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HUMAN RIGHTS COUNCIL
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**HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S
ATTENTION**

Joint written statement* submitted by Caritas Internationalis, Franciscans International, non-governmental organizations in general consultative status, Center for Migration Studies of New York, Congregation of Our Lady of Charity of The Good Shepherd, Dominicans for Justice and Peace (Order of Preachers), International Federation of Catholic Medical Associations (FIAMC), International Movement of Apostolate in the Independent Social Milieus (MIAMSI), International Volunteerism Organization for Women, Education and Development-VIDES, Pax Romana (International Catholic Movement for Intellectual and Cultural Affairs and International Movement of Catholic Students), Swiss Catholic Lenten Fund, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 February 2008]

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- This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Humanitarian and Human Rights Concerns in the Post Election Situation Kenya

“I stressed to all Kenyan leaders the need to stop the unacceptable violence and killing and to resolve their differences through dialogue and the democratic processes. I also appealed to all the political leaders to think beyond their individual interests or party lines, and to look to the future of Kenya as one country¹”

*Ban Ki-Moon
Secretary General of the United Nations*

The Situation in Post Election Kenya

Kenyans have lived one of the most difficult moments in decades following the announcement of President Kibaki as the winner of the 2007 presidential elections. When the result of the election was announced by the Electoral Commission on December 30th, 2007, it triggered frustration and anger for many Kenyans who had voted for a change in leadership. The peaceful towns and cities quickly turned violent with many people attempting to hold mass demonstrations countrywide. These demonstrations changed into riots and violence as an expression of dissatisfaction with the result of the election, challenging the official results.

By January 1st, 2008, the riots took place in different cities; in Nairobi –including in the slum area of Kibera and Mathare, in Kisumu, Kakamega, Eldoret, Mombasa. In Eldoret, 40 people, most of them women and children, were burnt to death by their assailants when seeking refuge in a church. The Rift Valley and Western Provinces are severely affected by the violence and ensuing ethnic conflict. By February 4th, 2008, the Kenyan Red Cross Society reported that over 1000 people lost their lives and that there was an increase in the number of Internally Displaced Persons (IDPs)².

In economic terms, this conflict has added to the existing poverty and economic issues in Kenya.³ As an example, in 2007 tourism brought in revenues of \$1billion. During this conflict the tourism industry has been greatly impacted by the post election violence leaving the hotels and resorts empty. Many Kenyans have lost their jobs, and millions of Kenyan shillings are being lost everyday while there is a slow or little progress in bringing this conflict to an end.

The conflict in Kenya affects the Eastern African region. The Eastern African countries such as Uganda, Tanzania, Rwanda and Burundi have been economically affected by the

¹ Ban Ki-Moon remarks at press encounter following Security Council briefing on visit to Africa, UN Headquarters February 5th, 2008. www.un.org/apps/news/infocus/sgspeechees

² See <http://www.kenyaredcross.org/UserFiles/File/Kenya%20Electoral%20Violence-Operations%20Update%20No%2018-31.1.08.pdf>

³ Whereas the country enjoyed a strong and steady growth of its GDPs during the last years, the percentage of the population suffering from extreme poverty is increasing. It is estimated that the population living in poverty has risen from about 48.8 percent in 1990 to 56 percent in 2003. Life expectancy declined from 57 years to 47 years between 1986 and 2000, and according to UNDP's Human Rights Index, Kenya figures on 148th position out of 177, in 2005. The guarantee of the enjoyment all human rights, including Economic, Social and Cultural rights for everyone in Kenya, without discrimination should be one of the basic elements. See UNDP, http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_KEN.html

events in Kenya. Southern Sudan and Eastern Democratic of Congo saw the price of fuel and other basic commodities rising. All these countries depend on the port of Mombasa for imports and exports. Against this background, a sustainable solution must be found that is in the interests of all Kenyans, the Eastern Africa region and the international community.⁴

Recognition to the Actions already taken

The mediation of Mr. Kofi Annan, the former Secretary General of the UN is highly appreciated and shows some positive efforts toward reaching a sustainable solution. We welcomed the visit made by the UN Secretary General Ban Ki-Moon on January 25th. We also express our support for the deployment of UN High Commissioner for Human Rights' fact-finding mission to assess allegations of grave human rights violations in Kenya. The mediation done by the President of African Union lead by Ghana President, Mr. John Kufour has taken a positive step to avert further violence.

