted in a comprehensive Draft Strategy on Plastic Waste Management to be initially implemented in Nairobi City where high population and expanding slum settlements have made the problem more acute. Lessons learnt from Nairobi will be replicated in other municipalities and urban centres across the country. The Strategy emphasizes waste minimisation, recycling, and public awareness among others.

The Government through the Ministry of Health has developed the National Malaria Strategy 2001-2010 towards compacting malaria incidence in the country. The strategy involves:

- (i) Guarantying all people access to quick and effective treatment to significantly reduce illness and deaths from malaria
- (ii) Providing malaria prevention measures and treatment for pregnant women
- (iii) Ensuring distribution of treated mosquito nets especially to pregnant mothers and children.
- (iv) Improving epidemic preparedness and response

Kenya has taken advantage of the UNEP to finance various initiatives currently at various stages of implementation.

The Government has implemented the Water Act 2002, which separates the roles of service delivery, regulation and policy. The water sector reforms have decentralized the water and sewerage services to local levels, allowing more participation of private sector and communities. The reforms have put in place better management structures, which have enhanced accountability, effectiveness and efficiency in the delivery of water services. The resources and facilities have been transferred to the new institutions and placed under their custody and management.

Regional water service boards have been created under the Water Act 2002 and Water service providers are being engaged to enable the government to increase water coverage. So far over 100 service providers have been contracted countrywide. 183 rural and 17 urban water supplies have been rehabilitated to restore them back to their original design capacity. Also 6 sewage schemes have been rehabilitated. Ksh 1.5 billion has been set aside by the government in the annual budgets specifically for ASAL areas. The money is utilized in construction of water pans, dams and drilling of boreholes to provide water for both domestic and livestock uses. During the 2005/6 financial year alone, the government rehabilitated 264 small dams and pans and constructed 54 new ones, giving additional water storage capacity of 7.85 million cubic metres; drilled and equipped 222 boreholes, yielding more than 15,500 cubic metres per day thereby serving additional 309,000 people daily. Water Services Trust Fund established under the on-going reforms is aimed at funding community water projects in targeted disadvantaged areas. Poverty maps are used to identify poor communities that qualify for support by the fund. Since its inception in 2004, the WSTF has funded 132 community water projects, worth Ksh. 800 million, benefiting about 750,000 people. Water quality monitoring and surveillance is ongoing. The central water testing laboratory has been upgraded and equipped to modern standard and staff trained on quality analysis for drinking water. In addition the Government continues to undertake pollution surveillance on lakes, rivers and ground water as well as industrial pollutants. Standards on polyelectrolites for water treatment have been developed and published.

Other interventions for achieving MDGs are irrigation and flood control measures. Over the past two years five small scale irrigation projects and two large irrigation schemes have been rehabilitated. Forty two (42) new small holder schemes have been completed in the last one year, increasing area under irrigation by 1,400 hectares. Fifty two (52) new ones were identified, thirty (30) of which have been designed ready for construction next financial year. To address food insecurity, the government will continue to rehabilitate the existing schemes and implement new irrigation projects to increase area under irrigation by 3,000 hectares next year. The Government has also continued to undertake flood control measures to mitigate the effects of floods on the communities in these areas. A total of 5,500 hectares of flood prone lands

have been protected, protecting more than 30,000 people and their property against flooding.

CRT Recommendation:

Consider providing alternative education models appropriate for children of nomadic groups with the involvement of stakeholders.

Country Response:

There are various approaches that the government is considering for children from nomadic communities which include: mobile schools, shepherd schools, integration of the Dugsi and other traditional systems in the formal education system and development of feeder schools, multi-grade teaching and other localized innovations that facilitate reaching the un-reached and the hard-to-reach children.

The Ministry of Education is currently implementing a 5-year investment programme to establish 100 mobile schools in 10 ASAL districts to be managed by District Education officers and communities.

In the urban slums and ASAL areas, the Ministry of Education is extending support to Non-Formal Schools and adult education learning centres that have admitted primary school age children. This has enabled the Government to access the hard-to-reach children

OBJECTIVE 4: ENSURING AFFORDABLE ACCESS TO WATER, SANITATION, ENERGY, FINANCE, MARKETS, ICT, SHELTER AND LAND FOR ALL CITIZENS, ESPECIALLY THE RURAL POOR

The Government of Kenya is particularly proud of water sector reforms as one of the best practices in Kenya.

CRT Recommendation:

Government of Kenya to improve upon the communications programme in the Ministry of Agriculture that provides regular market information to farmers.

Country Response:

The Government through the Ministry of Agriculture is currently providing regular market information to farmers through various market information systems such as basket surveys that are conducted fortnightly and agricultural information desks have been started in every market place up to the divisional levels. The Ministry is in process of establishing market information cyber cafes in every division and has revived Agricultural Information Centres among many more other initiatives. The government will strengthen the existing structures and institutions to facilitate the co-ordination, collection and analysis of market data.

CRT Recommendation:

Government of Kenya to accelerate the energy sector reform programme to ensure an adequate supply of energy.

Country Response:

The Government is currently formulating a comprehensive energy policy whose objective is to broaden the availability and cost effective of energy sources in support of sustainable socio-economic development while protecting and conserving the environment. Specific measures include expanding the rural electrification programme, and Independent Power Producers (IPPs). There is a deliberate emphasis in the policy to embrace all sources of energy especially renewable ones. In addition, the energy policy is aimed at strengthening the institutional capacities of electricity regulation board, Kenya Power and Lighting Company and Kenya Power Generation Company (KENGEN) in order to improve their financial and operational performance. All the energy sub-sectors are being addressed through specific and deliberate actions. In this regard, the Ministry of Energy is providing solar energy for schools.

CRT Recommendation:

Kenyan Authorities to articulate a comprehensive ICT strategy for human resources development, especially in the public sector; enhance National Information & Communications Technology (ICT) Policy government's capacity to manage change entailed in the implementation of e-government; and address substantively the issue of universal access to ICT.

Country Response:

The government has formulated an ICT strategy whose focus is to simultaneously develop the ICT Sector and to use ICTs for employment creation, economic recovery and the achievement of national development goals. Within this framework, the government has:

- (i) Established and operationalised ICT units within ministries;
- (ii) Started implementation of the Rural Telecommunications Project by the Ministry of Information and Communications
- (iii) Earmarked KShs.2 billion during the 2006/07 financial year to implement ICT related activities

It should be noted that the ICT strategy will be implemented through rolling plans initiated by inter-sectoral Task Groups (drawn from public, private and civil society sectors) working under the oversight of an ICT National Steering Committee. The Ministry of Education has sector specific policies and strategies addressing the issue of ICT.

CRT Recommendation:

Government of Kenya to develop a comprehensive strategy, involving all stakeholders, to deal with the problem of housing shortage, particularly in the urban areas. It is strongly advised that

government, in collaboration with UN HABITAT, intensify the slum upgrading and low cost housing initiative

Country Response:

In its commitment to addressing the housing challenge in the country the Government formulated a National Housing Policy which was adopted by Parliament in 2004 as Sessional Paper No. 3. The Policy comprehensively addresses the shelter problem; it targets urban housing, rural housing, slum upgrading and vulnerable groups. The policy also addresses ways of managing housing inputs such as land, infrastructure, building materials and finances. With regard to urban housing it proposes both public & private sector intervention in improving housing delivery to Kenyans in urban areas. This will be undertaken mainly through;

- (i) the development of urban middle income housing through development, re-development and urban renewal
- (ii) Slum upgrading and improvement of informal settlements.

In rural areas the government will continue in research and dissemination of low cost building materials and appropriate technologies to reduce the cost of construction and maintenance of rural housing stock.

The Government of Kenya and UN HABITAT signed a memorandum of understanding on 15th January 2003 to commence the Kenya Slum Upgrading Programme. A comprehensive implementation, financing and communication strategy has been developed to facilitate the slum upgrading programme. To date construction of 600 relocation houses has commenced. Other sites have been identified and the construction designs are at an advanced stage and constructions is expected to begin within this calendar year. The programme involved development of physical and social infrastructure including addressing issues such as the HIV/AIDS pandemic, income generating activities and employment. The Programme will also involve preparation of City/Town development strategies and provision of security of tenure.

OBJECTIVE 5: TO MAKE PROGRESS TOWARDS GENDER EQUALITY IN ALL CRITICAL AREAS OF CONCERN, INCLUDING EQUAL ACCESS TO EDUCATION FOR ALL GIRLS AT ALL LEVELS.

CRT Recommendation:

The Government of Kenya to initiate a gender sensitive approach in monitoring and evaluation of development programmes.

Country Response:

Government through the Ministry of Planning and National development has developed an Integrated National Monitoring and Evaluation system.

In addition, the government is revising the National Policy on Gender Equality and Development and a National Gender Master Plan to mainstream gender concerns into policy, planning and budgeting processes. The Ministry of Gender is developing monitorable indicators which will incorporate gender concerns in monitoring and evaluation of development programmes. Ministry of Agriculture has a classical model of working gender unit. Further, the Ministry of Education has set a target of ensuring that at least one third of the top managers in public universities are women by 2010.

CRT Recommendation:

Parliament to enact into law the Affirmative Action Bill, the National Gender and Development Bill, the Equality Bill, the Domestic Violence (Family protection) Bill, and the Gender and Development Policy Bill.

Country Response:

The government is currently revising the National Policy on Gender Equality and Development and a National Gender Master Plan. In addition, Sexual Offences Bill has been enacted by parliament. Affirmative Action Bill and the Equality Bill are being addressed within the context of a new constitutional dispensation.

In the Education Sector, there is a policy on affirmative action as outlined in Sessional Paper No 1 of 2005 on Education and Training.

CRT Recommendation:

Government of Kenya and CSOs to initiate a dialogue with the different communities in Kenya on harmful cultural practices and outlaw all forms of discrimination in respect of the CEDAW Convention

Country Response:

The government has established a National Steering Committee on female Genital Mutilation with a broad representation to address harmful cultural practices and forms of discrimination. A project on social mapping of communities involved is being implemented with advocacy to religious leaders/elders, women and youth. The Children's Act and the National Action Plan on elimination of FGM are being disseminated.

CRT Recommendation:

Government of Kenya to provide ARV for treatment of children, enhanced affordability and increased supply of female condoms and adopt measures for the prevention of mother to child transmission.

Country Response:

The Government is expanding access to ARVs from 35,000 to over 60, 000 over the last two years. While this is below the 95,000 target set to be

achieved in 2005, measures are being undertaken to expand ARVs as widely as possible. 4,000 children are now on ARTs compared to 1,200 in 2004. Similarly, promotion of female condoms in reduction of the spread of HIV/AIDS is being undertaken. The Government has created Aids Control Units in all ministries to mainstream HIV/AIDS into policy, planning and budgeting processes. **A recent positive development is that in June 2006 fees for ARVs were abolished in all government hospitals.**

OBJECTIVE 6: ENCOURAGE BROAD-BASED PARTICIPATION IN DEVELOPMENT BY STAKEHOLDERS AT ALL LEVELS

CRT Recommendation:

Local authorities to encourage public participation in projects and programmes by soliciting inputs from members of the public early in the project planning process to ensure that the latter's concerns are taken on board.

Country Response:

The government has developed a strategy to encourage public participation in projects and programmes by soliciting inputs from members of the public early in the project planning process to ensure that the latter's concerns are taken on board. This is undertaken through the Local Authority Service Delivery Action Plan (LASDAP) framework which requires that stakeholders be involved before funds such as LATF are accessed.

The Association of Local Government Authorities of Kenya (ALGAK) is actively engaged in policy, planning and implementation of government projects and programmes within local authorities. In the Education Sector, decisions on planning and implementation are delegated to the schools.

CRT Recommendation:

Government of Kenya to develop a national approach and common guidelines for public participation, to articulate needs and concerns, assist in the implementation of projects, and assess the progress and performance of projects.

Country Response:

The government acknowledges the need to develop comprehensive guidelines for projects and programmes implementation, progress reporting and accountability. In response to this challenge, the government is developing a strategy to strengthen and harmonise existing structures and institutions both at the national and devolved levels for efficient and effective utilization of resources as well as their management and accountability

The government will endeavour to continue regularly informing and involving all stakeholders at various stages of development programming and implementation. The Ministry of Education on its part issues guidelines to School Management Committees and Boards of Governors

CRT Recommendation:

Government of Kenya to provide effective guidelines to local authorities for the selection of representatives in CDC, to ensure broad participation

Country Response:

The government is working on amendments to the CDF Act to address the issue of transparency in the appointment of representatives in CDC committee through elections to ensure full and broad participation of all stakeholders

CRT Recommendation:

Government of Kenya to enhance the engagement of CSOs and the public in the preparation of national budgets

Country Response:

The government agrees with this recommendation. CSOs and other non-state actors have been encouraged to participate at the National level during the Medium Term Expenditure Framework (MTEF) sector working group public hearings. The government is developing modalities for establishment of district budget working groups.

THE KENYA PROGRAMME OF ACTION

- 1.1 The development of the Kenya Programme of Action is an iterative step following the Self-Assessment as presented in the APRM report. The analysis in the report has provided the issues around which the objectives have been established. Subsequently, indicators of performance and the expected outputs have been outlined.
- 1.2 The implementation of the POA will be undertaken as a collaborative effort between the Government of Kenya, the private sector and Civil Society. The development of the APRM and the POA has taken into account the existing Government programme frameworks and sectoral plans. However, the views articulated by stakeholders during the APRM process have remained paramount; and are the basis of the objectives, activities and the priorities contained in the POA.
- 1.3 A stakeholders' forum was held in the month of April 2006 to brief them of status of the process, to reconfirm the priorities they articulated and to arrive at consensus on the modalities for implementation, monitoring and evaluation.
- 1.4 In addition the Programme of Action was discussed at a high level government retreat on the 26th-27th of May and a follow up inter-ministerial meeting on the 2nd of June. This allowed Government Ministries to make their input and align the POA to their programmes.

