
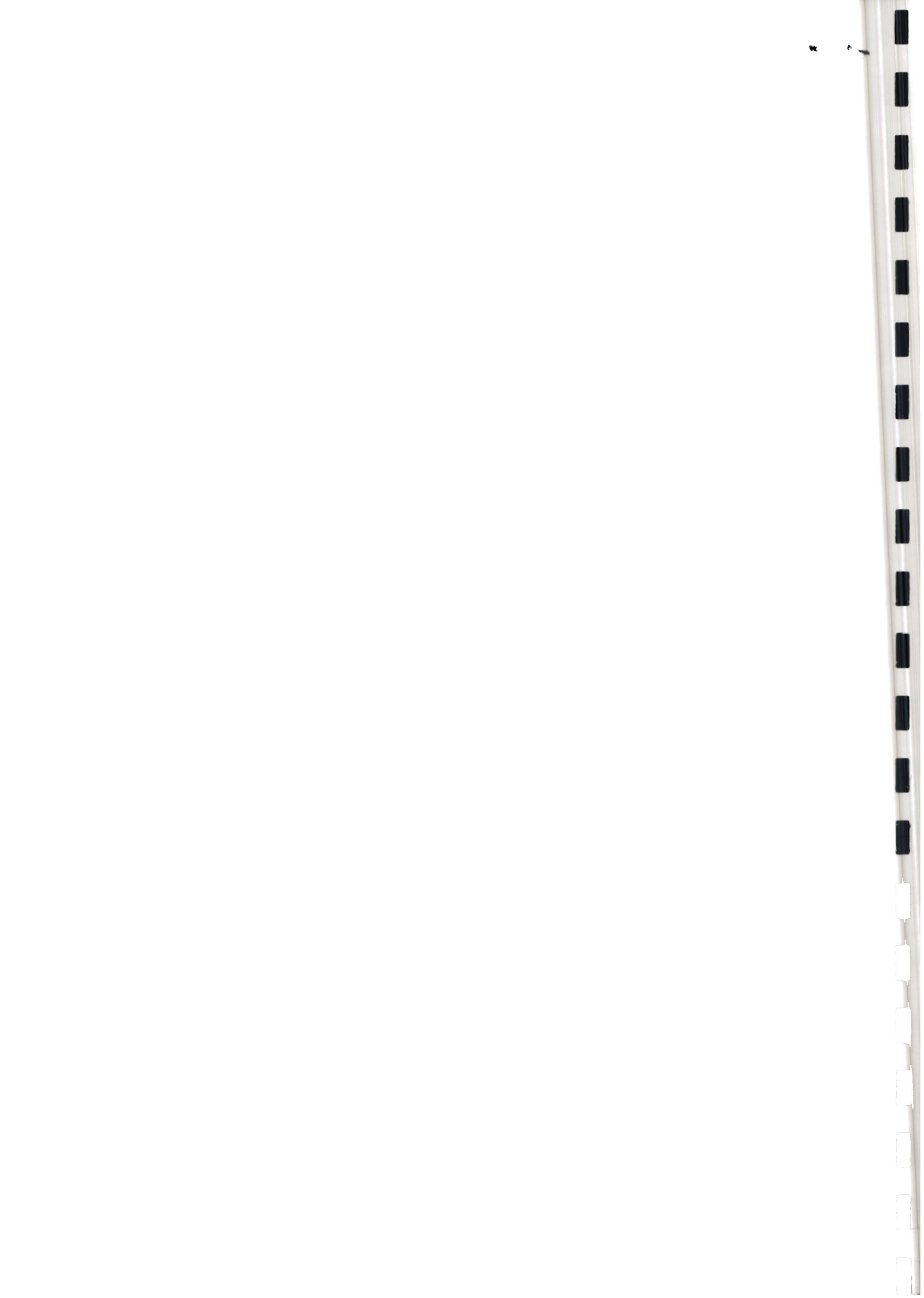
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**KENYA NATIONAL COMMISSION ON  
HUMAN RIGHTS (KNCHR) ANNUAL  
REPORT AND FINANCIAL STATEMENTS  
FOR THE PERIOD 2016/17**  
**FINAL REPORT**

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)  
P.O.BOX 74359-00200 NAIROBI



**KNCHR ANNUAL REPORT AND  
FINANCIAL STATEMENTS FOR  
THE PERIOD 2016/17**

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**President**

His Excellency, Hon. Uhuru Kenyatta C.G.H.  
President and Commander in Chief of the Defence Forces of the Republic of Kenya

**LETTER OF TRANSMITTAL**

Pursuant to Article 254(1) of the Constitution of Kenya, 2010 and section 53(1) of the Kenya National Commission on Human Rights Act 2011, I have the honour of submitting to you our report for the Financial Year 2016/2017.