We welcome the establishment of a Truth, Justice and Reconciliation Commission (TRJC) with the mandate to investigate the crisis and to bring some recommendations. As representatives of faith-based non-governmental organizations of Catholic inspiration, we believe that *justice and truth represent the concrete requisites for reconciliation*.⁵

The Humanitarian and Human Rights Concerns

The conflict in Kenya strongly impacts on the humanitarian situation of the civil population. Apart from displacement due to violence and threats of physical harm, the current conflict unveils a new displacement pattern resulting from the forced evictions⁶. To date, the Kenyan Red Cross Society has registered a total of 310,643 of Internally Displaced Persons in 296 known camps/sites.⁷ The increased numbers of the IDPs leads to the proliferation of new camps in various areas which pose additional challenges to aid delivery. In addition to the IDPs, the crisis has resulted in a significant number of cross-border refugees. The UN Office of the High Commissioner for Refugees reported that there were 12,000 Kenyan refugees in Uganda⁸ as a direct result of the post electoral conflict.

Having fled quickly and in panic, many IDPs and refugees left behind their belongings which in consequence it puts them in a precarious humanitarian situation. Many IDPs are located in the Rift Valley province which has traditionally grown maize and wheat for the country. The failure of the planting and harvest of the maize in the affected areas will soon cause food insecurity for many people. Among the IDPs are the school age persons and educational personnel. In several places the schools were burnt and vandalized, thus preventing many children from returning to school. The psychological trauma for the IDPs and refugees is considerable, and needs to be taken into consideration.

⁴ Pax Romana, *Post Election Crisis in Kenya: Another face of a Shining Country*, Unpublished report of the visit of Pax Romana International Team to Kenya, January 23 – February 7, 2008.

⁵ Pontifical Council for Justice and Peace, *The Compendium of the Social Teaching of the Church*, Libreria editrice vaticana, Rome, 2004, p.225.

⁶ Humanitarian update vol.3, *Office of the United Nations Humanitarian Coordinator in Kenya*, January 29 February 5, 2008, p. 1.

⁷ Humanitarian update vol.3, *op.cit.*, p. 2.

⁸ <http://www.unhcr.org/news/NEWS/47a85a4e2.html>

Disruption in the provision of food, water, shelter, health and sanitation is an ongoing concern for the Kenyan population. We have particular concerns for vulnerable groups, such as those suffering from HIV/AIDS. In a country where more than 1,300,000 persons live with HIV and AIDS,⁹ the violence is cutting off access to antiretroviral treatment. For many, their schedule of taking medications has been gravely disrupted, and it is no longer possible to give medical follow-ups to the infected IDP or refugees.

We express our concern about the denial of the freedom of assembly of the Kenyan people to express their opinions. We deplore the dispersion of the peaceful marches by the security forces. We do also express alarm regarding the number of persons who have been killed during the conflict. We condemn in particular the summary executions, massacres, destructions, rape and the excessive use of force, including by security agents when targeting civilians. We emphasize that the use of lethal force, under strict conditions, remains a last resort, in order to protect others' lives, and that any other use of lethal force is a violation of the right to life.

Address the Root Causes of the conflict

To have a sustainable solution to the conflict in Kenya and to avoid possible conflict in the future the root causes of the current conflict must be addressed. These include:

- Lack of good governance, including transparency during the democratic processes, especially in the electoral process.
- Deterioration in health standards and extreme poverty.¹⁰ The guarantee of the enjoyment of all human rights, including economic, social and cultural rights for everyone in Kenya, without discrimination should be one of the basic elements. There is a need to address the issue of corruption, governance (including respect for the principle of participation), discrimination, inequality of the wealth distribution and inequality of access to resources.
- Recurrent ethnic tensions and the old and latent conflicts over land, distribution of resources and access to power.