PLAN OF ACTION

A: DEMOCRACY AND POLITICAL GOVERNANCE

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|--|---|---|--|---|---|-------------|---|----------------------------------|---|
| STANDARD AND CODES | | | | | | | | | | |
| Objective: Full compliance with all Standards and Codes adopted by Government | Kenya to consider sign, ratify outstanding international instruments | Number of pending standards and codes signed and ratified | Records at State Law Office on Standards and Codes | The country has signed and ratified many Standards and Codes and is very active in embracing international treaties of its global interests | Ministry of Justice and Constitutional Affairs; Ministry of Foreign Affairs; State Law Office | The Civil Society Organizations, and relevant Government Departments | 2006-2010 | All relevant Standards and Codes signed and ratified | 200 (Kshs. 15m) | State Law Office; MJCA, Office of the President and Civil Society |
| | Parliament to consider pass necessary laws reflecting all international norms and standards acceded to | Number of laws passed on standards and norms acceded to | Records at State Law Offices; relevant Acts of Parliament | Government in the process of tabling relevant bills on standards and codes in parliament; and Government is in the process of strengthening KNHRC to be able to oversee domestication of standards and codes acceded to. | State Law office Ministry of Foreign Affairs | Office of the President, Ministry of Justice and Constitutional Affairs, and Relevant Government Departments; CSOs and Parliament | 2006-2007 | Domestication of standards and codes ratified by the Government | 70 (Kshs. 5.2m) | MOJ&CA, OP, LSK , KNCHR |
| | Conduct civic education to improve stakeholder consciousness and responsibility | Level of stakeholder awareness about standards and codes | Baseline and subsequent surveys on awareness | KNCHR and CSOs conducting civic education on standards and codes | KNHRC and CSOs | Kenyan citizens, Civil Society Organizations, MOJ&CA | 2007 - 2009 | Kenyans fully sensitized on standards and codes | 300 (Kshs.22m) | CSOs, Research Institutions, and MOJ&CA. |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|---|--|---|---|---|---|-------------|---|---------------------------------|--|
| OBJECTIVE ONE: PREVENT AND REDUCE INTRA AND INTER-STATE CONFLICTS | | | | | | | | | | |
| Finalization of Land Policy | Develop and implement coherent land policy to address land ownership, use, tenure and administration | Existence of a national land policy | Relevant Acts of Parliament and Kenya Gazette | Land issues being addressed in relation to recommendations of the Ndung'u and Njonjo Presidential Land Commissions | Ministry of Lands and Settlement | Kenya Land Alliance CSOs, Local Authorities, and affected Communities | 2006 - 2008 | A Comprehensive Land Policy | 200 (Kshs. 15m) | Kenya Land Alliance (CSOs) MOL&S, Ministry of Housing, Professional Associations on Land Issues |
| Minimize intra-state conflicts | Government and political parties to design and implement conflict resolution mechanisms (eg at community and ethnic levels) | Reported number of conflicts including cases of loss of human life and cattle rustling | Quarterly reports filed by provincial administration, police reports, and media reports | Public Officers' Ethics Act; Cabinet Code of Conduct; Peace committee established in OP to deal with conflict resolution; Government studies on beliefs of communities for a permanent solution to the problem. | OP (Ministry of Internal Security), Political Parties, CSOs, State Law Office | Affected communities (including pastoralists); CSOs, Traditional Cultural Dispute Resolution Institutions, MOJ&CA, and relevant Government Departments (Security, Lands, Agriculture and Livestock) | 2006 – 2009 | Proper mechanisms for mitigating conflict | 200 (Kshs 15 m) | CSOs, Government Departments (Security, Land, Agriculture and Livestock) Parliament; and State Law Office, |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|--|--|---|--|--|--|-------------|--|----------------------------------|---|
| Address inequality and any forms of discrimination | Institute measures to check inequality and discrimination prevailing in Kenyan Society (with specific attention paid to North Eastern Province and other identified disadvantaged areas) | Balance budgetary resource allocation among the various regions based on ERSW; improved social development indicators such as access to schools, health, water, roads etc in ASAL areas; and proportion of people in ASAL areas living below poverty level | Budget Estimate Books; Statistical Abstracts; Reports of NGOs | Introduction of various devolved funds like CDF , LATF and CBF; Affirmative action, political appointments, legislation; electoral reforms and the Special Presidential Initiative to accelerate development of ASAL | Ministry of Finance; Parliament | Ministry of Local Government, Parliament, all relevant Government Ministries, Donor Agencies, CSO, and Communities | 2006-2009 | Balanced regional resource allocation | 180 Kshs. 13 m) | Ministry of Planning and National Development, (MP&ND) Ministry of Finance, CSOs and Research Organizations |
| Promotion of responsible media | Dialogue between media owners' association (council) and the government on promoting responsible media | A regulatory mechanism to sanction irresponsible media houses and coverage | Parliamentary Act | Public debates going on about which institution to be vested with regulative powers | Ministry of Information and Communication, the Media Council | Media owners and practitioners, CSOs, the Government, and the citizenry | 2006-2008 | Responsible media | 120 (Kshs. 9 m) | Media owners and practitioners, CSOs, Research Institutions, the Government, and the citizenry |
| Inter-state conflicts with regard to cattle rustling and banditry | Strengthen diplomatic relations between states with the aim of increasing security along the borders | Diplomatic negotiations on cross border incursions | IGAD and EAC Reports | Inter-governmental security Teams established in the Ministry of State for Internal Security to deal with cross boarder conflicts. | Ministry of Foreign Affairs; OP | Pastoral Communities, Ministry of Internal Security, CSOs | 2006-2008 | Improved security along the borders | 300 (Kshs.. 22 m) | OP Civil Society Organizations |
| Interstate conflict with regard to shared resources e.g. fish in Lake Victoria | Initiate and ratify an EAC pact on shared resources e.g. fishing in Lake Victoria | Protocols signed with neighboring countries on shared natural resources | Protocol documents at the Ministry of Foreign Affairs | On-going talks on establishment of the East African Lake Victoria Basin Development Commission | Ministry of East African and Regional Development | EAC Assembly, Ministry of Foreign Affairs and Ministry of Trade and Industry | 2006 – 2008 | Joint management of shared natural resources | 120 (Kshs.. 9 m) | Ministry of Foreign Affairs and CSOs |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|---|---|--|--|---|--|---------------|---|--------------------------------------|--|
| Conflicts associated with international criminals and drug traffickers | Enhance the legal provisions to make it very risky to handle and traffic drugs in and through Kenya | Enactment and strict enforcement of Revised Act; highly enhanced sentence for offenders and diminished status of Kenya as a transit route | Police and Court reports on successful convictions; International reports of Drug transit routes | Improved detection of drug traffickers National Commission on Alcohol Drug Abuse (NACADA) in place | NACADA State Law Office | MOJ&CA Kenya Airports Authority | 2006 on-going | Eliminate Kenya as a drug trafficking route | 150 (Kshs.. 10 m) | Interpol, MOJ&CA, Kenya Airports Authority, Police Department |
| OBJECTIVE TWO: CONSTITUTIONAL DEMOCRACY, INCLUDING PERIODIC COMPETITION AND OPPORTUNITY FOR CHOICE, THE RULE OF LAW, CITIZENS' RIGHTS AND SUPREMACY OF THE CONSTITUTION | | | | | | | | | | |
| Political Parties Bill | Speeding up the adoption of the Political Parties Bill | Legislation in the form of an Act of Parliament | Acts of Parliament, Parliamentary Standing Orders, Hansard Reports | A draft Bill is in Parliament for discussion and enactment | Parliament | MOJ&CA, Parliament | 2006 - 2008 | Legislation that prohibits registration of political parties based on regional, ethnic and religious considerations | Catered for under Ministry's Budget. | MOJ&CA, CSOs and Parliament |
| Ensure the judiciary maintains rule of law | Enhancing capacity of Judiciary | Types of on going training programs, and ICT, and research facilities. | Reports of MOJ&CA and Judicial Service Commission; KNCHR | Government programs exist to enhance capacity of Judiciary through training, provision of research facilities, improvement of information flow; and instituting of performance based contracts | MOJ&CA through GJLOS, and Judicial Service Commission | CSOs (including LSK and ICJ), Citizens, Police Department, and KNHRC | 2006 - 2008 | Competent and independent administration of justice in Kenya | 200 (Kshs. 15 m) | CSOs, Citizens, Police Department, LSK and ICJ and KNHRC |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|---|---|--|--|---|---|-----------|--|----------------------------------|--|
| Reform of Civil Service | Coordination and speeding up of civil service reform efforts | The instituted reforms, and improved service delivery | Government circulars on reforms, and surveys on perceptions of service delivery | Civil service reforms are currently being undertaken (PSR&D) | OP, Public Service Commission | OP (DPM), Public Service Commission | 2006-2007 | A coherent and effective civil service | 115 (Kshs 8.6 m) | PSC, OP, CSOs, (PSR&D) |
| Management of decentralized resources | Sensitisation campaigns on all devolved funds and limiting the role of MPs in the control of such funds | Sensitization programs, types of structures, and management, implementation and monitoring mechanisms, put in place. | Reports of surveys of peoples' perceptions, media reports, CSO reports, and Official published reports on devolved funds (LATF, CDF, Education Bursaries, HIV/AIDS, and other funds) | There on-going initiatives undertaken by the National Campaign Steering Committee, local authorities and CSOs, to sensitize communities on LATF and CDF funds. Amendments to the CDF Act on the question of community participation being prepared | MOF, MPND, Local Authorities, CSOs. | Citizens, CSOs, Parliament, MOF | 2006-2007 | Transparent and effective use of devolved funds | 400 (Kshs 30 m) | Citizens, CSOs, Parliament, MOF, MPND, Local Authorities |
| OBJECTIVE THREE: TO PROMOTE AND PROTECT ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND CIVIL AND POLITICAL RIGHTS AS ENSHRINED IN AFRICAN AND OTHER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS | | | | | | | | | | |
| Promotion and protection of peoples' rights | According more recognition and relevance to economic, social, cultural, civil and political rights | The standards and codes on human rights that are adopted and domesticated; entrenching the rights into the legislation; Socio-economic indicators | UN records, AU Records CBS Statistics | Universal free primary education, the bursary fund and the draft national health insurance scheme | MOJ&CA, Parliament, Ministry of Education, Ministry of Health | Citizens, Parliament, MOJ&CA, CSOs, KNHRC | 2006-2007 | Legal Protection of economic, social and cultural rights | 400 (Kshs. 30 m) | MOJ&CA, Ministry of Education, Ministry of Health, CSOs, KNHRC |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|--|--|--|--|--|--|-------------|---|----------------------------------|---|
| Create greater awareness of rights within society | Increase capacity of CSOs in civil education, monitoring and reporting human rights violations | Higher observance of human rights. Number of reported cases of human rights violations | Media reports Police Statistics, Court Records, Federation of Women Lawyers (FIDA), KHRC | GJLOS Programme, FIDA programme, KHRC; Media reporting on these rights | CSOs, GJLOS, Media | CSOs (KHRC and FIDA), KNHRC, LSK, Kituo cha Sheria, Legal Resources Foundation | 2006 -2008 | Civil society network for monitoring and reporting human rights violations | 500 (Kshs..37.5m) | CSOs (KHRC and FIDA), KNHRC, LSK, Kituo cha Sheria, Legal Resources Foundation |
| Institutionalise access to legal representation for the socially disadvantaged | Develop Policy and institutional framework for providing free legal aid to the poor, marginalized and the vulnerable | Budgetary Provisions. Number of people receiving free legal aid. | Records of the Judiciary, CSOs records (KHRC, Legal Resources Foundation and FIDA) | GJLOS Programme and respective CSOs running programmes Very Limited "Pauper Briefs" availed on volunteer basis by lawyers only on murder cases | Ministry of Justice and Constitutional Affairs | LSK, CSOs, Ministry of Home Affairs and National Heritage, the Private Sector and Development Partners | 2006-2008 | Significant access to judicial services for the poor, marginalized and vulnerable | 300 (Kshs.. 22) | CSOs, Ministry of Home Affairs and National Heritage, the Private Sector and Development Partners |
| Monitoring and reporting violation of rights by the Government | Improve monitoring and reporting mechanisms of human rights violations | Number of reported cases of human rights violations | Police Statistics, Court Records | GJLOS Programme; Human Rights Watch | Ministry of Justice and Constitutional Affairs | CSOs, Ministry of Home Affairs and National Heritage, KNHRC | 2006-2008 | Institutional framework for monitoring and reporting of human rights violations | 300 (Kshs.. 22.5m) | Kenya Human Rights Commission CSOs, |
| Universal Health Care Plan | Review by cabinet and legislation by Parliament of the Universal Health Care Plan | Number of Kenyans accessing medical care | Legislation on the Universal Health Care Plan | The Bill on the National Health Scheme is before Parliament. Progressive programmes have been put in place such as immunization to improve access to basic health care for all Kenyans | Parliament, Ministry o Health | CSOs, Parliament, Ministry of Health, Development Partners | 2006 - 2009 | A health care system that is accessible to all Kenyans | - | CSOs, Parliament, Ministry of Health, Development Partners |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|---|---|---|---|---|---|------------|--|----------------------------------|---|
| Curtail violation of human rights by law enforcement agents esp. Police and Prisons | Develop and implement a code of conduct for the different law enforcement agents in regard to human rights | In-service training, seminars and workshops regarding human rights issues | Programmes offered in Training Institutions, seminars and workshops | Prison and Police reforms envisaged in GJLOs Community Policing being implemented | Police Department, Prisons Department, Communities. | Ministry of Home Affairs and National Heritage, CSOs, The Private Sector, KNCHR | 2006-2008 | Properly trained and professional law enforcement agents | 300 (Kshs. 22m) | Ministry of Home Affairs and National Heritage, CSOs, The Private Sector, KNCHR |
| Mechanism for receiving and resolving complaints | Strengthen the complaints desks in police stations responsible for violations involving law enforcement agents. | No of cases reported, Investigated and acted upon | Media reports, Police Reports, KACC Reports, CSOs Reports | Idea of creating the office of an Ombudsman has been floated severally but never actualized; GJLOs, reforms ongoing. | KACC, Police Department, AG's Chambers | CSO, Citizenry, MOJ&CA | 2006 -2007 | An established mechanism for channeling and resolving complaints | 150 (Kshs. 12 m) | KNCHR, CSOs, MOJ&CA |
| Partnering with private health care providers and health providing NGOs in improved health care delivery | Clarify mechanisms to support private health providers | Formal recognition instruments | Government Circulars | Government through the Ministry of Health recognizes the private sector and NGO health providers and has put in place mechanisms to support them | MOH | Health NGOs, Private Sector health providers, MOH | 2006-2007 | Support mechanisms | 105 (Kshs 8 m) | Health NGOs, Private Sector health providers, MOH |
| Speeding up the enactment of the HIV/AIDS Prevention and Control Bill | Parliament to debate the Bill with a view to enacting it | Parliamentary Act | Gazette Notice on new legislation, | The Bill is already before the Parliament; prices of ARVs have been reduced and more people can access them. The HIV/AIDS infection rate is reported to have dropped from about 14% to about 6% | Parliament, MOH | MOH, CSOs | 2006-2008 | Mechanism in place for prevention and control of HIV/Aids | - | MOH, CSOs, Communities |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|---|---|---|---|---|---|--------------------|--|----------------------------------|--|
| Ensuring Kenyans are made aware of achievements and constraints in addressing governance issues | Review current official communication strategy to increase its effectiveness | Citizens' perceptions about country's governance record and issues | Media reports, Surveys of perceptions about governance issues | Government has reviewed its Communication Strategy through creation of the office of Government Spokesman and has instituted mechanisms of disseminating information to the public regularly. | Office of Government Communications (Government Spokesman) (OP) | OP, MOJ&CA, Citizenry, CSOs, the News Media | 2006-2008 | An effective and informative official communication strategy | 130 (Kshs. 10 m) | OP, MOJ&CA, Citizenry, CSOs, the News Media |
| OBJECTIVE FOUR: UPHOLD THE SEPERATION OF POWERS, INCLUDING THE PROTECTION OF THE INDEPENDENCE OF THE JUDICIARY AND OF AN EFFECTIVE LEGISLATURE | | | | | | | | | | |
| Upholding separation of powers | Enforcement of judicial reforms and existing administrative measures to ensure members of the bench improve efficiency, accountability and monitoring of judicial functions | Reduced backlog of court cases and the time it takes to complete cases | Court reports, Prisons and Police Departments' reports | Measures already in place are able to deal with members of the Bench (without introducing performance based contracts) | MOJ&CA | Office of the President, Judicial Service Commission Attorney General's office, the Citizens and CSOs | 2006 - 2008 | Efficient delivery of justice and ensuring the rule of law. | 300 (Kshs 15 m) | Parliament MOJ&CA, CSOs (including LSK, ICJ) |
| | Institute constitutional provisions that minimize presidential discretion on legislative matters enhance the autonomy of the legislature. | Parliament sets its own calendar of activities and the nature of business | Act of Parliament | Draft Bills for debate currently in parliament; a Parliamentary Service Commission was recently established to oversee this matter. | Parliamentary Service Commission | State Law Office, Parliament, MOJ&CA | 2006 -2008 | Parliamentary control of calendar and business | 100 (Kshs. 7.5 m) | CSOs; MOJ&CA, Development Partners |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|---|--|--|--|------------------------------|---|-------------|---|---|--|
| An effective legislative assembly | Review standing orders to address persistent lack of quorum, and when parliament is in session, to create more time for issues based and quality debates. | Assured quorum during parliament sessions; reduction in the number of Pending Bills; the number of new legislations passed | Hansard and Parliamentary Standing Orders | Government and the public continue to express concern and frustration on pending bills | Speaker of National Assembly | Parliamentary Service Commission | 2007 - 2008 | Informed and quality debates and legislation of all pending and new bills | 200 (Kshs 15 m.) | Clerk of National Assembly, Parliamentary Committees, CSOs, the media. |
| Setting of emoluments of public officers (MPs) | Establish modalities for determining and reviewing emoluments of MPs | An independent constitutional agency established to handle this, and clearly defined modalities put in place | Published Parliamentary act; Government Circulars, | Government and Parliament already exploring measures for putting in place such modalities | OP, Parliament, | Parliament, OP, CSOs, | 2006-2008 | A carefully established emoluments structure for all public office holders in Kenya | 160 (Kshs 12 m) | Parliament, OP, CSOs, |
| Adequate funding of governance implementing agencies | Support necessary governance reforms by voting adequate funds to agencies such as KACC, Law Reform Commission, KNHRC, and GJLOS. | Approved levels of funding vis-à-vis the budgets | Parliamentary reports, reports of relevant agencies. | Government always sets aside funds as may be required to support necessary activities of agencies such as KACC, Law Reform Commission, KNHRC and GJLOS, among others | MOF, Parliament | MOF, KACC, Law Reform Commission, GJLOS programme, etc. | 2006 - 2007 | Adequate funding of agencies | Catered for under respective Ministerial budgets. | MOF, KACC, Law Reform Commission, GJLOS programme |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|--|--|--|--|--|--|---------------|--|---------------------------------|---|
| OBJECTIVE FIVE: ENSURE ACCOUNTABLE, EFFICIENT AND EFFECTIVE PUBLIC OFFICE HOLDERS AND CIVIL SERVANTS | | | | | | | | | | |
| Accountability and Efficiency in the Civil Service | Initiate a strategic plan to harmonize various reform programs (GJLOs, ERS, NEC) | Improved Performance in the Civil Service | MSE Audit Reports and an evolutionary survey on the performance of the Civil Service | The Vision 2030 of the government is a pointer to various reform initiatives | Public Service Commission and the relevant government Ministries | Public Servants, The citizenry, CSOs, Development Partners and government ministries | 2006 - 2007 | Fully Accountable and efficient Public Service | 170 (Kshs 12.8 m) | CSOs, Public Service Commission,, Development Partners and respective government ministries |
| Provision of adequate and sustained funding for new laws, policies, and programs | Align the enactment of laws, policies and programs with adequate and sustained funding to secure implementation | Progressive and successful implementation of the policies and programs | Ministries' budgetary allocations and program reports | Various reforms are currently on-going under the GJLOs framework | The respective government Ministries and departments | Involved government Ministries and departments, Development Partners and Interested CSOs | 2006 - 2009 | Successful implementation of the various reform programs | 260 (Kshs 19.5 m) | Respective government Ministries, Interested CSOs and Development Partners |
| Appointments and promotions in the Civil Service. | Ensure that all new recruitments are based on pre-defined qualifications and attributes in line with the organizational personnel needs. | No of reported complaints and efficiency of recruited civil servants in service delivery | Recruitment records of the Public Service Commission and Ministries personnel data bases | The PoEA has been enacted and caters for ethical conduct in recruitment of Civil Servants and; on-going harmonization and rightsizing in the Public Sector | The Public Service Commission and involved government Ministries | Civil Servants, CSOs, Development Partners and Government departments | 2006 on-going | Improved Service delivery and reduction in perceived favoritism, nepotism etc. | 200 (Kshs 15 m) | CSOs, Development Partners and Relevant government Ministries |
| OBJECTIVE SIX: FIGHTING CORRUPTION IN THE POLITICAL SPHERE | | | | | | | | | | |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|---|---|--|--|--|---|-----------|---|----------------------------------|--|
| Fighting Corruption in the political sphere (The Executive, Legislature and Judiciary) | <p>Launch a national campaign against corruption with along-term programme to promote positive values</p> <p>Accelerate and strengthen campaign against corruption with a long-term program to promote positive values.</p> | <p>1. Reduced incidences of corruption,</p> <p>2. Improvement in score in corruption perception surveys</p> <p>3. Improved information sharing among sectors.</p> <p>4. IEC initiatives undertaken.</p> | <p>TI-K Corruption Index, PAC and PIC reports, and Controllor and Auditor General reports.</p> <p>National Surveys on perception on corruption</p> | <p>1. Government has established anti-Corruption institutions (KACC) and the National Anti-Corruption Steering Committee which has introduced District Corruption Committees and together with the Ministry of Education have launched integrity clubs in schools to institutionalize an ethical and value based culture;</p> <p>2. Government Information website has been created, Office of Government Spokesperson broadcasting various programmes to the public</p> | <p>KACC</p> <p>Ministry of Justice and Constitutional Affairs, the State Law offices.</p> <p>Office of the Government Spokesman</p> <p>Ministry of Information and Communication</p> | <p>CSOs, the media, Development Partners and the Controllor and Auditor General</p> <p>The Citizenry</p> <p>CSOs</p> <p>KACC</p> <p>Office of Government Spokesman</p> <p>Ministry of Information and Communication</p> | 2006-2008 | Significant reduction of Corruption incidences and an inculcated national anti-corruption culture | Factored in the budget. | <p>KACC, Civil Society Organizations</p> <p>The media and the Controllor and Auditor General</p> <p>Ministry of Information and Communication.</p> |
| Legal and Operational capacity of preventing and fighting corruption | Enhance operational capacity of legal institutional mechanisms for preventing and fighting corruption. | Legislative amendment and enhanced institutional operations and powers. | Act of Parliament (Anticorruption and Economic Crimes Act) and KACC's annual Reports | Draft information Law to be tabled in Parliament for debate, The PoEA is being enforced and, Continued CSOs and Media pressure for KACC to be given more powers. | Ministry of Justice and Constitutional Affairs | <p>Civil Society Organization</p> <p>Donors</p> <p>Parliament</p> <p>Attorney General Office and KACC.</p> | 2006-7 | Strong and unencumbered legal institutional mechanism(s) | 200 (Kshs.. 15 m) | Donors, Civil Society Organizations, Parliament, Ministry of Justice and Constitutional Affairs and KACC |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|---|--|--|--|---|--|-----------|--|----------------------------------|--|
| OBJECTIVE SEVEN: PROMOTION AND PROTECTION OF THE RIGHTS OF WOMEN | | | | | | | | | | |
| Mechanisms for promotion and protection of women's rights | Enact legislation to prevent violation against the right of women | Reported cases of domestic violence | An Act of Parliament, CSOs reports and the Constitution. | A draft Family bill pending in Parliament, CSO's campaigns, and operation of a special police wing. | Ministry of Gender, Sports, Culture and Social Services | KNCHR, KHRC, FIDA, CSOs (FIDA, COVAW etc), Ministry of Justice and Constitutional Affairs. | 2006-2008 | An appropriate legislation that protect women's rights. | 400 (Kshs 30m) | KNCHR, KHRC, FIDA, CSOs (FIDA, COVAW etc), Ministry of Justice and Constitutional Affairs. |
| | Carry out civic education on women's rights | Established Civic Education Programmes | Reports of the Ministry of Gender and relevant CSOs. | National Civic Education Programme (NCEP) and MoJCA through the DGSP conducting Civic education, CSOs running civic education programmes on women's rights | Ministry of Gender, Sports, Culture and Social Services | KNCHR, KHRC, FIDA, CSOs (FIDA, COVAW etc), Ministry of Justice and Constitutional Affairs | 2006-2008 | Effective Civic Education Programmes | 300 (Kshs.. 22 m) | KNCHR, KHRC, FIDA, CSOs (FIDA, COVAW etc), Ministry of Justice and Constitutional Affairs |
| | Amend existing inheritance laws to allow men and women equal inheritance rights | Enactment of appropriate legislation | Parliamentary Acts, CSOs reports and the Constitution. | Active Civic Education by CSOs (MYWO, National Council of Women of Kenya among others) relating to these rights. | Law Reform Commission and MoJCA | MYWO, NCWK, KNHRC, FIDA, COVAW, FEMNET and FAWE. Ministry of Gender, Sports, Culture and Social Services | 2006-2008 | An appropriate legislation that protects women's rights to inheritance, and property ownership | 133 (Kshs 10 m) | CSOs |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands | M & E Agency |
|--|--|---|---|--|--|---|-----------|--|---------------------------------|---|
| | Take affirmative action to guarantee women's rights to education, maternal /child health care and participation in both public & private spheres | Percentage of girls in primary enrollment, high school and university; Maternal mortality rate and; No of women in Parliament, the Judiciary and senior levels in Government and Private sector. | Parliamentary Act(s), CSOs reports and other government reports | Political Parties Bill pending in Parliament, Lower University requirement for women, Civil Society pressure | Ministry of Culture, Gender, & Sports Ministry of Health Ministry of Education | MYWO, NCWK, KNHRC, FIDA, COVAW, FEMNET and FAWE., Ministry of Education | 2006-2007 | An appropriate policy and legislation on Affirmative Action | 266 (Kshs 20 m) | MYWO, NCWK, KNHRC, FIDA, COVAW, FEMNET and FAWE., Ministry of Education |
| OBJECTIVE EIGHT: PROMOTION AND PROTECTION OF THE RIGHTS OF CHILDREN AND YOUNG PERSONS | | | | | | | | | | |
| Protection and promotion of the rights of children and Young Persons | 1. Enact law to protect children from defilement, rape, forced FGM and early marriage | Statistical trends of reported incidences | CSOs, Government Statistics Media Reports Child welfare Surveys | A sexual offences bill before Parliament and implementation of the Children's Act passed in 2002 | Parliamentary Women caucus, MOJ&CA | Parliament, CSOs, Women Organizations | 2006-2007 | Children's rights protected | 300 (Kshs. 22.5 m) | Parliament, CSOs, Women Organizations, the Police, Ministry of Youth Affairs, |
| | 2. Develop a National Action Plan to combat violations of Children Rights and active enforcement of legislation on the rights of children | Existence of a National Plan of Action and, No. of reported cases of children's rights violations successfully prosecuted | Reports on child welfare by the children's department and CSOs | On-going advocacy on child rights by CSOs | The Ministry for Youth Affairs | Ministry of Home Affairs, CSOs, ILO, UNICEF, and Development partners | 2006-2009 | An appropriate legislation on the rights of children and Young Persons | 100 (Kshs. 7.5 m) | Ministry of Home Affairs, CSOs, ILO, UNICEF, JICA |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|---|--|---|--|---|---|-------------|--|----------------------------------|---|
| | 3. Intensify civic awareness programmes on the rights of children and young persons | Audited Effectiveness of programmes and level of behavioral change | Reports of relevant government departments and the Civil Society Organizations. | On-going advocacy programmes, establishment of the Youth Parliament and operations of the special family court | The Ministry for Youth Affairs | Ministry of Home Affairs, CSOs, ILO, UNICEF, and Development partners | 2006-2009 | An effective institutional establishment to protect the rights of children and young persons | 400 (Kshs. 28 m) | Ministry of Home Affairs, CSOs, ILO, UNICEF, and Development partners |
| | 4. Devise a multi-dimensional programme to cater for Youth issues | Government Policy that responds to issues of Youth Development | Government Policy briefs | National Youth Policy has just been developed by the newly created Ministry for Youth Affairs, Youths considered for the devolved funds and there are attempts to establish Youth Fund | The Ministry of Youth Affairs | Ministry of Finance, CSOs, Youth Groups and Donors | 2006 - 2009 | A suitable and realistic multi-dimensional programme for the Youth | 100 (Kshs 7.5 m) | Ministry of Youth Affairs, CSOs, Youth Groups and Donors |
| OBJECTIVE NINE: PROMOTION AND PROTECTION OF THE RIGHTS OF VULNERABLE GROUPS INCLUDING INTERNALLY DISPLACED PERSONS AND REFUGEES | | | | | | | | | | |
| Mechanisms for the protection of the rights of the vulnerable groups | 1. Enact and Implement Policies and programmes aimed at empowering and protecting the rights of vulnerable groups | No of street families and children; Decline in % of population living below the poverty level; No of school going orphans in school and the status of living conditions among refugee and IDPs | Reports of the UNHCR, IRC, relevant government departments and the CSOs | Advocacy programmes by CSOs and KNCHR agitating for resettlement of IDPs, Government and UNHCR partnership in protecting refugee rights. | Ministry of Home Affairs Ministry of Planning and National Development | UNHCR, IRC, KNCHR, Relevant government departments and CSOs | 2006-2008 | Suitable legal and administrative mechanism for the protection of vulnerable groups | 300 (Kshs. 20m) | Ministry of Home affairs, UNHCR, IRC, KNCHR and CSOs |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|-----------|--|--|--|--|---------------------------------------|--|-------------|---|----------------------------------|--|
| | 2. Step up security and strengthen response capacity of law enforcement agencies in conflict prone areas | Reduced incidences of conflict | Police records and media reports | Deployment of more security personnel in affected regions and the on-going disarmament programme | The Ministry of Internal Security | The CSOs, The Citizenry, and the Ministry of Internal Security | 2006 - 2008 | Zero incidences of conflict and amicable resolution of existing conflicts | - | The CSOs, Research Institutions, and the Ministry of Internal Security |
| | 3. Streamline immigration screening procedures and eliminate discriminatory screening practices | Percentage increase in No. of registered refugees; Changes in immigration screening procedures | Records of the UNHCR, The Ministry of Immigration and the Refugee Department | Refugee Department established under the VP's Office and the Ministry of Home Affairs | The Ministry of Immigration and UNHCR | Ministry of Immigration; UNHCR; refugee Department; CSOs; | 2006 - 2008 | Proper immigration procedures devoid of discriminatory practices. | 200 (Kshs 15 m) | Ministry of Immigration; UNHCR; refugee Department; CSOs; |