Please accept, Your Excellency, the assurances of our highest regard.

Kagwiria Mbogori  
Chairperson, KNCHR

Cc.

**Speaker of the Senate**

Hon. Ken Lusaka E.G.H, E.B.S, MP

**Speaker to the National Assembly**

Hon. Justin Muturi E.G.H, MP



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## LIST OF ABBREVIATIONS

CAT	Convention Against Torture
CBO	Community Based Organization
CORO	KNCHR, Coast Regional Office
CRC	Convention on the Rights of the Child
CRPD	Convention on Rights of People with Disability
CSOs	Civil Society Organizations
CuC	Court User Committee
CVE	Countering Violent Extremism
ECSR	Economic Social and Cultural Rights
FPE	Free Primary Education
GBV	Gender Based Violence
GoK	Government of Kenya
HODs	Heads of Departments
HRBA	Human Rights Based Approach
HRD	Human Rights Defender
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Person
IEC	Information, Education Communication
IPCRM	Integrated Public Complaints Referral Mechanism
KNCHR	Kenya National Commission on Human Rights
KPS	Kenya Prison Service
M&E	Monitoring and Evaluation
NAP	National Action Plan
NCCC	National Coordination and Consultative Committee on Internal Displacement
NCRC	National Crimes Research Centre
NERO	KNCHR, North Eastern Regional Office
NGO	Non-governmental Organization
NHRI	National Human Rights Institution
NORRO	KNCHR, North Rift Regional Office
PEV	Post-Election Violence
POMAC	Power of Mercy Advisory Committee
UNFPA	United Nations Population Fund
UNICEF	The United Nations Children's Fund
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNWG	United Nations Working Group
UPR	Universal Periodic Review



**The Fourth Schedule of the Constitution provides for allocation of responsibilities and places a number of functions within the mandate of the County governments that would contribute to the realisation of Economic, Social and Cultural rights.**

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## STATEMENT OF THE CHAIRPERSON



“The Kenya National Commission on Human Rights is pleased to present its Annual Report for the period 2016/2017. The report documents the work of the National Commission during the period under review and makes recommendations for the advancement of human rights and fundamental freedoms in our Republic. We are honoured for the opportunity granted to us to carry the mandate of promoting and protecting the observance of human rights and constitutionalism”.

As a National Human Rights Institution, KNCHR worked with State and non-State actors both locally and internationally to promote the inculcation of a culture of respect for human rights within the country. This is to ensure compliance with the Constitution of Kenya (2010) and international human rights standards and principles. The Kenya National Commission on Human Rights commends the State for ratifying the key human rights treaties and submission of its reports to the UN treaty body mechanisms. This has created a reporting obligation on Kenya with respect to implementation and domestication of the provisions of the various international instruments. We are optimistic that Kenya will ratify the outstanding human rights conventions and the optional protocols.

The Fourth Schedule of the Constitution provides for allocation of responsibilities and places a number of functions within the mandate of the County governments that would contribute to the realisation of Economic, Social and Cultural rights. Even as we state this we are aware and emphasize that human rights are in fact indivisible and interrelated. The Commission will continue to work closely with County governments to ensure that they adopt human rights based approach in their development agenda and service provision to the people. Kenya’s Constitution places human rights at the front and centre of good governance.

To complement the robust provisions of the Constitution, Kenya has also adopted the National Human Rights Policy and Action Plan. These two instruments provide a solid conceptual framework within which we can as a country progress the realisation of human rights.

It is impossible to promote human rights in the absence of a strong and vibrant civil society and human rights defenders who are operating within a conducive environment. We therefore continue to encourage and support the growth of the civil society sector and the civic space.

As articulated in Article 19 of the Constitution, the purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities. Restriction or non-attainment of human rights impacts negatively on the dignity of individuals and limits the promotion of social justice and the realisation of the potential of all human beings. This underscores the centrality of Economic, Social and Cultural rights. While the Constitution provides for the progressive realization of human rights, there is need to put more effort in moving policies from paper to action especially in prioritisation of resources for efficient service delivery.