Recommendations:

We call

- The Government of Kenya, opposition parties and all people of Kenya to take immediate steps to seek peaceful and sustainable solutions to the conflict, especially through an inclusive dialogue and a genuine peace-building process among different communities. The United Nations and the international community should provide their assistance and support to this process.

⁹ UNAIDS, *Global Report 2006*, Annex 1

¹⁰ Even if the country enjoyed a strong and steady growth of its GDPs during the last years, the percentage of the population suffering from extreme poverty is increasing. It is estimated that the population living in poverty has risen from about 48.8 percent in 1990 to 56 percent in 2003. Life expectancy declined from 57 years to 47 years between 1986 and 2000, and according to UNDP's Human Development Index, Kenya figures on 148th position out of 177, in 2005 (see Republic of Kenya, *Investment Programme for the Economic Recovery Strategy for Wealth and Employment Creation, 2003-2007*, March 12, 2004, p. 9; see also UNDP, http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_KEN.html)

- The Government of Kenya to do its utmost to respect, protect and guarantee the enjoyment of all the human rights of the population under its jurisdiction, including their right to life, their right to development, their right not to be submitted to any cruel, degrading or inhuman treatment, their right to work, their right to food, to property and land, their right to education and to fair and public hearing by an independent and impartial tribunal, to effective remedy and reparation. The protection should be based on respect of the human dignity of all people, especially of all the victims of the recent post-election conflict.
- The Government of Kenya should address, with the support of humanitarian actors, the humanitarian crisis of the most vulnerable victims, especially women and children by providing basic needs and social services such as food, water, shelter, access to health care services and medicines and education.
- The Government of Kenya should be able to provide and ensure the security to the Internally Displaced Persons (IDPs) and the Kenyan refugees now located in the neighboring countries for a safe return to their homes lands, such as those trapped in Naivasha, and properties. They should also prevent further displacement and provide security in the camps.
- The Government of Kenya should take appropriate measures in order to make sure that the intentional use of lethal force by law enforcement is “only (...) made when strictly unavoidable in order to protect life”¹¹;
- A complete and transparent investigation of human rights violations during the post election period should be undertaken by independent investigators. Perpetrators should be brought to justice.
- The Government of Kenya should address the root causes of the tensions and conflicts among different communities in Kenyan society, which include the issue of corruption, discrimination, inequality of wealth distribution, inequality of access to resources as well as examining past economic crimes.
- The Government of Kenya should promote good governance in all democratic processes, including in the electoral process.
- The Government should take measures to address the mistrust that has arisen between the ethnic groups which has been used as leverage in perpetuating violence and it should do its best to facilitate the work of the TRJC, and support the activities of civil society movements involved in peace-building among ethnic groups.
- The Government should also do its utmost to protect and guarantee the enjoyment of the rights of persons living in conditions of extreme poverty.
- The Human Rights Council to draw its attention and to address the human rights crisis in the post election situation in Kenya during its 7th Session, as the Council has the mandate to “*Contribute (...) toward the prevention of human rights violation and respond promptly to human rights emergencies*”.¹² The failure of the Council to acknowledge and to respond to this emergency situation will fail the expectation of the people on the effectiveness of its work.

We would like to join the appeal made by His Holiness Pope Benedict XVI in the Angelus Prayer in St. Peter’s Square, Vatican, on Sunday February 3rd, 2008 “*I invite you to join our brothers and sisters of Kenya - some of whom are here in St Peter’s Square - in praying*

¹¹ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, U.N. Doc.A/CONF.144/28/Rev.1 at 112, Principle 9

¹² UN General Assembly Resolution A/RES/60/251.OP.5f on the establishment of Human Right Council.

for reconciliation, justice and peace in their Country. As I assure them all of my closeness, I hope that the efforts for mediation now under way will succeed and, through the good will and cooperation of all, will lead to a rapid solution of the conflict which has already taken too heavy a toll of victims”.¹³

¹³ http://www.vatican.va/holy_father/benedict_xvi/angelus/2008/documents/hf_ben-xvi_ang_20080203_en.html