DEMOCRACY AND POLITICAL GOVERNANCE

TOTAL **US \$ =** **8,829,000**
KSH = **662,175,000**

PLAN OF ACTION

B: ECONOMIC GOVERNANCE AND MANAGEMENT

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|--|-------------------------------------|--|---|--|--|-------------|--|---------------------------------|-----------------------------------|
| STANDARD AND CODES | | | | | | | | | | |
| Ratify the signed treaties | Ratify signed AU conventions | No. of convention ratified | Ratification records | Conventions being prepared for ratification | Ministry of trade and Industry, Ministry of Justice and Constitutions affairs, MoT, MoENR, OP, MoE, AG | Ministry of foreign affairs, AG chambers Various non-state actors | 2006 - 2007 | Ratified conventions | 133 (Ksh 10 M) | Ministry of Foreign Affairs, MPND |
| Achieve Compliance with Best practices in the Financial Sector | Implement Joint IMF-World Bank-GoK Financial Sector Assessment Programme (2003) (FSAP) | No. of recommendations implemented | Implementation reviews | Implementation of FSAP recommendations on-going | MOF, CBK | NSA's, Kenya Bankers Association, CMA, Financial Institutions, DPs | 2006-2008 | Efficient and Stable Financial system | 400 (Ksh. 30 M) | MPND, CBK, MOF |
| Complete a detailed Assessment of APRM Codes and Standards | Assessment and development of a POA | A detailed POA developed | APRM Reviews | FSAP completed reviews in 2003 | MOF, CBK | MPND And DPs | 2006-2007 | Status of compliance | 67 (Ksh 5M) | |
| Achieve best practices in debt management | Implement the joint –IMF-World Bank Guidelines for Public Debt Management (2003.) | No. of recommendations implemented. | Debt reports and analysis Quarterly Budget Reviews | Consolidation of debt management functions and department Establishment of a comprehensive database | MOF | CBK NSA DPs | 2006 - 2008 | Efficient and Effective Public Debt management | 320 (Ksh 23 M) | MOF CBK |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--------------------------------|---|--------------------------|-----------------------|--|---------------------|--------------|-------------|-------------------------------------|---------------------------------|--------------|
| Enhance Kenya payments systems | Implement Kenya Payment System Strategy especially implementation of RTGS | Payment strategy RTGS | CBK Reviews | Amendment of the bills of exchange and introduction of electronic funds transfer | CBK | MOF | 2006 - 2007 | Observe international best practice | 266 (Ksh 20 M) | CBK |

