STATEMENT OF THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS PRESENTED BEFORE THE 19TH SESSION OF THE HUMAN RIGHTS COUNCIL DURING THE PRESENTATION OF REPORT OF THE SPECIAL RAPPORTEUR ON INTERNALLY DISPLACED PERSONS ON HIS MISSION TO KENYA TO EXAMINE THE CURRENT SITUATION OF ALL IDPS

6TH MARCH 2012

1. On behalf of the Kenya National Commission on Human Rights (the Commission), I wish to express my sincere appreciation for this opportunity to address the 19th session of the Human Rights Council on situation of internally displaced persons in Kenya. I also thank the Special Rapporteur on the Human Rights of Internally Displaced Persons, Prof Chaloka Beyani, for undertaking the mission to Kenya on 19th - 27th September 2011 and presenting a comprehensive mission report. I thank the Government of Kenya for extending an invitation to the Special Rapporteur to conduct the mission to Kenya. Finally I acknowledge all the other local and international partners who supported the mission to Kenya and fully commend the efforts of the members of the protection working group on internal displacement (PWGID).

2. Since its inception in the year 2003, the Commission has sustained work on internal displacements to profile the situation of internally displaced persons in Kenya through monitoring and reporting on IDP situations, issuing advisories to the Government of Kenya, targeted capacity building workshops, and advocacy on policy and legislative reforms. Since 2004 KNCHR has supported and mobilized the internally displaced groups in all parts of the country to solidify their voices and create publicity on this persistent problem.

3. In making this statement before the council, I have taken note of the mission report findings and recommendations and I will therefore not repeat what has been adequately addressed by the Special Rapporteur.

4. Before I proceed, I wish to point out that on 28th February 2012; Kenya marked the 4 year anniversary of signing of the National Accord that restored peace in the country following the post election violence. Under agenda item number two of the accord, resettling IDPs and addressing the human rights situation was one of the short term recommendations that has not been fully implemented.

5. I also wish to point out that the presentation of this report comes almost eight years since the former Special Rapporteur on the right to adequate housing Mr. Miloon
Kothari undertook a similar mission in February 2004. His report, which highlighted pertinent issues regarding forced evictions, was presented before the 61st session of the former Commission for Human Rights. About two years ago, Ms. Raquel Rolnik, who took over as the Special Rapporteur on the right to adequate housing presented before the 13th session of this council a follow up report on the progress on implementation of the findings of the Kenya mission report of her predecessor. I shall revert to the relevant issues later on in this statement.

6. KNCHR strongly commends the Government’s commitment to allocate budgetary resources for protection and assistance to IDPs. However, Government has been weak in securing substantive participation of IDPs in their return, resettlement and integration. Also the state efforts can be described as ad hoc and less focused on durable solutions.

7. The Government has made significant progress towards a policy framework on internal displacement. We have draft policy on internal displacement. Stakeholders in the PWGID are concerned that the process of adopting the national policy on internal displacement is progressing very slowly. The draft Eviction and Resettlement guideline has also been pending for a long time now. This lack of comprehensive policy framework is an impediment to providing adequate protection to all categories of internally displaced persons in Kenya.

8. I also commend the Parliamentary Select Committee on the Resettlement of Internally Displaced Persons for making significant progress towards the adoption of the Protection and Assistance to Internally Displaced Persons Bill 2011. The draft bill is soon to be tabled before parliament for debate.

9. I wish to take note of the commendable efforts by the Kenya judiciary to provide progressive interpretation of the bill of rights, particularly article 43 (b) on the right to adequate housing in the context of forced evictions. In a recent judgment *Ibrahim Sangor Osman & 1,122 others v The Minister of State for Provincial Administration and Internal Security & 10 others [2011] eKLR*, the High Court has given force of law to the procedural protection provided for under the General Comment No. 7 of CEDCR. The government now has to comply with the court’s decision.

10. The major challenge for Kenya is that there is no single, comprehensive and reliable data on internal displaced persons and their location, number of returnees and resettled IDPs, and the nature of protection and assistance provided by the state and other actors. The debate on fake IDPs continued in the national assembly last week following confusion over the fate of a group internally displaced persons that the government has refused to include in the IDP feeding programme terming them as “fake IDPs”. However the local Member of Parliament insists they are genuine. This incident has prompted the Speaker of the National Assembly to order parliament to investigate and report on the matter. IDPs are now vulnerable to exploitation by politicians as the general election approaches.
11. The Government has mainly focused on persons displaced by the post election violence in 2007/8. Displacement due to evictions, natural disasters and other causes has been ignored. In Kenya, displacements as a result of other causes are on the increase. The Special Rapporteur has referred to the evictions that took place in November 2011. These evictions have continued into the first quarter of 2012. In February 2012, conflict among warring communities in Western Kenya led to the displacement of over 200 people. Over 10,000 people may have been displaced as a result of conflict among two pastoralist communities in the Northern town of Moyale in early January 2012. These matters cannot be taken lightly in light of Kenya history of election violence.

12. We note that as we are approaching the next general election towards the end of this year or early next year, there is a general concern that there is need for heightened monitoring and contingency planning to towards the possibility of displacement as a result of heightened political contest. Further as the new Constitution is being implemented: the disputes over boundaries for new devolved units are posing a threat to peace in some areas and threatening to displace many more people. The National Cohesion and Integration Commission has documented these fears in its hotspot mapping released recently.

13. I also wish to point out to the council that in paragraph 82(c) of the Kenya mission report of the Special Rapporteur on the right to adequate housing (E/CN.4/2005/48/Add.2) called upon Kenya to ensure compliance with the procedural protection under general comment No.7 of the Committee of Economic, Social and Cultural Rights (CESCR). He also called upon the Government to enact a policy and legislation of evictions and implement an absolute moratorium on forced evictions.

14. During the presentation of the follow up report in February 2010 (A/HRC/13/20/Add.2) new the Special Rapporteur noted that Government had not fulfilled its commitment made before the UN Human Rights Commission in 2004 to halt evictions. As evidence in the presentation made today by the Special Rapporteur on the human rights of internally displaced persons forced evictions are still widespread in Kenya.

15. In summing up, the Commission agrees with most of the recommendations issued by the Special Rapporteur. I will particularly reiterate the following recommendations:

   i. The Government should issue time bound commitments and urgently adopt and implement the draft national policy and legislation on IDPs, and the draft eviction and resettlement guidelines

   ii. The Government should fast track the resettlement of the remaining IDPs and forest evictees

   iii. There is need for comprehensive community peace building plan that should be implemented at the grassroots levels. This should be complemented with
adequate security measures in all regions that are identified as hotspots in order to avert any possible election related violence in the forthcoming elections.

iv. The Government of Kenya should implement a moratorium on forced evictions in Kenya until guidelines on evictions and resettlement that meet internationally accepted human rights standards are adopted and implemented.

v. Where possible, the Government of Kenya should provide alternative housing or resettlement should be provided to all who have been rendered homeless as a result of the recent forced evictions and are unable to provide for themselves.

vi. A comprehensive data collection system should be adopted and implemented within a reasonable time frame.

16. Once the Special Rapporteurs’ report is adopted by the Council, the Commission will study it and identify specific recommendations on which to undertake advocacy and for implementation. The Commission will engage relevant Government ministries and departments to advocate for adoption and implementation of the report.

17. The Commission will also discuss the report together with members of the PWGID at the monthly national and field level PWGID meetings to create awareness and understanding among partners and trigger action by various state and non state actors including civil society organizations, humanitarian actors and development partners.

Signed by:

Commissioner Fatuma Ibrahim Ali