We encourage the pursuit of security and the promotion and respect for human rights. As a Commission, We will be ready to apply our expertise in Alternative Dispute Resolution to resolve the source of conflict resulting from ethnic and clan clashes which lead to loss of lives thus hampering the enjoyment of the right to life as provided for under Article 43 of the Constitution and hampering economic rights. We will proactively engage County Governments and the political leadership to utilize alternative means of resolving disputes to forestall standoffs in the future among communities.

Lastly, the Commission calls on the Government ministries, departments and agencies to offer effective linkages with the Kenya National Commission on Human Rights as the key institution that influence policy, legislation and public accountability on matters human rights. We further urge the Government to resource the Commission adequately to enable it to efficiently and effectively carry out its human rights mandate. On the same note, we express our gratitude to the Government and all our strategic partners who supported our work during the financial period 2016/2017.

Thank you.



**Kagwiria Mbogori**  
Chairperson  
Kenya National Commission on Human Rights

**We will proactively engage County Governments and the political leadership to utilize alternative means of resolving disputes to forestall standoffs in the future among communities.**



## STATEMENT FROM THE SECRETARY

During the financial year 2016/2017, the priorities and work of the Commission focused around four strategic objectives namely:

1. To promote the respect and observance of human rights standards by public and private actors;
2. To increase the application of human rights principles and standards in institutions and alternative justice mechanisms;
3. To enhance the realization of economic and social rights in Kenya and
4. To enhance the efficiency and effectiveness of the Commission.

One of the core functions of the Commission is receiving complaints and carry out investigations in a bid to process them diligently and fairly. The Commission processes complaints, conducts preliminary investigations on admitted cases, and carries out field investigations into alleged human rights violations with a view to recommending redress in investigation reports. It also generates appropriate cases for public interest litigation and alternative dispute resolution together with redressing the same.

During the financial year FY 2016/2017, the Commission received 4,852 petitions. The petitions were received from 4,880 petitioners (64% of these were male and 33% were female and 3% group petitions) who lodged the complaints. Economic, Social and Cultural rights (ECOSOC) formed the bulk of the complaints received, accounting for 3,057 (63.7%), out of which complaints touching on labour rights formed the majority. The Commission further received 1,472 (30%) that focused on civil and political rights, ranking it second in the main category. Under this category, rights of access to justice lead in this category. Cases on group rights reported during the financial year were 324 (7%), with refugees seeking asylum forming the bulk in this category.

On the other hand, the Commission was involved in five (5) Public Interest Litigation cases during the financial year 2016/2017. KNCHR planned to litigate on behalf of victims of 2007/2008 post-election violence by participating as amicus curiae in the prosecution of Petition No. 18 of 2014 at the Kisumu High Court which sought to secure redress for victims of police shootings during the 2007/2008 post-election violence. The Commission also participated in two (2) other cases on Environment and Land in Kisumu and at the High Court in Migori. Other Public Interest Litigation cases were lodged in Migori and Mount Elgon.

A key activity for the Commission during the 2016/2017 review period was conducting three (3) major Public Inquiries on security situation and the impact of the enjoyment of human rights in the North Rift and the Coastal regions of Kenya and a public inquiry on human rights violations in the mining sector in Taita Taveta County. The Commission set to unravel the human rights issues in the sector. KNCHR embarked on North Rift public inquiry on insecurity that covered the Counties of Baringo, Elgeyo Marakwet, West Pokot, Turkana and Samburu. The Commission's decision to conduct this inquiry was informed by the fact that such a mode of action (the inquiry) best addresses complex human rights situations that have historical and systemic natures and thus require comprehensive examination and reporting. The Coast region inquiry focused on the impact of insecurity on human rights in the four counties of Lamu, Mombasa, Tana River and Kwale. Under the public inquiry on mining and impact on human rights, KNCHR with support from GIZ, set out to investigate and document the human rights situation in the mining sector in Taita Taveta. In its preparatory process, KNCHR identified three (3) areas of Mwatate Sub-County, Kasighau in Voi Sub-county and Kishushe in Wundanyi Sub-County.

The Commission also reviewed Bills and Policies to ensure that they were compliant with the Constitution. During the reporting period the KNCHR reviewed twenty (20) Bills and submitted advisories to relevant policy makers and focal points on the various legislations and policies. The Commission reviewed County legislations from Wajir and Nairobi upon written request by the respective County Assemblies.