OBJECTIVE ONE: PROMOTE MACROECONOMIC POLICIES THAT SUPPORT SUSTAINABLE DEVELOPMENT

| | | | | | | | | | | |
|--|---|--|--|--|---|--|-------------|---|---|--------------------------------|
| Provide a macroeconomic policy framework supportive of sustainable development | 1. Maintain low levels of inflation | Overall and underlying Inflation rates | CPI (Consumer Price Index) | 1. Strengthening and prudential management of the monetary and fiscal policy frameworks to support macroeconomic stability | 1. Ministry of Finance 2. Central Bank of Kenya 3. Ministry of Planning and National Development.(CBS). | MOF, CBK, MOP&ND (CBS), Banks & Financial Institutions & Investors, consumers Non state Actors. | 2006-2007 | 1. Stable macro-economic environment for high real growth rate 2. improved standard of living for citizens | - | - Ministry of Finance - CBK |
| | 2. Maintain a stable exchange rate | The exchange rate to the dollar and currencies of major trading partners | Daily exchange rates release by CBK | Continuous monitoring of exchange rate by CBK and undertaking strategic measures to ensure exchange rate stability. | CBK | MOF, Banks and Financial Institutions, investors, exporters and importers. | 2006 - 2007 | A stable exchange rate | - | CBK, MOF |
| | 3. Maintain low and stable interest rates | 1. Treasury Bill and the Commercial Bank rates 2. Interest rates in quasi-official financial markets. | Monthly/annual average interest rates. | Controlled Government domestic borrowing. | CBK, MOF | Investors, Commercial Banks, Financial Institutions & MOF, quasi – official financial institutions | 2006 – 2007 | competitive interest rates conducive for borrowing and investment | - | MOF, CBK, & MPND |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|-----------|--|---|---|---|---------------------|---|-------------|---|---------------------------------|--------------|
| | 4. Achieve and maintain sustainable debt position | Public Debt as a % of GDP Debt service as a % of revenue. | Annual ratios Debt/GDP and Debt service/revenue | 1. Restructuring domestic debt 2. concessionary borrowing and grants 3. Developing a policy to manage foreign development assistance. | MOF, CBK | MOF NSA Development partners | 2006-2008 | Sustainable levels of public debt. | - | MOF MPND |
| | 5. Maintain low levels of fiscal deficit | Size of Budget deficit | Ratio of Budget deficits to GDP | Implementation of tax reforms and modernization programme is ongoing Expenditure monitoring and rationalization | KRA, MOF | MOF, KRA & Business people | 2006 - 2008 | Overall fiscal deficit to remain at 3% | - | MOF |
| | 6. Increase budgetary allocations to the social sectors, especially health and education | Budgetary allocation to the social sectors % of development/re current expenditure to GDP | Government Printed Estimates showing increased allocations to MOE & MOH | 1. Health financing as a % total expenditure increased 2. Restructuring of the drug-supply pipeline for public health facilities. 3. Implementation of the Kenya Education Sector Support | MOH, MOE, MoF | Learners, practitioners in health and education, MOE, MOH, NSA, | 2006 – 2008 | 1. Access to all levels of learning increased. 2. Reduced morbidity and mortality rates. | - | MOF |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|---|--|--|---|---|---|-------------|--|---------------------------------|-------------------------|
| | | | | Programme (KESSP) | | | | | | |
| | 7. Enhance and Intensify tax administration Reforms | Increased efficiency in tax collection | % of tax Revenue to GDP | 1. Tax reforms to enhance performance including increased use of ICT, ETR and SIMBA system. 2. Expenditure prioritisation under Sectoral plans and MTEF. | KRA, MOF | MOF, KRA, Tax payers, KPA, KAA, EAC, COMESA | 2006 – 2008 | Achieve optimal revenue collection | 1000 (75M) | MOF KRA |
| | 8. Review Monetary Policy Practice and autonomy of Central Bank | Review Report | CBK Monetary Policy Statements | Reserve Money Programming Framework | CBK, MOF | MPND DPs NSA | 2006-2007 | Improved monetary policy framework | | CBK MOF |
| | 9. Study efficiency and effectiveness of credit markets. | Review Reports | Information on distribution and implication of credit markets. | Reforms being undertaken under FLSTAP | MOF, other like Ministries, MOF, CBK | NSA's DPs MPND, NSAs, DPs | 2006 – 2008 | Improved understanding of credit markets. | 100 (Kshs. 7.50) | MPND DPs |
| Improve macroeconomic projections | 1. Improve existing models | Accurate and reliable indicators | Variance between actual and projected targets | Revision of the models | MOP & ND, KIPRA, CBK, MoF, | KRA, MOP & ND, KIPRA, CBK, IPAR, NSAs | 2006 - 2007 | Less Variations in macroeconomic forecasts contained in the Budget Outlook Paper, Budget Strategy Paper and the budget | 333 (Ksh 25 M) | MOP&ND, KIPRA, MoF, CBK |
| | 2. Develop Sectoral Models | Sectoral performance | New sectoral models | Discussions on the modalities | MPND KIPRA | KIPRA MOP & ND MOF, CBK | 2006 - 2007 | | | MPND |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|---|---|--|--|--|---|-------------|---|---------------------------------|---|
| | | comparable to forecasts | | and financing framework for building the sectoral models | | | | | | |
| | 3. Develop a macro model for the Central Bank | Central Bank Model Developed | A Macro model | Development of the Macro model for the Central Bank | CBK, | CBK, MOF | 2006 – 2008 | Predictable monetary policy indicators | 133 (Ksh. 10) | CBK |
| Increase Private Investment and savings | Provide an enabling environment for business development and growth | 1. Savings rate 2. Credit to the private sector % of GDP 3. The reduction in the policy impediments to private sector participation at the Sectoral level 4. Private Investment % of GDP | Change in proportion of credit to the private sector No. of policy reforms completed. | 1. Privatisation and divestiture 2. Reviewing the regulatory law and institutional arrangements for doing business 3. Implementation of the investment Act. 4.. Restoring and expanding infrastructure, | 1. Ministry of Trade and Industry 2. MoF, MoRPW 3. CBK 4. Other government line ministries. | EPC KIA NSAs Development partners | 2006 - 2008 | Increased private investment and savings | 133 (Ksh. 10) | |
| Design and implement Sectoral policies that promote growth and sustainable development | 1. Strengthen the agricultural sector through policy, planning and implementation | 1. Agricultural sector growth rate. 2. Increased agricultural productivity | % ge increase in agricultural growth and productivity | 1. Review and harmonization of the legal, regulatory and institutional framework of the sector 2. Implementation of the Strategy for Revitalization | 1. Ministry of Agriculture 2. Ministry of Livestock and Fisheries | Farmers, MOA, MOLD, MoPND, Farmers, KMC, Cooperatives, KARI, Parastatals, AFC | 2006 - 2007 | 1. Raising agricultural growth and productivity 2. National Food Security 3. Reduced poverty in the rural areas | 133 (Ksh 10 M) | Ministry of Agriculture Ministry of Livestock MoPND |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|-----------|---|---|--|---|--|---|-------------|--|---------------------------------|---|
| | | | | of Agriculture (SRA) on ongoing 3. A new agricultural extension policy is under preparation. 4. Livestock development programme for ASALS is under implementation | | | | | | |
| | 2. Implement the Kenya Education Sector Support Programme (KESSP) | 1. The GER for all levels of learning. 2. The NER at all levels of learning 3. Growth in total enrolment 4. % Change in the literacy rates 5. Student teacher ratios at primary and secondary levels 6. The % of females | 1. MOE statistical data 2. National literacy survey data. | 1. Implementation of free primary education programme 2. Provision of learning materials and facilities in schools 3. Hiring of more teachers 4. Provision of additional class rooms 5. Implementation of targeted programmes aimed at increasing | 1. Ministry of Education 2. Ministry Science and Technology 3. Ministry of Local Government, 4. Ministry of Home Affairs 5. TSC 6. MoGSCSS 7. NSAs | - Learners - Practitioners in Education - Parents/teachers - Community representatives PTA, KNUT, | 2006 - 2008 | 1. Achieving 100% primary net enrolment 2. Increase NEP net enrolment to 31.3% 3. Improved literacy rates 4. Increasing primary completion rates to 63% 5. Reduce primary repetition rate 6. 10,000 additional classrooms built | See SD Section | Ministry of education MPND MOST |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|-----------|--|---|-----------------------------------|---|--|---|-----------|---|---------------------------------|---------------------------|
| | | enrolled in learning institutions 7. Student textbook ratio | | enrolment of girls, pastoralist, street and slum children 6. Rehabilitation and Building of Classrooms and laboratories 7. School feeding program | | | | 7. Increase primary to secondary transition rate to 70% 8. 70,000 poor children in secondary schools provided with bursaries | | |
| | 3. Provide affordable and adequate health care | 1. Maternal and Infant mortality rates 2. The morbidity rate 3. The % reduction in cost of health care 4. The HIV prevalence rate 5. The doctor/patient ratio 6. The Health worker patient ratio 7. The average distance to the nearest health facility | Health and demographic statistics | 1.Expanding the child immunization programme 2. Provision of affordable drugs through KEMSA 3.Hiring and training of medical personnel 4.NATIONAL social Hospital Insurance Fund (NSHIF) 5.Stepping up the fight against HIV/AIDS, malaria and TB 6.Overhauling the drug procurement | Ministry of Health, National Aids Control Council (NACC) | Patients, MOH, Health workers, Health providers | 2006-2007 | 1. The incidence of underweight children reduced to 10% 2. The number of fully immunized children to 85% reduced 3. The under 5 mortality reduced from 114/1,000 to 100/1,000 by 2008. 4. The HIV/AIDS prevalence rate reduced to 5.5% by 2010. 5. The number of ARV users increased. | See SD Section | Ministry of Health, MoPND |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|-----------|--|--|--------------------------------|--|--------------------------------|---|-------------|--|---------------------------------|-------------------|
| | | | | and distribution system 7. Increasing budget allocation to rural health centres 8. Development of a comprehensive National Health Sector Strategic Plan. | | | | 6. The condom use among the sexually active population 7. The maternal mortality rate increased. 8. The number of births attended by skilled personnel increased to 80% 9. The patient malaria mortality as a percent of total in patient mortality reduced to 10%. | | |
| | 4. Strengthen land Management and Tenure Systems | 1. Number of Title deeds issued in a year 2. Length of time taken to process documents at the Ministry of lands . 3. Finalisation and Implementation National Land Policy. | Published National land policy | Implementation of an improved information management system at the Ministry of Lands - Computerization programme. | Ministry of Lands and Housing. | Landowners, MOL & H, Property Developers & Investors. | 2006 – 2007 | The % of outstanding title deed applications reduced. | See CG Section | Ministry of Lands |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|-----------|---|--|---|---|---|---|-----------|---|---------------------------------|---|
| | 5. Strengthen Fisheries, Forestry, Mining and the protection of the environment, natural resources and wildlife | 1. Growth in the Fisheries, Forestry and Mining Sub sectors. 2. The contribution to GDP of Fisheries, Mining & Forests. | 1. Ministry of Livestock and Fisheries Review. 2. Ministry of Environment Review. 3. Ministry of Regional Development Authorities Review. 4. Economic Survey | 1. Formulation of fisheries policy. 2. Improve governance in forestry sub sector. 3. Strengthened role of Ministry of Environment through NEMA. 4. Implementation of biodiversity conservation programmes. 5. Preparation of the mining sector policy. 6. Implementation of the National Environment Action Plan, the Environmental Management and Coordination act, the lake Victoria Management Project, and the Wildlife Policy and Legislation Review. | 1. Ministry of Livestock and Fisheries. 2. Ministry of Environment. 3. Ministry of Regional Development Authorities | 1. Fishermen, Livestock owners, MOL&F, MOE, MRDA, NEMA. | 2006-2007 | Increasing the hectares of protected forest land. | 67 (Ksh 5 M) | Ministries of Livestock & Fisheries, Environment and Regional development |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|--|---|---------------------------------------|---|--|---|-------------|--|---------------------------------|--|
| | 6. Improve the competitive environment for Tourism. | 1. Tourism earnings. | 1. Ministry of Tourism review report. | 1. Review and harmonization of the laws related to tourism sector on-going. 2. Implementation of the tourism marketing strategy and diversification programme. 3. Revamping the tourism police force. | 1. Ministry of Tourism. 2. Kenya Tourism Board. | Hotel Owners, Game keepers, Investors in Hospitality Industry, MOT, Kenya Airways. Kenya wildlife Services (KWS) | 2006-2007 | 1. Increasing tourism earnings. 2. Increase annual growth rates of tourism to 9.7%. | - | Ministry of Tourism |
| | 7. Infrastructural development. | Growth of the sector Road rehabilitated. | Economic Survey. | Rehabilitation and development of infrastructure. | Ministry of Roads and Public Works, Kenya Roads Board. | Local Authorities, Ministry of Transport, Ministry of Regional Development Authorities. | 2006 – 2007 | Reducing the share of road network in poor condition to 20%. | See CG Section | Ministry of Roads. |
| | 8. Programme and slum upgrading programme. | Houses built in the slum areas. | Ministerial Review Reports. | Slum upgrading. | Ministry of Lands and Housing, Ministry of Water. | Ministry of Energy, Ministry of Information and Communication. | | Slum upgraded | See SD Section | Ministry of Lands and Housing. |
| Sub-Objective: Improve adequacy and quality of statistics | 1. Establish the Central Bureau of Statistics as a Body Corporate. 2. Implement a Statistical Master plan | An autonomous CBS in key areas of finance and administration. | The CBS Statistical Bulletin. | 1. Implementation of the STATCAP project at the CBS. 2. Development of the Statistical Bill. | 1. Ministry of Planning, 2. CBS. | 1. Line Ministries, 2. Academic Institutions, 3. Civil Society Organization, Public Corporations and | 2006- 2007 | Accurate and reliable data systems. | - | Ministry of Planning and National Development. |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|--|--|---|---|---|---|-------------|---|---------------------------------|---------------------|
| | | | | | | Agencies. | | | | |
| OBJECTIVE TWO: IMPLEMENT SOUND, TRANSPARENT AND PREDICTABLE GOVERNMENT ECONOMIC POLICIES | | | | | | | | | | |
| Sub-Objective: Implement sound, transparent and predictable government economic policies | 1. Operationalize Public Procurement and Disposal of Assets Act | Public Procurement Act becomes operational. | The Laws of Kenya | Procurement Guidelines being prepared Public Procurement Oversight Commission being setup | Ministry of Finance; AG's Chambers. | All ministries, parastatals, SAGAs | 2006-2007 | An efficient and transparent public procurement system. | - | Ministry of Finance |
| | 2. Operationalize Privatization Act. | Privatization Act is operational as law. | The Laws of Kenya. | Privatization Commission is being setup | Ministry of Finance, AG's Chambers. | MOF, AG's Chambers, The private sector | 2006-2007 | An efficient and transparent privatization process | - | MOF |
| Sub-Objective: To improve transparency and effectiveness in administrative, legislative and fiscal entities | 1. Enforce the Anti-corruption and Economic Crimes Act (2004) | Number of prosecutions; No. of convictions of persons guilty of economic crimes. | 1. Court records; 2. Police records | Investigations into corruption cases ongoing, Prosecutions launched in cases where evidence is available. | Ministry of Justice and Constitutional Affairs, KACC, Courts of Law, AG's Chambers. | KACC, MOJ&CA, Citizens, Courts of Law, AG's Chambers. | 2006 – 2008 | 1. Reduced corruption, 2. Improved country ranking on the CPI. | 266 per F.Y (Ksh 20 M) | MOJCA MPND AG |
| | 2. Enforce the Public Audit Act (2004) and strengthen Kenya National Audit Office (KNAO) | Timing of audits in the F.Y; No. and types and quality of audits conducted. | 1. Audited records; 2. Annual workplan for CAG | Training, capacity building and reorganization of the KNAO | Ministry of Finance, KNAO, Office of the Auditor General. | CAG, MOF, Justice and Constitutional Affairs (GJLOS) | 2006 - 2008 | Timely and improved audited accounts | 400 per F.Y (Ksh 30 M) | MOJCA, AG, MOF |
| | 3. Strengthen Parliamentary Oversight | Implementation of recommendations | PAC and PIC reviews | Capacity building initiatives are on-going | PSC, MOF, OP | MPND, NSA, Line Ministries | 2006-2008 | Enhanced transparency and effectiveness of Parliament | 333 per F.Y (Ksh 25 M) | PSC, MOF, OP |
| | 4. Increase | No., type and | 1. Minutes | The PRSP and | Ministry of | MPND, MOF, | 2006 - 2008 | Improved | 200 per F.Y | MOF, MPND |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|---|---|---|---|--|---|-------------|---|---------------------------------|------------------------|
| | stakeholder participation in policy, planning and budgeting, at national and sub-national level. | levels of stakeholder participation in the process. | and reports of s/holders meetings. 2. Assessment reports | MTEF Budgetary processes have incorporated some participatory initiatives | Planning and National Development; MOF; SWGs | Private sector | | prioritization and ownership of programmes | (Ksh 15 M) | |
| Sub-Objective: Improve predictability of economic policies | 1. Strengthen and extend M&E structures for IP-ERS to district level. | The % of districts with functioning M&E structures for IP-ERS. | District M&E reports for IP-ERS implementation | National M&E Unit established; Ist National report compiled; framework on establishing district M&E Units published | Ministry of Planning and National Development | MPND, MOF, Line Ministries. | 2006 - 2008 | M&E framework established and functional at district level | 1300 (Ksh 100 M) | MPND |
| | 2. Conduct a comprehensive Review of Implementation problems throughout the GoK and Public Sector | Review Report | M&E Reviews | Institutionalization of M&E system | MPND | MOF MPND NSA | 2006-2008 | Better understanding of implementation of problems | 133 (Ksh 10 M) | MPND |
| | 3. Strengthen grassroots planning committees. | The no. of grassroots planning committees established and functional; No of grassroots committees plans approved. | Grassroots Committees' Plans; DIDC. | Several grassroots committees have been established at the constituency level (CACC, CDF, CBC, CRC etc) | Ministry of Planning and National Development | Constituencies, Districts, Communities. | 2006 – 2007 | Well coordinated and harmonized community led budget proposals in every district. | 533 (Ksh 40 M) | National CDF Committee |
| | 4. Improve Public Private Partnerships. | 1. Private sector annual input into the national budget. | 1. Records and minutes of PPP meetings. 2. Private | Partnerships in policy formulation and budgeting and planning have | Convenors of Sector Working Groups and MoPND, KEPSA. | MPND KEPSA NGOs Private sector | 2006 - 2007 | Participatory development plans and MTEF budgets | 400 per F.Y (Ksh 30 M) | KEPSA |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|--|--|--|---|---|---|------------------------|--|---------------------------------|---|
| | | 2. The number of scheduled Public Private partnership workshops held. | Sector Budgetary proposal submissions. 3. Workshop Reports. | been formed with KEPSA, National NGO Council among others | | | | | | |
| | 5. Formulate a national IEC Strategy | IEC Strategy implemented. | IEC Strategy Paper. | Consultations with stakeholders ongoing. | MoPND | MPND, Ministry of information & communication | 2006-2006 | IEC strategy Paper | 133 (Ksh 10 M) | Office of Communication Secretary MoI&C |
| Sub-Objective: Improve capacity in the implementing departments / agencies /State Corporations | 1. Strengthen local authorities in decision making on resource use and allocation. | 1. No. of Local Authorities with budget committees and budgets produced. 2. No. of Local Authorities with audited accounts. | 1. Local Authorities Annual Reports; Budgets committees' reports. 2. RDA Budgets of Reports | Local Authorities prepare LADPs and LATF funds require detailed budgets before they are released. | 1. Ministry of Local Government; 2. Ministry of Regional Development Authorities 3. RDAs. | 1. MOF Local Government 2. Ministry of Regional Development Authorities. 3. RDAs. | 2006 – 2007 2006/07 | Well formulated Local Authority budgets and capacity for implementation and M&E improved | 1069 (Ksh 80 M) | Ministry of Local Government |
| | 2. Train district staff on MTEF budget process. | The proportion of district budgets captured in the national MTEF. | Training reports; Training manuals. | Briefings on MTEF budget requirements ongoing at district level. | MOF; MoPND | MOF MPND MoRDA | 2006 - 2007 | All district staff trained on MTEF budget process | 667 (Ksh 50 M) | MOF MPND |
| | 3. Make the budget making process more participatory at district level | No. of community groups represented and levels of consultations in budget process. | District Plans and budgets. | Stakeholders' involvement in planning and budgeting has been initiated at district level. | MoPND | MOF MPND Private sector District committees | 2006 - 2008 | Increased inputs of private and non-governmental agencies in the district budget | 266 (Ksh 20 M) | MOF MPND |
| | | | | | | | | | | |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|--|---|---|---|---|--|-------------|--|---------------------------------|------------------------------------|
| | 4. Increase absorptive capacity of spending agencies. | 1. Project Completion rates. 2. Proportion of disbursed budgetary funds to budgetary allocations | Completion certificates. | Training of implementation officers ongoing; procurement bill passed by parliament. | 1. MOF 2. Ministry of Regional Development Authorities | MOF; AG; Ministry of Roads and Public Works; MoPND | 2006 - 2007 | Efficient, transparent and predictable completion of project | 467 (Ksh 35 M) 53 (Ksh 4 M) | MOF, MPND |
| Sub-Objective: CMA and Insurance Commission to adopt international practices | 1. Enhance the legislative framework and autonomy 2. Capacity building for Insurance Commission | 1. CMA Bills, 2. Insurance Commission Bills | Autonomy of insurance commission and staff capacity | Insurance Act exists. | Ministry of Finance | MOF, CMA, Insurance Commission | 2006 – 2007 | International standards | 67 (Ksh 5M) | Insurance Commission CMA MOF |
| OBJECTIVE THREE: PROMOTE SOUND PUBLIC FINANCE MANAGEMENT | | | | | | | | | | |
| Sub-Objective: Promote sound public finance management | 1. Implement Strategy for Public Financial Management | No. of benchmarks met | Bench marks | Already 5 benchmarks met Strategy being finalized | Treasury/MPND / All public organizations. | MOF MPND, All public organizations NSA. | 2006-2008 | Efficient and Effective utilization of budgetary resources. 28 Public Expenditure and Financial Accountability benchmarks met | 2,266 (Ksh 170 M) | Ministry of Finance MPND |
| | 2. Strengthen the link between budgeting and planning. | Degree of Synchrony between Ministry/Agency plans and MTEF budgetary allocations. | 1. MTEF budgets 2. Agency | 1. FMAP in place. 2. It is a statutory requirement that all ministries and | Treasury/MPND/ All public organizations | MOF MPND, All public organizations NSA. | 2006-2008 | Efficient and Effective utilization of budgetary resources | 333 (Ksh 25M) | MOF MPND |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|--|---|---|--|---------------------------|---|-------------|--|---------------------------------|----------------------------------|
| | | | | public agencies develop and implement strategic plans | | | | | | |
| Sub-Objective Implement fiscal decentralization | 1. Harmonize the legal framework for Local Authorities with the Finance Act of 1997. | 1. The provisions of LASC Act, LATF and related Acts harmonized with those of Finance Act of 1997. 2. LAs are allocated 5% of total revenue. | 1. The LAs Act. 2. LA Books of Accounts. | Implementation of Kenya Local Government Reform Programme (KLGRD) is ongoing. | LAs, AG's Chambers, MOLG. | LAs, AG's Chambers, Ministry of Local Government, Members of Parliament, CDF Committee Members. | 2006 – 2008 | Completed projects and programmes | 67 (Ksh 5 M) | Line Ministries, MOF MLOG |
| | 2. Build LA capacities for financial management and programme implementation. | % of LAs submitting the requisite budgets and accounting documents. | Report of the MOLG on LATF disbursements and accounting. | Government through the LGFR issued in 1986 provides prescriptions for financial responsibilities and functions of LAs. | MOLG | LAs, MOLG | 2006 – 2008 | Aligned expenditures | 400 (Ksh30 M) | MLOG DPs MOF |
| | 3. Strengthen the capacities of the District level Development Committees for the effective management of resources. | 1. The rate of completion of the DFRD projects in districts. 2. The % of Districts with completed plans for investment. | 1. Audit Reports of the DFRD projects. 2. District Investment Plans. | Some limited decentralization of budgetary resources to the DDCs ongoing. | MP&ND. | DDCs, MP&ND | 2006 – 2008 | Improved policy and project implementation | 133 (Ksh 10 M) | MOF MPND |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|---|---|---|--|------------------------------|------------------------------------|--------------------------|--|---------------------------------|--|
| | 4. Build the capacities of the Constituency Development Committees for the management of the Constituency Development Fund. | 1. The % Constituencies with bankable development plans. 2. The % of constituencies making acceptable expenditure reforms. | 1. Constituency Development Plans. 2. CDF expenditure reforms. | 1. CDF is gaining currency in Kenya as an innovative and effective mode of fiscal decentralization 2. CDF consumes 2.5% of total ordinary revenue and is set to increase. | OP, MOF, National Assembly. | MPs, Members of CDFCs. | 2006 – 2008 | Efficient and Effective utilization of CDF | 267 (Ksh 20 M) | MPND, National CDF Committees MOF, & DME Committees |
| Establish efficient local Authorities | 1. Implement Kenya Local Government Reform Programme | LATF funds efficiently utilized in accordance with established controls. | Monitoring Reports. | The LGRP is being implemented. | Ministry of Local Government | MOF Ministry of Local Government | 2006 – 2007 | Well managed Local Authorities | 333 (Ksh 25 M) | Ministry of Local Government MOF |
| | 2. Rationalize manpower in local authorities | Composition of expenditure | Local Authorities | Staff rationalization | Local Authorities, MOLG. | LAS, MOLG | 2006-2008 | Reduced spending on PE by LAs. | 2,000 (Ksh150 M) | MOF MLOG |
| | 3. Build LA capacities | Trained personnel | LA records | Staff capacity | LA, Training Institutions. | LAS | On-going | Skilled manpower | 2,667 (Ksh 200 M) | MOF MLOG |
| | 4. Provide a Technical assistance to LAs in project implementation. | LA performance in project implementation improved. | Project monitoring Reports by LAs. | Needs assessment for TA ongoing. | LA, Donors, MOLG, LAs. | Local Authorities MOF Donors | 2006 | TA | 1,333 (Ksh 100 M) | MOF MLOG |
| | 5. LAs budgetary process to be open to public participation and consultation. | LATF | Local Authorities budget | | | LA, Treasury | MOF Local Authorities | 2006 | Sound LA budgets | 133 (Ksh 10 M) |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|--|---|---|---|---|--|-----------|-----------------------------------|-------------------------------------|--|
| OBJECTIVE FOUR: FIGHT CORRUPTION AND MONEY LAUNDERING | | | | | | | | | | |
| Sub-Objective: Improved Governance | 1. Control corruption and enhance rule of law | 1. Number of corruption cases convicted. 2. Number of corruption cases investigated. | KACC records on convictions and investigations. | Legal framework already in place | Ministry of Justice, Anti-Corruption Commission, Treasury | Ministry of Justice, Law reform commission | 2006-2007 | Corruption cases prosecuted | 6,667 (Ksh 500 M) | Ministry of Justice and Constitutional Affairs, KACC |
| | 2. Enhance information availability on fight against corruption | Press releases | Press releases | Sensitisation on-going | KACC, MOJCA | MOF, All public entities NSA | 2006-2007 | | | |
| Sub-Objective: Enhance public safety, law and order | Improved Security. | 1. Number of criminal offences reported 2. Security reports and public awareness | Criminal investigation department, Statistical Abstract (CBS) | Enhanced police training. Hiring of additional security staff. Retraining, reequipping and redeploying of police force. Computerization of police department. | MHA, Police department / Office of the president NSIS | Kenyan community | 2006-2007 | Security in the country | 6,667 (Ksh 500 M) 600 (Ksh 45 M) | OP MOF MPND |
| Sub-Objective: Money Laundering | 1. Improve the legal framework for anti-money laundering. 2. Improve the banking system | 1. Laws to curb money laundering 2. Number of criminal offences reported | AG Chambers, CID, CBK fraud reports | Kenya is a member of ESAAMLG Legal framework on anti-money laundering has been initiated. The bill -Anti money laundering and crime bill 2005, | CBK OP MOF AG chambers Kenya Police | Financial Institutions NSA | 2006-2007 | Clean money in the banking system | 333 (Ksh 10 M) | CBK MOF MPND |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|---|--------------------------------------|--|---|--|------------------------|---|---|---------------------------------|---|
| | | | | is still pending. CBK issued anti-money laundering prudential guidelines in 2000. Other initiatives include; targeting predicate offences such as corruption, drug trafficking, illicit trade in small arms, cattle rustling and motor vehicle theft. | | | | | | |
| OBJECTIVE FIVE: ACCELERATE REGIONAL INTEGRATION BY PARTICIPATING IN THE HARMONIZATION OF MONETARY, TRADE AND INVESTMENT POLICIES | | | | | | | | | | |
| Sub-Objective: Accelerate regional integration | <ol style="list-style-type: none"> Strengthen membership to regional integration unions. Accelerate the integration process. Review the existing export development incentive schemes (EPZs & MUBs). Review the diversification of export markets and reduce vulnerability to unilateral | Level of integration and trade flows | <ol style="list-style-type: none"> Ministry of trade and industry. Ministry of East African Community IP-ERS | <ol style="list-style-type: none"> Reduction of trade tariffs to facilitate liberalization. Creation of new institutions and structures and strengthening the existing ones. Trade liberalization initiatives. Promotion of public sector private | <ol style="list-style-type: none"> MOTI Ministry of regional cooperation MOTI | East African Community | <ol style="list-style-type: none"> Ongoing Ongoing 2006-2008 | <ol style="list-style-type: none"> Increase in exports and imports volume. Reduction in cost of doing business. Increase in investments in the country | 2,667 (Ksh 200 M) | Ministries of Trade, East African Cooperation MOFA MPND |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|---|--|---|--|--|------------------------|--------------|---|---------------------------------|-------------------------------|
| | decisions over trade in the export markets. | | | partnerships. | | | | | | |
| Monetary harmonization | <ol style="list-style-type: none"> 1. Consolidate existing instruments of monetary cooperation. 2. Introduce limited currency convertibility. 3. Establish a formal exchange rate union. 4. Establish a full monetary union | <ol style="list-style-type: none"> 1. Conversion rate 2. Common currency | CBK monetary reports | Documentation and discussion progressing well | <ol style="list-style-type: none"> 1. Central banks of Kenya, Tanzania and Uganda 2. COMESA clearing house 3. Common monetary institution | East African Community | 2001-2018 | <ol style="list-style-type: none"> 1. Regional payment and settlement systems. 2. Common currency. 3. Monetary union | 6,66 (Ksh 50 M) | MOEAC MOF, CBK, MOFA |
| Harmonize regional and national policies | <ol style="list-style-type: none"> 1. Enhance support for R&D for industries by reviewing the tax policies, trade and investment policies, and other policies for doing business. 2. Harmonization of competing policies | Consistency of regional and national policies | <ol style="list-style-type: none"> 1. ERSWC 2. IP-ERS | <ol style="list-style-type: none"> 1. Capacity building of key stakeholders in the integration process. 2. Investment Code drafting in the process | <ol style="list-style-type: none"> 1. MOTI 2. Ministry of regional cooperation | East African Community | Ongoing | Full application of regional block rules as a result of harmonized policies | 1,000 (Ksh 75 M) | MOEAC MOF MOFA OOP |
| Expansion of markets | <ol style="list-style-type: none"> 1. Removal of work permits requirements in Uganda and Tanzania. 2. Build capacity to monitor international trade malpractices in | <ol style="list-style-type: none"> 1. Number of EA passports issued. 2. Share of trade to GDP. 3. Number of business and employment | <ol style="list-style-type: none"> 1. Returns of Immigration offices in Kenya, Uganda and Tanzania. 2. Economic survey 3. Reports of | <ol style="list-style-type: none"> 1. Issuance of an East African passport. 2. Implementation of a trade policy. 3. Expand and strengthen | <ol style="list-style-type: none"> 1. Immigration offices in Kenya, Uganda and Tanzania. 2. MOT | East African Community | 2006 2008 | Free movement of goods and people across the borders Harmonization of taxes in the region | 667 (Ksh 50 M) | MOEAC MOF |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---------------------------|---|--|-----------------------|--|---------------------|--------------|-----------|---------------------|---------------------------------|---------------|
| | order to effectively apply anti-dumping and countervailing measures so as to ensure that Kenyan products are not unfairly driven out of markets | opportunities created. 4. No. of regional tax regimes. | MORC | partnership with the private sector especially in negotiating trade protocols and other business related issues. 4. Protocol on rights of settlements and work. | | | | | | |
| Enhanced Awareness | Sensitize the general public on integration | Publications, and programmes aimed at sensitizing the general public | Surveys | A Secretariat has been formed and tasked to enhance public awareness | MOEAC MOFA | NSA | 2006-2008 | Increased awareness | 200 (Ksh. 15 M) | MOEAC MOFA |

