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Hon. Samson Kegeo Ongeru, M.P.  
Minister for Foreign Affairs  
Old Treasury Building, Harambee Avenue  
P.O. Box 30551, Nairobi  
Kenya

2 November 2012

Dear Minister,

#### **OPEN LETTER: KENYA'S CANDIDACY FOR ELECTION TO THE UN HUMAN RIGHTS COUNCIL**

We write on the occasion of your country's candidacy for membership of the UN Human Rights Council in the elections scheduled for 12 November 2012. Amnesty International has received a copy of and welcomes your election pledges to promote and protect human rights at the national and international levels. We encourage you to ensure that these pledges are promptly made available on the UN Human Rights Council elections web site.

We recall that, according to General Assembly resolution 60/251, members of the Council shall uphold the highest standards in the promotion and protection of human rights and fully cooperate with the Council.<sup>1</sup> On the occasion of Kenya's candidacy, we take the opportunity to comment on your election pledges and to note additional opportunities for your government to promote and protect human rights. In doing so, we refer to the guidance of the Office of the High Commissioner for Human Rights on presenting voluntary human rights pledges and commitments, including that such pledges and commitments should be specific, measurable and verifiable.<sup>2</sup>

#### **Commitments at the international level**

##### *Ratification of international human rights instruments*

We take this opportunity to encourage you to ratify the international human rights instruments that are still outstanding, in particular the First and Second Optional Protocols to the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and the International Convention for the Protection of All Persons from Enforced Disappearance.

##### *Cooperation with the Special Procedures*

All Members of the Council are requested to fully cooperate with the Special Procedures. In this regard, we note with concern Kenya's rejection of the 2009 report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, as well as the lack of cooperation with the Special Rapporteur during his follow-up visit in 2011. We also note that six Special Rapporteurs are currently requesting permission to visit, and we urge your government to facilitate these visits without further delay. In

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<sup>1</sup> A/RES/60/251, para 9.

<sup>2</sup> Office of the High Commissioner for Human Rights, *Suggested Elements for Voluntary Pledges and Commitments by Candidates for Election to the Human Rights Council*, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/pledges.pdf>.

particular, we urge you to extend invitations, as a matter of priority, to the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. We further encourage you to extend a standing invitation to all Special Procedures and to ensure full cooperation with them.

#### *Cooperation with the treaty monitoring bodies*

We note your commitment to honour your reporting obligations to the Treaty Bodies. In this regard, we urge you to promptly submit the periodic reports that are due to the Committee on the Rights of the Child, including with respect to the Optional Protocol on the involvement of children in armed conflict, and to the Committee on the Rights of Persons with Disabilities.<sup>3</sup>

We also urge your government to fully implement all recommendations made by the Treaty Bodies in the context of their reviews of past state reports, including the 2012 recommendations of the Human Rights Committee. We call on your government to submit to the Committee, by July 2013, information regarding Kenya's implementation of the recommendations that the Committee identified as priorities for the purpose of its follow-up procedure. In particular, we urge your government to promptly provide information on the implementation of the recommendation to investigate and prosecute all cases of post-2007 election violence and to ensure adequate compensation for victims.<sup>4</sup>

#### *Engagement with the Universal Periodic Review*

We welcome your support, during your first Universal Periodic Review in May 2010, of recommendations to protect human rights defenders;<sup>5</sup> to cooperate with the International Criminal Court (ICC), including by ensuring that human rights defenders are able to speak freely with ICC investigators;<sup>6</sup> to implement police reform;<sup>7</sup> and to provide for effective witness protection.<sup>8</sup> We urge you to ensure the prompt and full implementation of these recommendations and to provide regular updates on such efforts to the Council.

#### *Participation in the deliberations of the Human Rights Council*

We note your pledge that, if elected, you will work to effectively carry out your mandate in the Human Rights Council.

In this regard, we urge your government to work with delegations from all regions to ensure that the Council addresses situations of human rights violations, including gross and systematic violations and human rights emergencies, without selectivity or double-standards. We also urge your government to support efforts to ensure that all credible allegations of reprisals or intimidation against persons and groups who have engaged or have sought to engage with the UN human rights machinery are brought to the urgent attention of the Council; that the Council demands the government concerned to ensure that any alleged reprisals are investigated in a prompt, impartial, transparent and effective manner and that perpetrators are held to account; and that the Council requests the government concerned to inform it of measures taken in this regard.

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<sup>3</sup> Kenya's election pledges state that the initial report under the Convention on the Rights of Persons with Disabilities has been submitted. However, as of 31 October 2012, this report is still not recorded in the UN Treaty Body Database (<http://www.unhchr.ch/tbs/doc.nsf>).

<sup>4</sup> Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, Kenya (CCPR/C/KEN/CO/3 Advance version), para 13.

<sup>5</sup> Report of the Working Group on the Universal Periodic Review, Kenya, 17 June 2010 (A/HRC/15/8), recommendations 101.88 (Sweden) and 101.89 (Norway).

<sup>6</sup> A/HRC/15/8, recommendations 101.77 (Austria), 101.78 (Finland), 101.79 (Republic of Korea), 101.80 (Ireland), 101.81 (Australia), 101.82 (Norway), and 101.83 (Portugal).

<sup>7</sup> A/HRC/15/8, recommendations 101.20 (United States of America), 101.21 (Netherlands), 101.22 (France), and 101.69 (Austria).

<sup>8</sup> A/HRC/15/8, recommendations 101.65 (United States of America), 101.66 (Netherlands), 101.67 (Japan), 101.68 (United Kingdom), and 101.69 (Austria).

## **Commitments at the national level**

We note your commitments to strengthen your institutions of governance to further entrench respect for the rule of law; to implement the Kenya Vision 2030 for economic, social and political development; and to realize an efficient, effective and coherent judicial system, including through reforms to enhance equitable and timely access to justice for all.

We also note your commitment to ensure the safety and protection of refugees in camps and elsewhere within Kenya. In this spirit, we urge you to cease all threats to arbitrarily close the Dadaab camps and forcibly return its residents to Somalia; to ensure prompt and effective investigation, prosecution and reparations for abuses by the security forces against asylum-seekers and refugees; and to ensure that all provisions of the proposed Refugee Bill 2012 are compliant with international human rights and refugee law.

We call on you to commit to combating the persisting impunity for unlawful killings, including by investigating allegations of human rights violations and crimes under international law, fairly prosecuting all perpetrators, and establishing an independent and transparent national reparations programme for victims, including victims of post-election violence.

Similarly, we urge you to pledge to immediately cease all forced evictions, to legislate and enforce a clear prohibition on forced evictions, and to pass a law on evictions that incorporates all the safeguards required under international human rights law.

We welcome the pledges and commitments already made by Kenya, and we urge your government to use this opportunity to further strengthen its election pledges by committing to progress with regards to the concerns and recommendations outlined above. We also encourage your government to announce the steps it will take to fulfil its electoral pledges and to regularly inform the General Assembly and the Human Rights Council of progress in implementing these commitments. This could be done, for example, in the form of an oral or written statement to these bodies.

We would be pleased to receive your comments and responses to the issues raised in this letter.

A copy of this letter has been sent to your country's permanent missions in Geneva and New York.

Yours sincerely,

Audrey Gaughran  
Programme Director  
Africa Programme  
Amnesty International