In 2016/2017 Kenya National Commission on Human Rights concluded the following thematic and occasional reports on human rights:

1. Research and Publication of Briefing Paper on Article 12 of the Convention on the Rights of Persons with Disabilities regarding Legal Capacity
2. Research on Counter-Terrorism legislation analysis
3. Research Report on Inter-Sex persons in Kenya
4. Audit of the situation of women and other vulnerable human rights defenders in Kenya
5. Research report on cost of impunity

As part of enhancing capacity of citizens to claim their rights, the Commission set out to raise public awareness of the rights and obligations of a citizen under the Constitution. The Commission's constitutional mandate to promote and protect human rights requires the Commission to have a country-wide presence. However, the Commission has so far managed to have only six offices. In an effort to bridge the gap and serve all Kenyans, especially the often marginalized country side, the Commission held human rights and legal aid clinics, trade and exhibitions and commemorated key thematic human rights days. The Commission also held public forum with human rights defenders, duty bearers and members of the public.

As part of its functions to enhance the country's compliance with regional and international human rights obligations, the Commission attended Kenya's review of its implementation of the International Convention on the Elimination of all Forms of Racial Discrimination. KNCHR also participated in the 10th Session of the Conference of State Parties to the Convention on the Rights of Persons with Disabilities. The Conference which is mandated under Article 40 of the Convention brings together State parties, National Human Rights Institutions, UN Agencies, Civil Societies and Persons with Disabilities with a view to finding better ways to improve the lives and well-being of Persons with Disabilities.

In June 2017, the Attorney General formally re-designated the Kenya National Commission on Human Rights as the monitoring agency under the Convention on the Rights of Persons with Disabilities. The nomination of the Commission is an important milestone towards monitoring and advising the State on its obligations under the Convention on the Rights of Persons with Disabilities and the Constitution of Kenya, 2010.

During the 2016/2017 review, the Commission issued a State of Human Rights statement which was released ahead of H.E. the President's 4th State of The Nation Address. It is part of our deliberate efforts within our mandate to increase and create awareness on the human rights status in Kenya while endeavouring to hold the Government accountable in the promotion and protection of human rights. The status speech highlighted KNCHR position on the state of human rights within the nation for the period 2016/2017. The statement was shared with the Office of the President and its receipt acknowledged.

In conclusion we encourage all people of good-will "To stand up for someone's rights". We commit to ensure that our responsibilities and accountabilities empower the public with knowledge of human rights. At KNCHR we will continue to work to increase public understanding of their rights and obligations as provided under the Constitution of Kenya.

We wish to acknowledge the support of the Government, and specifically the office of the Attorney General, and all our key partners. We will endeavour to enhance and upscale our collaboration in the next financial year 2017/2018.



**Dr. Bernard Mogesa, PHD**  
**Commission Secretary /Chief Executive Officer**  
**Kenya National Commission on Human Rights**

# Overview

## OVERVIEW OF THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

The Kenya National Commission on Human Rights (the Commission or KNCHR) is an independent National Human Rights Institution (NHRI) established under Article 59(1) of the Constitution of Kenya, 2010 and the Kenya National Commission on Human Rights Act, 2011.

The Commission implements two key broad mandates: first, it acts as a watchdog over the Government in the area of human rights (the protection mandate); secondly, it plays a key leadership role in advising and moving the country towards becoming a human rights state (the promotion mandate). These mandates are implemented through various strategies including research, advocacy, lobbying, education and training, outreach, investigations and redress, issuing advisories and publications, and through partnerships building and networking.

The KNCHR has its head office in Nairobi with 5 regional offices in Wajir, Kitale, Kisumu, Laikipia and Mombasa. Currently the Commission has 93 staff.

### Independence of the Commission

The KNCHR has the status and powers of a Commission within the meaning of Chapter 15 of the Constitution. The Commission is not subject to the authority or control of any person or agency in the performance of its functions. Chapter 15 of The Constitution, Article 249(2) on Commissions and Independent Offices provides that:

“The Commissions and holders of independent offices: -

- a) Are subject only to this Constitution and the law; and
- b) Are independent and not subject to direction or control by any person or authority.”

The Commission gets its funding from both the Government of Kenya and development partners. It however sets its own priorities in accordance with the strategic plan and mandate under its constitutive Act. Additionally, the Commission determines how to use the resources allocated, which are utilized as per the annual work plans and budget estimates to deliver the objectives set out in the strategic plan.