ECONOMIC GOVERNANCE AND MANAGEMENT

TOTAL **US \$ =** **45, 772, 000**
KSH = **3, 432, 900, 000**

PLAN OF ACTION

C CORPORATE GOVERNANCE

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|--|--|---|--|---|---|-----------|--|----------------------------------|---------------------------|
| STANDARD AND CODES | | | | | | | | | | |
| Ratify and Adopt Core Principles of Insurance Supervision | 1. Adopt and implement the Core Principles. Of Insurance | 1. Standard signed and ratified 2. No. and % of insurance companies fully complying with Principles of Insurance Supervision. 3. No of Insurance companies collapsing. | 1. Commissioner of Insurance Report. 2. Insurance industry survey. | 1. A committee set up to consider establishment of an insurance industry regulator | <u>Commissioner of Insurance (CoI)</u> Ministry of Finance | Insurance companies, Insurance brokers. Policy holders | 2006 | 1. Principles of Insurance supervision ratified and adopted. | 100 (Ksh 7.5M) | Ministry of Finance |
| | 2. Review Insurance Act to incorporate the principles | 1. No. and % of insurance companies fully complying with Principles of Insurance Supervision. 2. No of Insurance companies collapsing | Reviewed Insurance Act | | <u>Ministry of Finance</u> Commissioner of Insurance (CoI) | Insurance companies, Insurance brokers. Policy holders | 2007 | Revised Insurance Act in place | 100 (Ksh 7.5 M) | Commissioner of Insurance |
| Ratify and Adopt ILO Convention no. 87 | 1. Adopt and domesticate the conventions in | Convention ratified | | Kenya has ratified a number of | <u>MoLHRD</u> COTU State Law Office | Ministry of Foreign Affairs FKE | 2007-2008 | Labour Laws incorporating ILO | 100 (Kshs. 7.5m) | MoLHRD |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|--|---|---|---|--|--|------------|--|----------------------------------|-----------------------------------|
| | Kenya labour law and practices | % of unionisable employees who belong to Unions | | labour conventions Labour Laws being reviewed through a consultative process | | | | Convention 87. | | |
| Enhance adoption of Principles of Corporate Governance in all sectors of economy | 1. Conduct training on corporate governance for directors in all sectors of economy incl SMEs. | 1. Number of institutions adopting good corporate governance principles. | CCG through its monitoring and research to verify: 1.No. of directors trained by CCG | 1. Sample code of best practice for corporate governance has already being developed. 2. 1200 directors have already been trained in corporate governance. | <u>Centre for Corporate Governance (CCG)</u> GJLOS Programme Training & Educational Institutions Qualified in CG | Insurance companies, Banks and other financial institutions. Public and private companies. Relevant professions. SOEs, Co-operatives, Local Authorities, Investors, Institutions of higher learning. | 2005 -2008 | 2000 Directors and 50 training of trainers trained in the first year. | 2,250 (Ksh169M) | <u>CCG</u> MJoCA |
| | 2 Sector regulators to issue guidelines on Corporate Governance reporting and compliance | 1. Profitability of corporations 2. Contribution of corporations to GDP. 3. No and % of corporate scandals and failures | 1. No and % of sectors / regulators issuing guidelines 2. CCG Survey 3. GoK / CBS Economic Survey | 1. CMA issued guidelines to quoted Companies on CG reporting 2. GJLOS programme within Government 3. SOE put on performance contracts with 13 first pilot SOEs reporting performance improvements | Registrar of Companies NSE, CMA, ICPAK, ICPSK, Commissioner for Insurance, CBK, Commissioner for Co-operatives, other regulatory agencies | -as above- | 2006/07 | Increased number of organizations adopting and adhering to corporate governance principles | No budget implications | CCG Regulatory Authorities |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|-----------|--|---|--|---|--|---|------------|--|----------------------------------|---|
| | 3. Develop a Monitoring and Evaluation framework which all key stakeholders can subscribe data to, share and own findings. | Corporate governance Monitoring and Evaluation framework. | M&E framework document M&E reports based on framework | All State Corporations have strategic plans and their boards are on performance contracts. | Centre for Corporate Government (CCG) Ministry of Justice & Constitutional Affairs Sector Regulators. | - as above- | 2006-2007 | Increased number of organizations benefiting from utilizing easy to use guidelines and reporting to the M&E hub. | 30 (Ksh.2.25M) | MOJ&CA CCG |
| | 4. Require SOEs & Cooperatives to publish accounts and reports in newspapers and on time | 1. Number and % of SOEs & cooperatives publishing annual reports and accounts in newspapers. 2. Number and % of SOEs and cooperatives submitting their annual accounts in a timely manner. | Annual Accounts and Reports of SOEs | Timely production annual accounts incorporated in performance contracts by SOE's CEO's recently signed. | Inspector- General of State Corporations Commissioner of cooperatives | Government and General public | 2006 -2008 | Greater accountability | 40 (Ksh 3M) | Inspector- General of State Corporations. |
| | 4. Enhance capacity of Institutions involved in corporate governance esp. CCG, ICPAK, CBK,CMA and other regulators | 1.Training and skills development programmes developed & implemented 2. No. of Organizations adopting good corporate governance and the impact | Company annual reports Good Business Practices Award Schemes evaluation | | CCG | - as above- | 2007 | | 70 (Ksh 5.25m) | MOJ&CA CCG |
| | 5. Develop codes & guidelines of best practice for | 1. No and % of sector specific codes | Codes and standard | 1. GJLOS Programme. | CCG Regulatory | Various sectors of the economy e.g. banking, insurance, | 2005-2007 | Strengthened corporations in all sectors. | 120 (Ksh9M) | Centre for Governance & Development |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|---|--|---|---|--|--|-----------|---|----------------------------------|------------------|
| | other key sectors such as insurance etc. (10 sectors in total) | developed and disseminated | s. | 2. Institute of Directors (K) Ltd established. 3. Shareholders Association already in place. 4. Other associations promoting adoption of codes of good corporate governance, e.g. ICPSK | Authorities. | transport, telecommunication s etc. | | | | |
| Task force for reviewing implementation and reporting on ratified standards and codes | 1.Establish Taskforce and its terms of reference | Task force in place 2. A catalogue of signed and ratified convention established and responding agency confirmed | | Individual Ministries currently respond directly e.g. MoLHRD report to annual on Labour Conventions | <u>State Law Office</u> MoJ& CA | | 2007-2008 | | 700 (Ksh 52.5m) | State Law Office |
| Full adoption of International Accounting and Auditing Standards | Mandatory and full adoption & enforcement of compliance of IFRS by quoted companies , large enterprises incl SOEs, financial institutions | No and % of organizations complying with IFRS. SME Accounting and Reporting Standards. | Survey of Companies. Policy document | .FiRe (Financial Reporting) Award system by ICPAK, CMA and NSE | <u>ICPAK</u> , RAB, Ministry of Finance, Controller and Auditor General. | All sectors of the economy Investors Kenya Revenue Authority | 2005-2007 | 1. Increased number of corporations in various sectors adopting IFRS. 2. Improved accountability of corporations | 30 (Ksh2.25M) | ICPAK |
| Accounting and Auditing Standards by | 1. Adopt, domesticate and | % of MSE complying with | Annual Audited returns | KRA requirement is | - as above- | MSEs | 2007 | Acceptable and | 50 (Ksh 3.75m) | KRA |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands | M & E Agency |
|---|---|--|---|--|---|--|----------------|--|---|------------------------|
| MSEs. | enforce compliance with Accounting standards for MSEs (now under development internationally) | MSEs Accounting and Reporting Standards. | to KRA | that MSEs annual accounts be prepared to adopted Standard and IFRS is the standard in force with poor compliance due cost and complexity | | KRA Accountants Finance Institutions | | affordable Accounting framework | | ICPAK |
| | 2. Develop and implement Accounting and Auditing Standards for MSEs. | 1. % of MSEs adopting and using MSE Auditing Standards | 1. MSE survey | 1. Sample codes for MSEs available with IFC and OECD. 2. ICPAK also addressing the issue | ICPAK, Ministry of Finance Association of Micro Finance Institutions (AMFI), MoLHRD. | -as above- | 2007 | Acceptable and affordable Auditing framework | 50 (Ksh.3.75m) | KRA ICPAK |
| OBJECTIVE ONE: PROMOTE AND ENABLING ENVIRONMENT AND EFFECTIVE REGULATORY FRAMEWORK FOR ECONOMIC ACTIVITIES | | | | | | | | | | |
| Overall enabling environment for business | Implement the Private Sector Development Strategy (PSDS) | Growth of Business Sector | Economic Surveys | Policy covers infrastructure, security etc | Ministry of Trade & Industry | | 2006 & ongoing | | Under Ministry budget . Cost of other enablers posted below | MoTI |
| Create enabling environment for development of MSEs | 1. Expedite Legislation and implementation of Microfinance Regulatory framework. | 1. Bill enacted | 1. Returns to CBK of credit advanced by Micro-Finance Institutions 2. CBS Statistical Abstracts / Economic Survey. | 1. MFI Bill now published | Ministry of Finance Attorney -General CBK, Ministry of Lands | MFIs, MSEs AMFI Small depositors | 2006-2007 | 1. Access to credit by MSEs improved. | Covered under Ministry Budget | CBK |
| | 2. Implement the recommendations | 1. Number of jobs created in | CBS statistical Abstracts / | SME Sessional paper has been | Ministry of Industry | MSEs | 2007 | Job creation | 300 (Ksh. 22.5M) | Ministry of Planning & |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|--|---|--|--|---|--|------------------------|---|---|--|
| | of the SME's Sessional Paper. | the MSE sector 2. Contribution of MSEs to GDP 3. Mechanism of implementation of bill in place | Economic Survey | developed | KEPSA Jua Kali Association | Ministry of Labour Ministry of Planning & National Development | | Poverty alleviation | | National Development |
| Provide affordable and accessible credit to the private sector – including MSE's. | 1. Reduce level government borrowing from domestic market. | 1. Amount of credit available to private sector | CBK monthly economic review reports | 1. Government shifting from 90/180 days bills to longer term bond 2. Move by Government to raise funds by divesture from SOEs | MOF, CBK. Monitory Advisory Committee | Banks and other financial institutions, MFIs, General Public | 2006 & continuous | 1. Expanded credit to private sector 2. Lower cost of credit | A monetary policy instrument without Budget implications. | CBK |
| | 2. Address gap between interest paid on deposits and that charged to borrowers | 1. Gap between deposit and credit interest 2. Money liquidity | 1. CBK monthly economic review report 2. Statistics published in Media by CBK | Recent relative lower cost of credit spurred building sector | Minister of Finance CBK | Financial Initiations Capital Markets Individuals and business community | 1 st Q 2007 | Higher economic activities | 200 (Kshs. 15M) | CSO specializing in interest rate monitoring |
| | 3. Accelerate the land survey & issuance of title deeds. | Proportion of landowners with title deeds | Records at Ministry of Lands | Govt. has committed to deal with the land issue at Coast where APRM reported as most affected by lack of collateral | Ministry of Land and Housing | Coast Province Inhabitants Ministry of Regional Development Financial Institutions | 2007 | More Kenyans using title deeds as collateral | 6000 (Ksh 450M) | Ministry of Lands and Housing |
| | 4. Formulate and implement policy | Level of non-performing loans | CBK & Kenya Bankers' | 1. Banks have made | Ministry of Finance | Banks | 2007 | Increased loanable | 100 (Kshs. 7.5m) | CBK |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|---|---|-----------------------|---|--------------------------------------|---|------------------------|---|----------------------------------|--------------|
| | on existing and future Non Performing Loans (NPL). | (NPL). | Association Reports | provisions for NPL. 2. Banks implementing loans recovery strategies. | CBK Kenya Bankers Association | Shareholders Depositors | | funds in banks. | | |
| | 1. Review the listing requirements. 2. Provide incentives to encourage listing. 3. Improve the facilitation and the enabling role of CMA. 4. Develop policy to attract medium business to list in the Stock exchange | 1. Number of companies listing at NSE. 2. Performance of NSE | NSE Reports | 1. 2005/6 budget provided Incentives to list. 2. Implementation of CDS in 2005 will allow for NSE to handle more companies | CMA, NSE, CDSC. | Government Companies, stockbrokers, Investment Banks, including financial advisory companies and Investors. | 2005-2007 and on-going | 1. Listing requirements reviewed and simplified. 2. More companies listed on the NSE | 50 (Ksh 3. 75M) | MOF |
| Attract more companies to list at the Stock Exchange | 1. Review the listing requirements. 2. Provide incentives to encourage listing. 3. Improve the facilitation and the enabling role of CMA. 4. Develop policy to attract medium business to list in | 1. Number of companies listing at NSE. 2. Performance of NSE | NSE Reports | 1. 2005/6 budget provided Incentives to list. 2. Implementation of CDS in 2005 will allow for NSE to handle more companies | CMA, NSE, CDSC. | Government Companies, stockbrokers, Investment Banks, including financial advisory companies and Investors. | 2005-2007 and on-going | 1. Listing requirements reviewed and simplified. 2. More companies listed on the NSE | 400 (Ksh 30M) | MOF |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|--|--|---|---|---|--|-----------|---|----------------------------------|--|
| | the Stock exchange | | | | | | | | | |
| Provide an attractive business regulatory framework | <p>1. Review Companies Act ensuring provisions for good corporate</p> <p>2. Review other business Laws.</p> | <p>1. No. of revised Business Laws</p> <p>2. Decrease in number of business licenses.</p> <p>3. No. of new businesses registered in a year</p> | <p>1. CBS statistics on new business registration and Registrar of Companies Reports.</p> <p>2. IPC / KIA investor enquiry reports</p> <p>3. No. of new businesses registered per year.</p> | <p>1. The Law Reform Commission is currently reviewing the Companies Act, insolvency laws</p> <p>2. The Ministry of Finance and ministry of Trade & Industry have undertaken a review the regulatory framework for business with a view to reducing business licenses</p> | <p>Law Reform Commission,</p> <p>State Law Office</p> <p>Ministry of Finance</p> <p>Ministry of Trade</p> | <p>Professional Associations, Registrar of Companies, and other business sectors of the economy.</p> | 2006-2008 | <p>1. Modern Business law regime in place</p> <p>2. Reduced cost of doing business</p> | Under GJLOS | Registrar of Companies |
| Enhance good corporate governance in State Owned Enterprises (SOEs) | <p>1. Review State Corporations Act to entrench corporate governance codes of best practice</p> <p>2. Provide mechanisms for implementing best corporate governance practices.</p> | <p>1. No. of SOEs complying with code of best practice for SOE's.</p> <p>2. Performance Level and sustainability of SOEs.</p> <p>3. Level of dependence on Exchequer</p> | <p>1. Revised Act in place.</p> <p>2. Report of Controller and Auditor General.</p> <p>3. Report of Inspectorate-General of State Corporations.</p> <p>4. Survey of SOEs.</p> | <p>1. All State-Owned Enterprises (SOEs) have been put on performance contract from July 2005.</p> <p>2. SOE Boards are now empowered to select CEO</p> <p>3. Privatization Bill passed in August 2005</p> | <p>Inspectorate of State Corporations, State Law Office.</p> | <p>Government</p> <p>SOEs</p> | 2006-2007 | <p>1. Accountabl e and profitable SOEs</p> <p>2. Better and efficient service delivery.</p> | 500 (Ksh 38M) | Ministry of Finance (Investment Secretary) |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|---|---|---|--|--|--|-----------------|---|---------------------------------|---|
| REGULATORY FRAMEWORK | | | | | | | | | | |
| To improve the effectiveness of regulatory framework in all sectors of the economy. | 1. Bring Micro-Finance Institutions, Insurance Companies and SACCOs under the purview of Regulatory Framework of the Financial Sector | 1. Growth rate of capital bases of MFIS, Insurance Companies and SACCOs 2. Proportion of MFI, Insurance Companies and SACCOs benchmarking best practices. | Regulator Reports. | 1. A task force has been formed to look at modalities for putting an insurance industry regulator in place. 2. Recently adopted Sessional Paper on SMEs allows for a Commission | Ministry of Finance Central Bank of Kenya Commissioner of Insurance. | All sectors of the economy. | 2005-2006 | 1. Effective regulatory framework for all the sectors of the economy. 2. Economic Growth | 200 (Ksh15M) | Ministry of Finance |
| | 2. All regulatory sectors to focus also on their enabling and facilitation mandate | Growth and performance of regulators sector | Regulators Annual Reports | Some regulators like CMA striking a good balance between regulatory & facilitation roles | All Regulatory Entities | Business and Industry | 2006 & on-going | Sustainability and Growth of the different sectors | 200 (Kshs. 15m) for training | Parent Ministry Business & Industry Associations |
| Strengthen regulation in the practice of professions. | 1.1 Enhance governance within individual professional regulatory bodies. 1.2 Train professionals in good corporate governance. | 1. No. of complaints against professionals. 2. No. of professions with operational self regulation framework. 3. Proportion of professionals trained. | 1. Annual Reports of Professional bodies. 2. Annual Reports. | 1. A number of bodies have a code of business ethics. 2. A small number has gone through Corporate Governance Training. | Ministry of Finance MoJCA Training -CCG | Government Trade, Business and Professional Associations Professional Bodies | 2007 - 2008 | Higher accountability of Officials to their members and observance of Business Ethics | 300 (Ksh 23M) | Ministry of Planning & National Development CCG |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|--|---|---|---|--|---|-----------|--|--------------------------------------|---|
| | 2. Strengthen human, financial and technical capacity of existing oversight professional regulatory bodies especially those under Government Ministries with oversight role e.g. Advocates' Appeals Board under State Law Office | 1. Backlog of disciplinary cases e.g. at Law complaints Committee 2. Higher ethical standards as judged by level of complaints | Statistics of backlog of disciplinary cases and complaints from all professional / oversight regulatory bodies. | 1. A regulator for the procurement professionals has been put in place. 2. The FIAS recommends strengthening of regulatory bodies. | Host Ministries Government Association of Professional Societies in East Africa (APSEA), specific professional bodies, and their parent ministries. | Various professional associations, Registration Boards, all sectors of the economy. | 2006-2007 | 1. Better regulated professions. 2. Professions become effective partners in the fight against corruption and other malpractices. | 400 (Ksh 30 M) | APSEA |
| | 3. Strengthen self-regulation among the professionals. | 1. Level of complaints by the public 2. Existence & enforcement of code of conduct | Media reports Annual Reports from the Professional Bodies Letters of complaints to the secretariats | | Professional Associations | Government (Public Contracts) Private Sector CSOs Development Partners | 2007-8 | Professional Accountability Enhanced Professional role in fight against corruption | 200 (Ksh.1.5 M) for M&E over 2 years | APSEA |
| JUDICIAL EFFICIENCY AND COMMERCIAL DISPUTE RESOLUTION | | | | | | | | | | |
| Expedite resolution of commercial disputes | 1. Continue implementing judicial reforms. | Average number of days to settle commercial disputes | Level of backlog of commercial cases | Reforms being undertaken under the GJLOS programme. | Law Reform Commission, Judicial Service Commission, MOJ&CA. | Businesses and General public | 2005-2008 | Enhanced effectiveness of Judiciary. | 7,000 (Ksh525M) Under GJLOS | ICJ LSK Law Reform Commission |
| | Review Arbitration Act Incorporate Alternative Dispute Resolution (ADR) in the | 1. Cost of dispute resolution 2. Level of backlog of commercial cases | Level of backlog of commercial cases | GJLOS programme under implementation | State Law of Law Reform Commission, Judiciary | Business Community Litigants | 2006-9 | 1. Lower cost of adjudication 2. Reduction in the number of days and cost in | Under GJLOS | MOJ&CA |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|---|--|---|--|---|---|---------------|--|----------------------------------|---|
| | administration of justice | | | | | | | resolving commercial disputes | | |
| | 3. Decentralize commercial courts to the Provinces in Kenya. | 1. Cost of dispute resolution 2. Level of backlog of commercial cases | Level of backlog of commercial cases | Commercial cases allocated one day in the provinces | Judiciary State Law Office | Business Community & Individuals Lawyers | 2006-9 | Speedy and cheaper resolution of commercial disputes | 7,000 (Kshs. 525m) | Law Reform Commission |
| Enhance capacity of the Judiciary | 1. Digitalization of Court Proceedings to improve judicial administration system ¹ | Time in resolution of cases. | ICJ, KACC and TI reports and survey. | Judicial reforms has been ongoing in the last 3 years GJLOS programme | Judiciary MOJ&CA, | Ministry of Finance Both State and Non-State actors. Chartered Institute of Arbitrators (Kenya), KACC | 2006-2008 | Efficient Judicial system | 3,500 (Ksh262.5M) | Judicial Service Commission ICJ LSK |
| | 2. Increase no Judges & magistrates | 1. Backlog of cases 2. Average no days it takes various types of cases to be determined | Court Records Media | Statute Law Miscellaneous Amendment Bill has proposed increase of no of Judges from 50 to 70 | Judiciary MOJ&CA | State Law Office Business Community Police Prisons Department | 2006 on-going | Speedy administration of Justice | Judiciary Budget | ICJ KHRC |
| | 3. Appoint more state counsels as prosecutors | 1. Percentage of Legally qualified prosecutors 2. Proportion of successful prosecutions | Records at Registrar of High Court Police Crime statistics | State Law Office has recently recruited more State Counsels | State Law Office Office of President | Kenya Police LSK Judiciary CSOs | 2006-2008 | Enhanced rule of Law | 2,400 (Kshs. 180m) | State Law Office LSK |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|---|---|-----------------------------------|---|---|---|------------------------|--|----------------------------------|--------------|
| | 4. Implement anti-corruption programmes in the judiciary | 1. Level of confidence of the business community in the judicial system. 2. Reduction in number of complaints. | Report of Service Delivery Survey | Judges and Magistrates under enquiry | Chief Justice MOJ&CA | | 2006 on - going | | Judiciary Budget | ICJ |
| Evaluate ax extent the reform programmes | 1. Extent GJLOS programme to institutions and Ministries perceived to have poor service delivery e.g. NEMA 2. Evaluate effectiveness and impact of reform programmes | 1.Improvement in service delivery 2. Evaluation Report | Opinion Surveys TI Reports | GJLOS already covering law and order enforcement agencies | MoJCA | Ministries SOEs | 2007 | | Under GJLOS | MoJCA |
| INFRASTRUCTURE | | | | | | | | | | |
| A. Roads | | | | | | | | | | |
| Improvement in state of the road network. | 1. Develop and communicate road rehabilitation and development policy and master plan. | Policy Document on National Road Network | Kenya Road Board Reports | Identify and create by-passes along major routes. | MoRPW, Kenya Roads Board,(KRB) Local Authorities. | Local Authorities, motorists and transportation agencies. | 2005-2008 and on-going | Road network rehabilitated and expanded. | 2,000,000B (Ksh150B) | KRB |
| | 2. Build capacity | 1. No. of | Ministry of | | MoRPW | Institute of | 2006 and on- | | Kenya Road Board | MoRPW |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands | M & E Agency |
|---|---|--|--|--|--|---|-------------------|--|---|---|
| | to implement the plan | Road contractors licensed in the top categories | Roads & Public Works (MoRPW) database | | Local Authorities Kenya Road Board | Engineers of Kenya Local Contracts | going | | | |
| | 3. Rehabilitate, construct and upgrade the country's road network | 1. Kilometers of renovated roads 2. % of Roads rehabilitated are rural access roads 2. Kilometers of new roads added to the network. 3. Cost of transportation. | KRB Reports Transporters' Associations Reports e.g. Matatu Owners Association | LATF used for road rehabilitation Major Road rehabilitation works on-going around the Country | MoRPW Local Authorities Kenya Road Board | All Sectors of the Economy Parliament Kenya Wild Life Society General Public | 2006 and on-going | Accelerated economic Growth Lower Cost of doing business | Fuel Levy Ministerial Budgets Development Partners Est. \$2 Billion (Ksh 150 Billion) | KRB Parliamentary Committee on Transport |
| Address Road congestion and traffic jams in major towns especially Nairobi | 1. Adopt and implement Urban Transport Policy | | Road Board Budget reports | | Kenya Roads Board, MoRPW, Local Authorities. | Local Authorities, motorists and transportation agencies. | 2005- 2008 | 1. Roads in Nairobi and other major towns rehabilitated. 2. Road network in Nairobi and major towns reorganized and improved. | Funding will be through concessioning | |
| | 2. Allocate more resources to urban roads rehabilitation from the fuel levy | 3. Percentage of fuel levy allocated to top 10 urban areas | KRB Reports | Funds already being given but we | MOR&PW MOF Kenya Road Board (KRB) | | 2006 & on-going | | | KRB |
| | 3. Address traffic congestion in Nairobi Central | 1. Time taken to travel. to office | 1. Survey of major roads leading out of | 1. Construction of by-passes in Nairobi already | MoRPW Ministry of Local | City Council of Nairobi | 2006-2008 | 1. Lower pollution levels. | Higher Productivity | Automobile Association of East Africa |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|--|---|---|---|---|---|-----------|---|---|------------------|
| | Business District (NCBD) | 2. Pollution levels | Central Business District of Nairobi. 2. NEMA reports on pollution in Nairobi. | designed 2. A multilane road through Nairobi is proposed | Government | Motorists Business Community | | 2. Savings on fuel usage | Lower Pollution | |
| Promote accessibility in the rural areas | Develop and maintain rural access roads | Kms of rural roads developed and maintained | MoRPW annual performance contract report | Labour –based Roads 2000 programme | MoRPW | Rural population Motorists Transportation agencies | 2005-2008 | 500km of roads developed and maintained | 103 (Ksh 7.725M) | Kenya Road Board |
| B. Rail Network | | | | | | | | | | |
| Improve the state of the rail network and increased use of rail transport. | 1. Rehabilitate, expand and modernize the rail network and systems. | 1 Volume of cargo and number of passengers ferried. 2. Cost and efficiency of Transport. | Ministry of Transport (MoT) Statistics | Concessioning of Kenya Railways Corporation already agreed | MoTC, Local Authorities, Kenya Railways Corporation. Government | Transporters, Local Authorities, Businesses General public | 2005-2008 | 1. Efficient and modernized rail network 2. Decongestion of Port of Mombassa | 90,000 (Ksh6.75B) To be done by concessioner | MoT |
| | 2. Participate in the construction of a rail line from Nakuru to Southern Sudan. | 1. Business volume with South Sudan 2. Cost of transportation | Department of External Trade Statistics | | Ministry of Transport | | 2007 | Lower Road maintenance Opening of North Rift | | OP |
| C. Air Transport | | | | | | | | | | |
| Increase the use of air transport | 1. Modernize navigation aids in Kenya airspace | 1. No of Air Carriers Attract more airlines to Kenya 2. IATA rating | KAA database IATA Audit Report | Airlines are being encouraged to fly to Kenya. E.g. Qatar Airlines. | Kenya Civil Aviation Authority (KCAA) | Airlines Kenya Airports Authority | 2006-2007 | Improved usage of air transport both cargo and business/leisure travel | Budget to established | MoT |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|--|--|---|--|---|---|-------------------|--|----------------------------------|----------------|
| | | of Country Air-space | | | | | | | | |
| | 2 Expansion of Jomo Kenyatta Airport (JKIA) and other Airports | 1. No. of flights landings in Nairobi & Mombasa 2. Rating of our two Airports by IATA | | Expansion of JKIA under implementation | Kenya Airports Authority (KAA) MoT, Kenya Airways | | 2006-2008 | | KAA Funding | MoT |
| | 3. Review Management & maintenance of small air strips | 1. No. of Tourists using the small airstrips 2. State of maintenance | KCAA reports | | MoT Office of the President KAA, KCAA | Tourist Industry | 2006 | Safer Airports More Tourists using | Policy issue | |
| D. Access to water | | | | | | | | | | |
| Access to clean & portable water in the country. | Implement National Water policy and programmes | Number and % of people with access to clean water. | Central Bureau of Statistics (CBS) data | A number of local authorities have privatized the provision of water services and this is expected to improve accessibility to water in their areas of jurisdiction. | MoWD, Local Authorities, Water Service Boards, water service companies | Local Authorities, water consumers. Businesses and individual citizens | | Improved access to water | 500,000 (Ksh37.5B) | CSOs |
| E. Port services | | | | | | | | | | |
| Improve Mombasa Port Services. | 1. Modernize and increase capacity of the Port (equipment, training etc.) equipment | 1. Volume of transit cargo handled by the Port per year. 2. Volume of | Kenya Ports Authority statistics. | On going discussion on commercialization of the Port | Kenya Ports Authority Ministry of Transport | Business Community Shipping Agents | 2006 and on-going | Lower cost to business & Country Mombasa Preferred Port | KPA Funded | EMU MoT |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|---|--|--|---|------------------------------------|--|-------------------|---|----------------------------------|-----------------|
| | | cargo handled per year 3. Demurrage charged by ships | | | | Neighbouring Countries | | of discharge by neighbouring countries | | |
| | 2. Modernize and simplify custom clearance procedures | 1. Number of days taken to offload ships and clear goods. | 1. Kenya Ports Authority (KPA) statistics. 2. Port user survey. | Customs and Excise Department has recently introduced computerized clearing procedures, which are expected to reduce the number of days taken to clear goods and reduce corruption. | KRA KPA MoT | Business Community Neighbouring Countries Clearing Agents Transporters | 2005 and on-going | Lower cost to business & Country Mombasa Preferred Port of discharge by neighbouring countries | KRA Budget | EMU MOF |
| | 3. Stamp out corruption at the Port | 1. No. of Containers reported missing 2. KRA Tax Collection | 1. National surveyor on corruption 2. Kenya Ports Authority statistics. | 1. Kenya Ports Authority recently purchased 5 new cranes from China, which have since been installed. | KPA, MoTC, , KRA K | Importers, exporters. Business Community and general public. Countries served by Mombasa Port | 2005-2007 | 1. Port services improved. | - | KACC EMU |
| F. Information and Communications Technology (ICT) | | | | | | | | | | |
| Improve quality and access to land line telephony | 1. Privatize Telkom Kenya. | 1. Number of new fixed telephone lines. 2. Proportion of Digital exchanges. | CCK and CBS statistics Telkom Kenya database | 1. Plans are underway to commercialize/ privatize Telkom Kenya with a view to making it more efficient. | MoIC, CCK, Telkom Kenya, | Business Communities, ICTs service Telecommunication Service providers., Providers of Kenya (TESPOK) | 2005-2008 | 1. Reduced cost of telecommunications. 2. Higher and wider access to telephone | - | CCK |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|--|--|-------------------------------------|--|---|---|-----------------|--|--|--------------|
| | | | | 2. In 2005, new digital exchanges have been commissioned. | | General Public | | (telephone density) | | |
| | 2. Eliminate the existing monopoly in land line services | 1. Regional Telephone Operator licensed 2. Licensing a second national operator | CCK Reports | Monopoly of Telkom Kenya has come to an end | CCK ₂ MoIC, Telkom Kenya | | 2007-2008 | | Policy Implemented | CCK |
| | 3. Promote adoption of wireless telephone to enable rural access to telephone and internet | Rural access to internet. | CCK Reports | The mobile telephone operators expanding their network Telkom has also a limited no. of wireless subscribers | Mobile Telephone operators Telkom Kenya | MoIC, CCK ICT Industry Rural Communities | 2006 & on-going | | Industry funded | CCK |
| Reduced Costs of making local and international calls | 1. Kenya Participate in the undersea Fibre cable link between Durban and Port Said | 1. Cost of communications 2. Quality of Connectivity | Funding and participation confirmed | Discussions have been going the last 3 years on the Eastern Africa | MoIC Cabinet | Total Economy Investment Community Other Eastern Africa Countries | 2007-2008 | Attract of ICT and other investors Quality & Competitive cost of Communications | 200,000 (Ksh 15b) Donor Funding or Nairobi Stock Exchange | MOF |
| Improved internet access | 1. Improve fixed line accessibility and efficiency. 2. Increase the bandwidth. 3. Adopt wireless telephony | 1. Number of internet users. 2. Degree of internet access outside major urban areas | Statistics from CCK and TESPOK | 1. International gateway recently liberalized. 2. Mobile telephone operators have been expanding | Key players in ICT | KAM, KEPSA, Business Community ICTs service providers, general consumers. | 2005-2007 | Improved efficiency of telecommunication services. | 13,500 (Ksh1.0125B) | CCK |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|---|--|--|--|---|--|-----------|--|---------------------------------|-------------------------------|
| | technology | | | networks in rural areas and introduced internet access facility. 3. Telkom Kenya has recently been introducing wireless telephony | | | | | | |
| Fully integrate ICT in the economy. | Develop and implement the National Information, Communication and Telecommunications (ICT) Policy. | A ICT policy passed in Parliament | Policy document | A draft ICT Bill has been developed through a stakeholders participatory awaiting enactment | MoIC, State Law Office CCK, Telkom Kenya, Telecommunication Service Providers of Kenya (TESPOK) | KAM, KEPSA, ICTs service providers, general consumers. | 2006 | Policy framework for ICT developed and approved. | 100 (Ksh7.5M) | ICT Industry and Associations |
| G. Electricity | | | | | | | | | | |
| 1. Increase access to electricity | 1. Increase generation and distribution capacity 2. Develop and implement an aggressive and equitable rural electrification programme. | 1. Number of people and rural outposts connected. 2. Per capita power consumption | CBS and Kenya Power & Lighting Co. (KPLC) data | 1. On-going rural electrification programme and expansion of the generation stations at Sondu-Miriu, Ol-Karia, among others. 2. Plans in place for Government to privatize part of KENGEN in 2006 3. A Company to coordinate | MoE, KENGEN, KPLC, independent power producers. | KAM, KEPSA,, KNCCI, other general consumers. | On-going | Access to electricity increased. | 70,000 (Ksh5.25B) | ERB |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|--|---|---|--|--|---|-----------|---|----------------------------------|--------------|
| | | | | development of geothermal power being formed | | | | | | |
| 2. Improve quality and reliability of electricity connectivity. | <p>1. Rehabilitate, modernize and strengthen power distribution system.</p> <p>2. Liberalize power distribution.</p> <p>3. Develop a national energy policy.</p> | 1. Number and duration of power supply interruptions. | KPLC statistics on power outage Survey | 1. Power sector reform programme has been ongoing. | KPLC MoE, KENGEN, independent power producers. | KAM, KEPSA., KNCCI, other general consumers | 2006-2007 | Reliability of electricity supply enhanced. | 1,000 (Ksh75M) | ERB |
| 3. Achieve competitive cost of electricity compared to other COMESA countries. | <p>1. Reduce electricity losses within distribution costs.</p> <p>2. Examine the viability of importing power.</p> | <p>1. Level of distribution losses.</p> <p>2. Narrowed gap of electricity cost (compared to South Africa and Egypt)</p> | Electricity Regulatory Board (ERB) and Kenya Association of Manufacturers' (KAM) data | Consideration of entering the Southern Africa power pool under investigation | ERB, MoE, KENGEN, KPLC | KAM, KEPSA., KNCCI, other general consumers | 2006-2007 | 1. Cost of electricity reduced. | - | ERB |
| 4. Achieve shorter and predictable period in electricity connection (hook ups). | Set a benchmark for connection and ensure implementation. | No. of days taken to receive new connection (from application to connection) | KPLC data | GoK now requires all Parastatal CEO's to sign performance contracts. | KPLC , MoE, KENGEN independent power producers. | KAM, KEPSA., KNCCI, other general consumers | 2006-2007 | Faster connections | - | MoE |
| H. Taxation | | | | | | | | | | |
| Reduction in level and multiplicity of taxes. | Undertake an impact assessment to determine the effect of the tax rate on individuals and corporations | <p>1. Rate of income and corporate tax.</p> <p>2. Number of tax payers</p> | KRA Report and Annual Budget speeches | <p>KRA has been exceeding its tax collection targets</p> <p>KRA taking</p> | MOF, KRA and other agencies | Corporate and individual taxpayers | On-going | More equitable tax regime | 300 (Ksh 22.5) | KRA |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|--|--|---|---|---|---|--------------------------------|--------------------------------------|----------------------------------|--------------|
| | and review individual and corporate tax accordingly. | 3. Compliance with tax payment. 4. % of taxes paid by business. 5. Total taxes revenue collected | | action to expand its tax base | | | | | | |
| Speed up VAT refunds by KRA | Develop and communicate policy & timeframe of VAT refunds | Value of VAT refunds annually held by KRA | KRA Reports | | KRA | Taxpayers Ministry of Finance CBK | 2006 & on-going | | - | MoF |
| I. Other Major issues affecting businesses activities | | | | | | | | | | |
| 1. Reduce the high levels of crime and insecurity. | 1. Reduced crime rate and insecurity 2. Demonstrated success in the fight against crime and insecurity. 3. Reform police and prison services | 1. Crime rate 2. Cost of security to businesses. 3. Level of economic activities at night. | Police Crime Reports | 1. Community policing being introduced 2. GJOLS programme addressing the police and prison reforms | Commissioner of Police Minister in Charge of Internal Security | Business Community and General public | On-going | Insecurity and crime levels reduced. | Under GJLOS | CSO |
| 2. Reduce High levels of corruption in the country. | 1. Demonstrated will to fight corruption. 2. Review the number, effectiveness and relevance of various institutions in the | 1. Bribery index. 2. Cost of doing business | 1. Annual Transparency International Index 2. Business Associations periodical poll of their members | 1. KACC and other anti-corruption organs have been established | KACC, Kenya Police, MOJ&CA. | Investors and the general public. | 2006 and on-going 2006-2007 | Reduced levels of corruption | - | CSO |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|--|--|--------------------------------------|--|---|---|------------------------------------|--|---------------------------------|----------------------|
| | fight against corruption. | | | | | | | | | |
| 3. Aggressive and sustained marketing of Kenya and its products internationally. | Develop a marketing strategy | 1. Number of tourists. 2. Number of new investors. 3. Export levels. | Annual Statistical Abstract from CBS | 1. Tourism sector has been marketing the country with good returns 2. Ministry of Trade advertisement on M-Net 3. Ministry of Information and Communication has indicated it will be recruiting people abroad to market Kenya. | MoTI, MOFA(Kenya Missions Abroad), MoTW (Kenya Tourist Board), MoCM Marketing agencies. | Exporters, producers, general public. | 2006 2006-2007 and on-going | More people internationally knowledgeable about Kenya. | 4,000 (Kshs. 300m) | Kenya Export Council |
| 4. Improve business and entrepreneurial skills especially in the MSE sector. | 1. Develop business development institutions 2. Strengthen tertiary level educational institutions. | 1. MSEs survival rate. 2. % of MSE's transforming to SMEs | CBS data. MSE Council data. | The Sessional paper No. 2 of 2005 proposes an MSE Council to lead in the development of MSEs | MoLHRD , Ministry of Education (MoE) National Council of Small Enterprises (NCSE),. | MSEs, KAM, KIE, MoTI, MoLG, KIM, KEPSA, AMFI, | 2006 and on-going | Improved national entrepreneurial capacity | 1,500 (Ksh112.5M) | |
| 5. Address increased levels of brain drain. | 1. Address inability to attract and retain Kenya professionals. 2. Attract those choosing to remain abroad to invest in the | 1. No of Highly trained Kenyan professionals returning after overseas training.. 2. Funds remitted by | Immigration Department | Kenyans Abroad Association in place Go | Directorate of Personnel Kenya's missions abroad. | Kenyans Abroad | On-going | Deficiency of professionals in some disciplines addressed. | 200 (Kshs. 15m) | FKE |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|---|---|---|---|---|--|-------------------|--|----------------------------------|--------------|
| | country | Kenyans in the Diaspora. | | | | | | | | |
| 6. Enhance access to market and market information by MSE's | <p>1. Promote quality exports aggressively.</p> <p>2. Create modern information mechanisms, especially outside Nairobi.</p> | <p>1. No. of firms accessing market information</p> <p>2. Growth of MSEs</p> | Annual Statistical Abstract from CBS | EPC is improving its Centre for Business Information in Nairobi | MoTI, Investment Promotion Council (IPC,) MoC&MD | MSEs | 2006 and on-going | <p>1. Higher growth and contribution of MSEs to GDP.</p> <p>2. Increased employment levels</p> | 500 (Ksh 37.5M) | IPC |
| OBJECTIVE 2: ENSURE THAT CORPORATIONS ACT AS GOOD CORPORATE CITIZENS WITH REGARDS TO HUMAN RIGHTS, SOCIAL RESPONSIBILITY AND ENVIRONMENTAL SUSTAINABILITY | | | | | | | | | | |
| A: Labour laws | | | | | | | | | | |
| 1. Make Labour laws relevant for enhanced economic growth and employment creation | Review, harmonize and communicate revisions of labour laws | <p>1. Effectiveness and relevance of the Labour Laws.</p> <p>2. Industrial relations</p> | No of labour laws reviewed | A taskforce has been working on labour laws review | MoLHRD, State Law Office, Law Reform Commission | Trade Unions, Employees and employees | 2005-2007 | Labor laws reviewed and harmonized. | 250 (Ksh18.75M) | FKE COTU |
| 2. Build enforcement capacity at Ministry of Labour and Human Resource Development (MoLHRD). | <p>1. Evaluate and Build capacity in MoLHRD to play its regulatory & enabling role</p> <p>2. Enforce child laws & protection of children rights</p> <p>3. Enforce observance of labour laws in EPZ</p> <p>4 Combat sexual harassment in workplace</p> | <p>1. Budget allocation to MoLHRD</p> <p>2. Evaluation report</p> <p>3. Mechanisms in place for alerting and reporting child labour violations</p> <p>4. No. of Complaints from EPZ</p> | <p>1. Ministry of Labour Reports</p> <p>2. Kenya Human Rights reports on Labour related human rights violations</p> | Kenya has ratified almost all International Labour Laws. | MoLHRD, | Employers and employees and Trade Unions | 2005-2007 | Higher compliance with Labour Laws and human rights. | 1,000 (Kshs. 75m) | CSO |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|---|---|---|--|--------------------------------|----------------------------|------------------------|--|---|--------------|
| | 5..Enforce employees' right to unionize | labour violations 5.Period it takes to resolve cases 6. Signing and operationalizati on ILO Convention 87 | | | | | | | | |
| 3. Strengthen role and capacity of the trade union movement. | Training of Trade Unions Movement in areas of relevant labour legal & regulatory framework, fight against HIV/AIDS, finance and, environmental management | 1. No. of training courses launched 2. No. of COTU officials trained | COTU Returns reports | | COTU | MoLHRD, FKE ILO | 2006-2007 | Effective & Professional Trade Union movement | 200 (Ksh 15 m) (COTU to request ILO funding) | CSOs |
| 4. .Address corruption in labour inspection and labour movement | Mechanisms put in place for detecting and alerting on corruption at labour inspection and union officials levels | 1. No. of complaints received 2. Trend in no. of strikes | MoLHRD annual and quarterly reports | COTU public acknowledgment that there could be corruption among its ranks | KACC MoLHRD COTU | Shopstewrds | | | 100 (Ksh. 7.5m) | |
| B: Good Corporate Citizenship | | | | | | | | | | |
| 1. Strengthen Public/ Private Sector alliance in HIV/AIDS management | Engage and create partnership with private sector in the war against HIV/AIDS. | 1. Number of companies engaged 2. HIV/AIDS rate of infection | Ministry of Health and National Aids Control Council Statistics | Kenya HIV and AIDS Business Council coordinate the programme for over 200 large Companies. | Government, Employers and NACC | Employees, and Communities | 2005-2006 and on-going | More corporations adopting HIV/AIDS policy in their workplace and nearby communities | 50 (Ksh3.75M) | CSO |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|---|--|---|--|---------------------|--|---|---|---------------------------------|--|
| 2. Enhance CSR adoption and practices in the Country | 1. Develop awareness and advocacy programmes on CSR | No of corporations with CSR programmes. | Reports from Ufadhili Trust and KHRC. FKE, KHRC. | KEBS | General Public | 2005 – on-going | Compliance with GCC enhanced. | | 20 (Ksh1.5M) | CSO |
| | 2. Develop community needs based programmes and enlist adoption by corporations | No. of Corporations with CSR programmes | CBOs Reports | CBOs Corporations | NGOs | | | | | |
| 3. Involve youth in economic activities | 1. Finalise and implement Youth policy | 1. Budget allocation to youth programmes e.g. Young Kenya Entrepreneurs 2. Level of unemployment among the youth | Ministry of youth established Strategic Plan developed Youth Policy being developed | Ministry of Youth | | 2006- 2008 | | | 26,700 Ksh 2,002,500,000 | |
| C: Environmental Sustainability | | | | | | | | | | |
| 1. Enhance capacity of NEMA to play its regulatory role | 1. Fully operationalised EMCA 2. Review and strengthen NEMA | 1. NEMA budget & establishment 2 Number of citations and prosecutions for environmental degradation 3. No. of complaints from public 4. Average no. | 1.NEMA State of Environment Reports 2. Tribunal Reports 3.Reports through Media | 1. Under the Environmental Management and Coordination Act, corporations are now conducting Environmental Impact Assessment (EIA) and Environmental Audits (EA) and submitting | NEMA, MoENR, | Lead agencies, private sector, Local communities, industries, Development partners, NGOs | 2005 and on-going NEMA improved. | 1. Timely delivery of services 2. Sustainable environmental care | 75 (Ksh5.625M) | CSO MoPND (M & E dept) and line Ministries |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|---|--|--|---|--|--|-------------------|--|--|---|
| | | of days taken to issue EIA certificate | | their reports to NEMA. | | | | | | |
| 2. Build national recycling capacity and adoption of best practices | 1. Develop and implement best practices in recycling and waste disposal 2. Develop and implement policy on light polythene | 1. No of best practices implemented 2. Light polythene Policy in place and operational | NEMA state of environment reports | Development of a strategy on plastic waste management for Nairobi city | NEMA Clean Production Technologies Industry | Local Authorities Manufacturing industries, local communities CBO's, NGO's in the Public Consumers of plastics, Government taxes, plastic waste collectors | | Cleaner environment | | Manufacturing industries, local communities CBO's, NGO's in the Public Consumers of plastics, Government taxes, plastic waste collectors |
| OBJECTIVE THREE: PROMOTE ADOPTION OF CODES OF BUSINESS ETHICS IN ACHIEVING OBJECTIVES OF THE CORPORATION | | | | | | | | | | |
| 1. Fight against corruption | 1. Demonstrate political will and commitment in fight against corruption | 1. Cases of high profile prosecutions 2. Ministerial resigning or stepping aside where implicated or corruption take place under their watch 3. Operationalisation of enacted laws to fight corruption | 1. KACC Reports 2 Corruption surveys Indices | 1. prosecution capacity being expanded 2. Ministerial code of conduct 3. legal capacity and institutional framework on-going 4. Programme in place for awarding exemplary business practices | Government | Investors Business Community Development Partners | 2005 & on-going | | Development of national culture that detest corruption | KACC CSO |
| 2. Change public attitudes and perceptions that glorify corruption and ill gotten wealth. | 1. Implement a sustained well- Coordinated and systematic public awareness campaign to change the | | 1. KACC Reports 2. Corruption surveys Indices | 1. The National Anti Corruption Campaign Steering Committee has been set up but has not | Kenya National Anti-Corruption Campaign Committee KACC, | General Public | 2006 and on-going | Current attitudes and perceptions on corruption changed. | 4,000 (Ksh300M) | CSO |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|--|--|---|--|--|----------------|------------------------|---|---------------------------------|------------------------|
| | attitudes, perception and behaviours that enhance corruption. 2. Make economic crimes high risk activity 3. Embed ethical, transparent and accountable behaviour in public service through staff performance contracts 4. Incorporate ethics in the school curriculum | | | commenced operations. 2. GJLOS has programmes to address the public service | MOJ&CA, Ministry of Education | | | | | |
| 3. Address Corruption in procurement in both public and private sector | 1. Private Sector business and professional Associations develop mechanisms and capacity to monitor and enforce sector code of business ethics 2. Operationalize the new Procurement and Disposal Act. 3. Institute transparency in procurement of security related | 1. Holding the supply side of corruption as equally guilty as the demand side. 2. Sector codes in place e.g. hospitality sector , manufacturing , financial sector etc 3. Witness Protection Act (Whistle Blower) in place | 1. Corruption surveys Indices 2. Regular Reports from business and Professional Associations 3. Media Reports | 1. Business men involved in Anglo-leasing cases under investigation alongside public officers 2. The Public Procurement and Disposal Act 2005 passed 3. Government has stated publicly that security projects will be carried out openly and | Professional & business associations Ministry of Finance MOJ&CA, KACC, | General Public | 2005-2006 and on-going | 1. Enhanced transparency and competitiveness in procurement in the public and private sectors. 2. Cost effective procurement of goods and services | Ministerial Budget | CSO and Private Sector |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|--|--|--|---|---|---|-------------------|--|----------------------------------|---------------------|
| | projects 4 Enhance capacity for early detection and voluntary sharing information on economic crimes | | | Parliament will have a watchdog role 4. KAM has in place a manufacturing code of ethics | | | | | | |
| 4. Create a free, accountable and responsible media. | 1 Develop legal framework to enhance investigative journalism 2. Review operations of Official Secrets Act . 3. Media Council to strengthen self – regulatory role. 3. Build capacity in investigative journalism training | 1. Witness Protection Act (Whistle Blower) in place 2. Policy on 3. No. of cases on corruption exposed by media 4. Level of public awareness on impact of corruption on daily lives | Media Report Report of Kenya Media Institute. | Witness Protected Bill prepared Media Owners' Association have been talking of enhancing self regulation Media Bill being drafted | State Law Office Media Council Kenya School of Journalism | Media houses, journalists both in print and electronic. | 2006 and on-going | Quality and capacity of journalism and media | - | Media Council Mol&C |
| OBJECTIVE FOUR: ENSURING THAT CORPORATIONS TREAT ALL THEIR STAKEHOLDERS (SHAREHOLDERS, EMPLOYEES, COMMUNITIES, SUPPLIERS AND CONSUMERS) IN A FAIR AND JUST MANNER | | | | | | | | | | |
| 1. Strengthen legal framework for protecting all classes of shareholders and other stakeholders. | 1. Revise and modernize the Companies and State Corporations Acts as well as the Bankruptcy, Receivership and Liquidation Laws. 2. Incorporate in the revised Companies Act | 1. Revised Companies Act published 2. No of Shareholders' complaints 3. Level of investments by small shareholders | Revised Legal framework in place | The Law Review Commission is reviewing business laws under the GJLOS programme. | State Law Office Law Reform Commission | Shareholders and other stakeholders in a Company | 2006-2007 | Legal framework amended. | - | CSO |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|--|---|--|--|--|--|---|-----------|--|----------------------------------|------------------------|
| | provisions that allow for derivative suits where aggrieved minority shareholders can sue Directors on behalf of Company | | | | | | | | | |
| 2. Achieve greater awareness levels among shareholders and members of cooperatives on their rights. | <p>1. Develop and implement programmes to educate shareholders and stakeholders on their rights.</p> <p>2. Strengthen Shareholders Associations</p> | <p>1. Membership of Shareholders Associations.</p> <p>2. Programme in place and funding mechanisms identified</p> | <p>Shareholders Association reports.</p> <p>Quality of engagement at Annual General Meetings</p> | A Shareholders Association has been established but needs to be strengthened. | <p>Shareholders Association</p> <p>MoF Private Sector</p> <p>Capital Markets Authority</p> | Shareholders and Cooperative Members | 2006-2007 | Shareholders awareness level improved. | 70 (Ksh 52.5M) | Private Sector |
| 4. Strengthen Consumer /consumer protection | <p>1. Enact counterfeits and contraband goods Act</p> <p>2. Develop a national policy on consumer protection</p> <p>3. Strengthen capacity of Kenya Bureau of Standards</p> <p>4. Strengthen CMA and CBK capacity to detect cases of inside trading</p> | <p>1. Act in place</p> <p>2. Policy developed and implementation started</p> <p>3. Cases of insider trading identified</p> | <p>1. CMA Reports</p> <p>2. CBK inspection reports</p> <p>3. Media reports</p> | <p>Govt. and Private has prepared a draft bill on counterfeits</p> <p>KeBS has been decentralizing its operations to the provinces</p> | <p>Ministry of Industry CMA</p> <p>CBK</p> | <p>NSE</p> <p>Stockbrokers</p> <p>Financial Institutions</p> <p>Investors</p> | 2007 | | | Consumer Organisations |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$) Thousands) | M & E Agency |
|---|---|--|-----------------------|---|---|--------------------------|-------------|---|----------------------------------|--------------|
| | 5. Advocate for criminal prosecution by directors | | | | | | | | | |
| OBJECTIVE FIVE: PROVIDING FOR ACCOUNTABILITY OF CORPORATIONS, DIRECTORS AND OFFICERS | | | | | | | | | | |
| 1. Strengthen Shareholders capacity to participate at AGM & hold corporations to account | 1. Provide seed money to enable the Association to start operations | 1. Funds allocated 2. Office established and its existence publicized | Media Advertisement | 1. Registration of the Shareholders Association under Societies Act completed 2. Interim official in place | MoF CMA Centre for corporate Governance Interim in shareholders Association Official | 2006-2007 | 2006 – 2007 | Boards of Directors more accountable. | 300 (Kshs. 22.5m) | CMA CCG |
| 2. Achieve financial sustainability of Institute of Directors and Shareholders Association | Provide funding for the two bodies in the formative first 4 years | Budgetary allocation | | 10 DK levying membership fees. | MoF | CMA and other regulators | 2006-2007 | Vibrant 10 DK and Shareholders Association. | 300 (Kshs. 22.5m) | MoF |

**CORPORATE GOVERNANCE
TOTAL**

US \$ = 4,946, 658,000
KSH = 370,999, 350,000

PLAN OF ACTION

D: SOCIO - ECONOMIC

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|---|---|--|---|---|--|-----------|---|---------------------------------|--|
| STANDARD AND CODES | | | | | | | | | | |
| Create awareness of standards & codes | Organize workshops for Government departments, civil society, NGOs and all relevant stakeholders | All government departments and all implementing agencies have a working knowledge of the treaties & instruments | AG Chambers records | Enacting and popularization of relevant Acts of parliament, for instance the Children's Act, which is a domestication of the UN Conventions on the Rights of the Child (CRC), | Ministry of Local Government, Ministry of Justice and Constitutional Affairs Parliament Ministry of Foreign Affairs | Civil Society Organizations NGOs Government Departments | 2007-2009 | Implementation of the respective Standards & Codes sensitized | 30,000 (Ksh 22.5M) | Ministry of Planning and National Development Civil Society Organisations |
| Prepare popular versions of the standards and codes | Make CDs of international treaties and instruments available to the public in government printers Provide a brief of the implemented treaties on the web | Easy accessibility of Standards and Codes in an electronic form | Ratification records | Computerization of the various departments to ensure electronic information storage and management, GJLOS | Ministry of Justice and Constitutional Affairs Parliament Ministry of Foreign Affairs | Public and Private Libraries Central Bureau of Statistics | 2007-2009 | All Standards and Codes stored electronically | 18,000 (Ksh 1.35M) | •Ministry of Planning and National Development •Civil Society Organisations |
| Create regular and up-to-date data on compliance and enforcement of standards and codes by government departments and institutions | 1. Resource the Central Bureau of Statistics to provide adhoc information on the ministry activities 2. Enact into law the Freedom of Information Bill | Number of current and user friendly data on the economy which are easily accessible The Freedom of Information Law | Economic Survey, Statistical Abstracts (CBS), Special Reports | Facilitation of regular assessments on various socio-economic development issues STATCAP | Ministry of Finance Ministry of Planning and National Development Parliament Attorney General | Civil Society Organizations Universities and Research Institutes | 2006-2007 | Up-to-date time series and cross sectional micro and macro data on the various sectors of the economy Parliament to | 1,000,000 (Ksh 75M) | Office of the President |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|--|---|---|--|---|--|-----------|---|---------------------------------|--|
| | | | | | | | | pass the Freedom of Information Bill | | |
| OBJECTIVE 1: PROMOTION OF SELF-RELIANCE IN DEVELOPMENT AND CAPACITY FOR SELF-SUSTAINING DEVELOPMENT | | | | | | | | | | |
| Promote self-reliance by mobilizing domestic resources | Undertake a national civic education and awareness campaign on the benefits of paying taxes. | Tax Revenue Performance | Economic Surveys; Statistical Abstracts | Kenya Revenue Authority National Programmes | Kenya Revenue Authority; Ministry of Finance | Civil Society Organizations NGOs | 2006-2008 | Reduced proportion of donor funding; Greater use of local resources | 500,000 (Ksh 37.5M) | Ministry of Planning and National Development |
| Accelerate adoption and implementation of bottom-up planning system | 1. Strengthen self-help groups by providing assistance in the form of advisory services 2. Widen stakeholder consultations and sensitization of the general public on national issues | Satisfactory stakeholder involvement in issues of national planning | Civil Society Organisations Reports | Opening doors to encourage participation of stakeholders for synergy in implementation | Ministry of Planning and National Development Ministry of Finance Line Ministries | Civil Society Organizations NGOs and CBOs | 2006-2007 | Wider and effective consultations all stakeholders in national development programmes | 200,000 (Ksh 15M) | Civil Society Organizations Community Based Organizations |
| OBJECTIVE 2: ACCELERATE SOCIO-ECONOMIC DEVELOPMENT TO ACHIEVE SUSTAINABLE DEVELOPMENT AND POVERTY ERADICATION | | | | | | | | | | |
| Initiate programmes for poverty alleviation | 1. Implement the Social Fund | Number of Persons receiving support | Annual Reports, Economic Surveys, Statistical Abstracts | Government is establishing Kenya Social Fund | Ministry of Planning and National Development; CDF | The Ministry of Youth | 2006-2009 | Increased number of Persons receiving support | 5 m (Ksh 375M) | The Ministry of Youth |
| | 2. Implement the slum-upgrading and low-cost housing | Number of New Housing Units Number of upgraded settlements | Annual Reports, Economic Surveys, Statistical Abstracts | Slum-upgrading Training on Appropriate Building Technologies for low cost housing | Ministry of Housing, National Housing Cooperation | UNHABITAT Slum dwellers Relevant government ministries, civil societies, | 2006-2015 | Increased New Housing Units | 3 m (Ksh 225M) | Ministry of Planning and National Development |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|--|---|---|--|--|--|-----------|---|---------------------------------|--|
| | | | | | | private sector | | | | |
| | 3. Implement the Vulnerability Programme | Number of Persons receiving support | Annual Reports, Economic Surveys, Statistical Abstracts | KENSAF, CDF | Ministry of Planning and National Development; CDC | Slum dwellers | 2006-2009 | Increased number of Persons receiving support | 7 m annually (Ksh 525M) | Ministry of Planning and National Development |
| Enhance Youth Employment | Implement a revolving youth fund for the promotion of self-employment | Employed Youth | Annual Reports, Economic Surveys, Statistical Abstracts | KENSAF, CDF | Ministry of Planning and National Development; | The Youth Ministry of Youth | 2006-2009 | Increased number of employed Youth | 5 m (Ksh 375M) | Ministry of Planning and National Development, Civil Society Organisations |
| Address the needs of people living with disabilities | 1. Create a desk for people living with disabilities in every ministry. 2. Ensure national policies and programmes and enforcement cater for the needs of people with disabilities' | Number of Persons receiving support A desk created in every ministry | Annual Reports, Economic Surveys, Statistical Abstracts | Inter-Ministerial Committee | Ministry of Culture and Social Services National Council of Persons with Disabilities | The Association of Physically Challenged Ministry of Local Government, CDF Management Committee | 2006-2009 | Increased number of Persons receiving support A desk created in every ministry | 4 m (Ksh 300M) | Ministry of Planning and National Development |
| Involve more Kenyans in development process | 1. Involve Kenyans in Diaspora 2. Sensitize local communities on the need for their involvement in the LATF and CDF management | Remittance from Diaspora | Annual Reports, Economic Surveys, Statistical Abstracts | African Brain Drain Kenya Chapter established. Dual citizenship | Ministry of Planning and National Development; CDF Management Committee Ministry of Local Government. | African Brain Drain Kenya Chapter | 2006-2009 | Increased remittance from Diaspora | | Ministry of Finance |
| OBJECTIVE 3: STRENGTHENING POLICIES, DELIVERY MECHANISM AND OUTCOMES IN KEY SOCIAL DEVELOPMENT AREAS | | | | | | | | | | |
| Improve the quality of education | Expand educational facilities | Improved Teacher-Pupil | Economic Surveys; | The following Investment | Ministry of Education Science | Civil Society Organizations, | 2005-2010 | Increased educational | 206m (Ksh 15.45B) | Ministry of Planning and |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|---|--|--|---|--|---|-----------|--|---------------------------------|--|
| | <p>Employ more teachers</p> <p>Provide more textbooks for schools</p> <p>Improve remuneration and incentives for teachers,</p> <p>Provide study leave with pay.</p> | <p>ratio</p> <p>Number of students passing KCPE and KCSE examinations with good grades</p> | Statistical Abstracts | <p>Programmes are being implemented under KESSP:</p> <p>Primary Infrastructure</p> <p>Instructional Materials</p> <p>Primary Teachers INSET</p> <p>Quality Assurance</p> <p>Teacher Management</p> <p>Study leave with pay for teachers, teacher awards, free basic education, attempt to allow churches to run certain mission schools</p> | <p>and Technology</p> <p>Ministry of Finance</p> | <p>Local Authorities</p> <p>Religious Bodies and Private Investors.</p> | | <p>quality</p> <p>Well-staffed educational facilities</p> | | <p>National Development,</p> <p>Civil Society Organizations</p> |
| Ensure that bursaries are awarded on the basis of demonstrable needs | <p>1.1 Establish transparent disbursement mechanisms.</p> <p>1.2 Target girl child and ASAL areas.</p> | <p>Increased enrolments</p> <p>Declined school drop-outs</p> | Economic Surveys; Statistical Abstracts Annual Reports | <p>Constituency Bursary Funds</p> <p>Review of disbursement criterion</p> | Ministry of Education | Schools Community Based Organizations | 2006-2010 | <p>Increased enrolments</p> <p>Declined school drop-outs</p> | <p>79M</p> <p>(Ksh 5.925B)</p> | <p>Ministry of Planning and National Development,</p> <p>Civil Society Organizations</p> |
| Improve on alternative education models | Target children from nomadic communities | Increased enrolments | Economic Surveys; Statistical Abstracts Annual Reports | <p>Asal Mobile Schools Investment Programme in KESSP.</p> <p>Mobile schools, Dugsi madrassa feeder schools, multi-grade schools</p> | Ministry of Education | Schools Community Based Organizations | 2006-2010 | Increased enrolments | <p>1.5M</p> <p>(Ksh 112.5M)</p> | <p>Ministry of Planning and National Development,</p> <p>Civil Society Organizations</p> |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|--|---|--|--|---|---|-----------|--|---------------------------------|--|
| Improve environmental sustainability | 1.1 Finalize Mining Bill and Policy 1.2 Foster collaboration with UNEP, 1.3 Improve Capacity of NEMA 1.4 Promote tree planting | Environmental Compliance | Economic Surveys; Statistical Abstracts Annual Reports | GEF projects, | Ministry of Environment and Natural Resources NEMA Ministry of Youth | Kenya AM | 2006-2008 | Environmental Compliance | 3 m (Ksh 225M) | Ministry of Planning and National Development, Civil Society Organizations Local Authorities |
| Combat malaria | 1.1 Provide treated mosquito nets at affordable prices 1.2 Ensure clean environment and educate people on personal hygiene 1.3 Improve motivation of health professionals & reduce brain drain | 15-20% reduction in deaths caused by Malaria and other communicable diseases | Annual Reports | Spraying of mosquito infested areas, construction of drainage, Initiatives on radio and TV to sensitize people on hygiene practices | Ministry of Health Ministry of Finance Directorate of Personnel Management | Civil Society Organizations NGOs and CBOs Religious Bodies. | 2005-2008 | Deaths caused by Malaria and other communicable diseases reduced significantly | 800.000 (Ksh 60M) | Ministry of Planning and National Development, Civil Society Organisations |
| OBJECTIVE 4: ENSURING AFFORDABLE ACCESS TO WATER, SANITATION, FINANCE (INCLUDING MICRO FINANCE), MARKETS, ICT, SHELTER AND LAND TO ALL CITIZENS ESPECIALLY THE POOR | | | | | | | | | | |
| Improve upon the communications programme in the Ministry of Agriculture | Provide regular market information to farmers | Number of information desks, Market information cyber cafes in every division | Annual Reports, Economic Survey | Agricultural information desks | Ministry of Agriculture | Farmers, Kenya Agricultural Research Institute | 2005-2008 | Improved market access | 6m (Ksh 450M) | Ministry of Planning and National Development Civil Society Organisations |
| Accelerate the energy sector reform programme to ensure an adequate | Enact in law the draft energy bill Implement rural electrification framework | 1. Energy sector reforms implemented 2. The % of the | | Unbundling of energy sector Renewed investment in | Ministry of Energy Ministry of Finance | Civil Society Organizations NGOs | 2005-2008 | Improved access to energy supply and sources of | 22m (Ksh 1.65B) | Ministry of Planning and National Development |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|------------------|---|------------------------------------|-----------------------|---------------------|---------------------|--------------|-----------|--|---------------------------------|-----------------------------|
| supply of energy | Promote the use of solar energy and other natural gases | population using solar technology. | | KenGen | | | | energy 20% Increased use of LP Gas by 20% | | Civil Society Organizations |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|---|--|-----------------------|---|--|-----------------------------|-----------|----------------------------------|---------------------------------|-----------------------------------|
| | | | | | | | | | | |
| Articulate a comprehensive ICT strategy for human | Increase telephone lines Encourage private | Internet access increased and at least access to | | Increase coverage of cellular phone operators, Telkom | Ministry of Information and Communications | Civil Society Organizations | 2005-2008 | Increased coverage of telephone, | 20M (Ksh 1.5B) | Ministry of Planning and National |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|--|---|--|--|---|---|-----------|---|---------------------------------|--|
| resource development | participation including FDI Review existing regulations facilitate wider access Integrate ICT in education and training. | telephone increased by 30% 5% of annual budget for science & technology research | | Kenya to expand coverage, NEPAD E-School Project Implementation of Rural Telecommunications Project by Ministry of Information and Communications E-government | Ministry of Finance | Private Sector Organizations Universities and Research Institutions | | Science & Technology, internet, etc particularly in the rural areas by 30%. | | Development Civil Society Organizations |
| Ensure increased access to water and sanitation services to all users Provide efficient and affordable water and sanitation services | 1. Accelerate implementation of the water sector reforms | Number and % of people with improved access to water and sanitation | Central Bera of statistics (CBS) data and information, Ministry (boards) data and information, reports | A number of Water Services Boards put in place and have commercialized water and sanitation service in many areas to improve accessibility to water in their areas of jurisdiction | MWI, WSBs, WSRB, WSTF, WRMA, Local Authorities, Private Sector, Communities | MWI, Water consumers, Local Authorities, NGOs, Private sector, Business and individuals, development partners | 2005-2015 | Improved access to water and sanitation | 2 m (Ksh 150M) | Ministry of Planning and National Development Community Based Organizations |
| | 2. Increase resources allocated to the water sector to make water more accessible by all | Additional resources allocated to water and sanitation | Printed estimates | WSTF created to solicit additional funds for community WSS | MWI, MOF, MPND, WSBs, WSRB, WSTF, Private Sector, CBOs, Communities, Development Partners | MWI, Water consumers, Local Authorities, NGOs, Private sector, Business and individuals, WSPs, development partners | 2005-2015 | Increased resources for water and sanitation | 200000 (Ksh 15M) | Ministry of Planning and National Development Community Based Organizations |
| | 3. Increase water storage capacity | Additional M3 of water Number of water storage structures | Amount of water available Physical verification, | Construction and rehabilitation of dams, water pans and boreholes ongoing in ASAL | MWI, WSBs, WSRB, WSTF, WRMA, Private Sector, Communities | MWI, Water consumers, CBOs, NGOs, Private sector, Business and | 2005-2015 | Increased water storage and availability | 500,000 (Ksh 37.5M) | Ministry of Planning and National Development |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|--|--|---|--|--|--|-----------|--|---------------------------------|--|
| | | constructed p.a (dams, water pans, boreholes) | reports and documents | areas | | individuals, | | | | Community Based Organizations |
| | 4. Water quality monitoring and surveillance | Reduced incidences of water borne diseases, compliance with standards | Clinical records, media Consumer feedback, impromptu checks | Central water testing laboratory upgrading, pollution surveillance on lakes, rivers, groundwater and industrial pollutants | MWI, NEMA, WSRB, WRMA, KBS | MWI, Water consumers, CBOs, Local Authorities, NGOs, Private sector, Business and individuals, WSPs, | 2005-2015 | Safe water to all | 2 m (Ksh 150M) | Ministry of Planning and National Development Community Based Organizations |
| Water for food security | Increase area under irrigation | Additional hectares irrigated | Physical verification, various reports | Irrigation policy under review, rehabilitation of existing schemes and implementation of new projects | MWI, NIB, Farmers | MWI, MOA, Farmers, communities, CBOs, Private sector, Business, development partners | 2005-2015 | Improved food security | 0.8 m (Ksh 60M) | Ministry of Planning and National Development Community Based Organizations |
| Flood mitigation | Reduce effects of floods | Number of people and hectares free from floods | MWI Reports, interviews with people in affected areas | Floods control measures ongoing in Nzoia, Nyando and Garrissa | MWI, NWCP, communities, development partners | MWI, Farmers, communities, | 2005-2015 | Peoples and property protected against flooding | 1.2 m (Ksh 90M) | Ministry of Planning and National Development Community Based Organizations |
| OBJECTIVE 5: PROGRESS TOWARDS GENDER EQUALITY, PARTICULARLY EQUAL ACCESS TO EDUCATION FOR GIRLS AT ALL LEVELS | | | | | | | | | | |
| Gender sensitive approach to monitoring and evaluation of development projects | Create Women's Desk at the Ministries and other relevant public offices Enact in law affirmative action bill, national gender | Gender parity in schools Proportion of women appointees increased to 20% Increased proportion of women MPs | Statistical Abstracts Economic Survey | Sensitization measures, spearheaded by the government, political leaders and incorporates Civil Society Organizations | Ministry Justice and of Constitutional Affairs Ministry of Culture, Gender and Sports | Civil Society Organizations NGOs and CBOs Trade Unions | 2006-2010 | Women's Desk in all Ministries, Scholarship schemes for girls instituted Capacity | 195,000 (Ksh 14.625M) | Ministry of Planning and National Development Civil Society Organizations |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|---|--|--|--|--|--|-----------|---|---------------------------------|--|
| | and development bill, the equality bill, the domestic violence, and the gender and development policy bill. Intensify sensitization initiatives for gender equality and equity | | | | Ministry of Finance | | | building programme in place for women in public office An enabling socio-cultural environment for women empowerment in place | | Trade Unions |
| Ensure affordable secondary and tertiary education | Target girls and the needy in secondary and tertiary education. | The number of bursary and scholarship opportunities for the poor, girls and disabled persons | Ministry of Education Guidelines | Provision of loans and bursaries and scholarships to students who can prove that they cannot afford the fees Provision of affordable credit facilities to rural households for initiating IGAs by NGOs, CBOs and FBOs | Ministry of Education, Science and Technology Ministry of Culture, Gender and Sports Higher Education Loans Board Constituency Bursary Committees | Public and Private Training Institutions Civil Society Organizations NGOs and CBOs | 2006-2010 | Affordable and equitable access to education | 200,000 (Ksh 15M) | Community Based Organizations |
| Eliminate harmful cultural practices Eliminate early and forced marriages Ensure equal opportunity for girls in secondary tertiary and University education | Carry out study to understand the cultural, economic and social factors driving early and forced marriages With CSOs initiate a dialogue with different communities in Kenya on harmful cultural practices | Gender parity in schools Proportion of women appointees increased to 20% Increased proportion of women MPs | Statistical Abstracts Economic Survey | Sensitization measures, spearheaded by the government, political leaders and incorporates Civil Society Organizations | Ministry of Culture, Gender and Sports Ministry of Finance MoPND CBS | Civil Society Organizations NGOs and CBOs Trade Unions | 2006-2010 | Women's Desk in all Ministries, Scholarship schemes for girls instituted Capacity building programme in place for women in public office An enabling socio-cultural | 200,000 (Ksh 15M) | Ministry of Planning and National Development (MPND) |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|--|---|--|--|--|--|--|-----------|--|---|--|
| | | | | | | | | environment for women empowerment in place | | |
| Improve women's and children's condition | Create ACUs in all ministries, mainstreaming HIV/AIDS issues. | ACUs in all ministries, | Annual Reports Statistical Abstracts Economic Survey | ACUs being created to mainstream HIV/AIDS issues | Ministry of Health | NACC | 2006-2015 | ACUs in all ministries, | 5m (Ksh 375M) | Ministry of Planning and National Development |
| | Enhance the number of children put under ARV | The number of children put under ARV | Statistical Abstracts Economic Survey | Ministry of Health working on policy under MDG goals to provide free health facilities and gradually face out cost sharing | Ministry of Health | NACC | 2006-2015 | Increased number of children put under ARV | 5m (Ksh 375M) | Ministry of Planning and National Development |
| | Improve access to female condoms | Increased access to female condoms | Statistical Abstracts Economic Survey | Ministry of Health working on implementation framework | Ministry of Health | NCPD, NACC | 2006-2015 | Increased access to female condoms | 2m (Ksh 150M) | Ministry of Planning and National Development |
| | Adapt measures for the prevention of mother to child transmission | Decline in mother to child transmission | Statistical Abstracts Economic Survey | Ministry of Health working on implementation | Ministry of Health | Ministry of Health | 2006-2015 | Decline in mother to child transmission | 3m (Ksh 225M) | Ministry of Planning and National Development |
| OBJECTIVE 6: ENCOURAGE BROAD-BASED PARTICIPATION IN DEVELOPMENT BY ALL STAKEHOLDERS AT ALL LEVELS | | | | | | | | | | |
| Foster effective participation of stakeholders at the grass roots | Involve all stakeholders in planning and implementation process | Proportion of community members and CBOs incorporated in project management committees | Regular Consultations | Sensitization initiatives on the value of broad-based participation of projects for ownership and sustainability | Ministry of Planning and National Development Ministry of Finance | Civil Society Organizations NGOs and CBOs | 2006-2007 | Broad-based planning and implementation process Effective constituency committees | 160,000 (MPND) 2m (MoLG) (Ksh 150M) 80,000 | Civil Society Organisations Community Based Organisations |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|------------------|-----------------------|-----------------------|---------------------|--|-----------------------------|-----------|---|---------------------------------|-----------------------------|
| | | | | | Ministry of Local Government Ministry of Regional Development Authorities | | | established | (Regional) (Ksh 6M) | |
| Remove impediment to community participation in development at grass roots level especially women and youth | | | | LATF | MoPND | Civil Society Organizations | | Broad-based planning and implementation process | 2 (Ksh 15M) | Civil Society Organisations |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|-----------|------------------|--|-----------------------|---------------------|-----------------------------|--|-----------|---|---------------------------------|--------------|
| | | | | | | | | | | |
| | | 2. 1. Reported level of intimidation 2. Proportion of women & youth who actively participate in community | | | <u>OP</u> Private Sector | Provincial Administration down to sub-chief level Society | | Capacity and employment at constituency level | 200,000 (Ksh 15M) | |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|-----------|------------------|------------------------|-----------------------|---------------------|---------------------|--------------|-----------|-----------------|---------------------------------|-----------------------------|
| | | development programmes | | | | | | | | Civil Society Organisations |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|-----------|------------------|-----------------------|-----------------------|---------------------|---------------------|--------------|-----------|-----------------|---------------------------------|--------------|
| | | | | | | | | | | |

| Objective | Required Actions | Monitorable Indicator | Means of verification | Ongoing Initiatives | Implementing Agency | Stakeholders | Timeframe | Expected Output | Estimated Cost (US\$ Thousands) | M & E Agency |
|---|---|---|-------------------------------------|--|---|---|-----------|---|---------------------------------|---|
| | | | | | | | | | | |
| Enhance engagement of CSOs and the public in the preparation of national budgets | <p>1. Develop stringent guidelines for participation and selection of representatives in monitoring and implementation of public projects and programmes</p> <p>2. Build capacity of constituency to engage stakeholders in planning issues</p> | <p>1. The number of projects involving local people</p> <p>2. Constituency development committee effectively dialoguing with stakeholders on constituency planning issues</p> | Civil Society Organisations Reports | <p>Encouraging grass-root level participation through the decentralization initiatives</p> <p>CSOs participating in MTEF sector working group public hearings</p> <p>District Working Groups</p> | Ministry of Local Government Ministry of Planning and National Development, Ministry of Finance | Civil Society Organizations NGOs and CBOs | 2006-2007 | Stakeholders effectively involved in constituency and budgeting through the unit committees | 160,000 (Ksh 12M) | Civil Society Organisations Private Sector |

**SOCIO – ECONOMIC
TOTAL**

US \$ = 387,145,000
KSH = 29,035,875,000

GRAND TOTAL OF KENYA PROGRAMME OF ACTION (POA)

TOTAL IN US DOLLARS = 5,388, 404, 000

TOTAL IN KSH = 404, 130, 300, 000