## Functions and powers of the KNCHR

The functions of the Commission are set out in Article 59(2) of the Constitution and have been operationalized through Section 8 of the KNCHR Act, 2011. These are to:

- a) Promote respect for human rights and develop a culture of human rights in the Republic;
- b) Promote the protection and observance of human rights in public and private institutions;
- c) Monitor, investigate and report on the observance of human rights in all spheres of life in the republic;
- d) Receive and investigate complaints about alleged abuses of human rights, except those relating to the principle of equality and freedom from discrimination under the Gender and Equality Commission, and take steps to secure appropriate redress where human rights have been violated;
- e) On its own initiative or on the basis of complaints, investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs;
- f) Act as the principal organ of the state in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights except those that relate to the rights of special interest groups protected under the law relating to equality and non-discrimination;
- g) Formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a citizen under the Constitution;
- h) Work with the National Gender and Equality Commission and the Commission on Administrative Justice to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referral and collaboration;
- i) Perform such other functions as the Commission may consider necessary for the promotion and protection of human rights; and,
- j) Perform such other functions as may be prescribed by the Constitution and any other written law.

The powers of the Commission on the other hand are prescribed under the Constitution and the KNCHR Act. Article 252(1) states each Commission and each holder of an Independent office:

- a) May conduct investigation on its own initiative or on a complaint made by a member of the public;
- b) Has the powers necessary for conciliation, mediation and negotiation;

## Overview

- c) Shall recruit its own staff; and
- d) May perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by this Constitution.

Article 252(2) states; a complaint to a Commission or the holder of an independent office may be made by any person entitled to institute court proceedings under article 22(1) and (2).

Section 26 of KNCHR Act, 2011 provides for general powers of the KNCHR and states:

In addition to the powers conferred in Article 252 of the Constitution, the Commission shall have powers to:

- a) Issue summons, as it deems necessary for the fulfilment of its mandate;
- b) Require that statements be given under oath or affirmation and to administer such oath or affirmation;
- c) Adjudicate on matters relating to human rights;
- d) Obtain, by any lawful means, any information it considers relevant, including requisition of reports, records, documents and any information from any person, including governmental authorities, and to compel the production of such information for the proper discharge of its duties;
- e) By order of the Court, enter upon any establishment or premises, and to enter upon any land or premises for any purpose material to the fulfilment of the mandate of the Commission, in particular, for the purpose of obtaining information, inspecting any property or taking copies of any documents, and for safeguarding any such property or document;
- f) Interview any person or group of persons;
- g) Subject to adequate provisions being made to meet his expenses for the purpose, call upon any person to meet with the Commission or its staff, or to attend a session or hearing of the Commission, and to compel a person who fails to respond to a request of The Commission to appear and to answer questions relevant to the subject matter of the Session or hearing;
- h) Conduct audits of any public or private institution to establish the level of compliance with the Constitution with regards to integrating the principle of equality and equity in its operations; and,
- i) Require any public or private institution to provide any special report on matters relating to the institution's implementation of the principle of equality and equity including gender equity.

## Affiliation to International and Regional Networks

The Commission is affiliated to the Global Alliance for National Human Rights Institutions (GANHRI) an international, independent body established to promote the establishment and strengthening of NHRIs in conformity with the Paris Principles and enjoys 'A' Status accreditation. The GANHRI's sub-committee on accreditation conducts periodic review (every five years) of existing NHRIs to assess their continued compliance with Paris Principles and strengthen NHRIs to ensure full compliance through technical assistance. Proposed and new NHRI are assessed against Paris Principles benchmarks before their accreditation as A, B or C status NHRI depending on their level of compliance. Accreditation regulates NHRIs' access to the UN Human Rights Council and the treaty body mechanisms, hence the key significance of this mechanism to the work of NHRIs.

The GANHRI facilitates interaction and cooperation between NHRIs and the UN system, as well as coordination and collaboration among NHRIs. In addition, it strengthens NHRIs to ensure full compliance with Paris Principles. The GANHRI currently has 16 voting members representing four regions (Africa, America, Europe, and Asia/pacific region)

The work of NHRIs in Africa is coordinated by the Network of African National Human Rights Institutions (NANHRI), which is headquartered in Nairobi and is hosted by the KNCHR. NANHRI encourages and supports the establishment of strong and independent African NHRIs in compliance with Paris Principles through national, sub-regional, regional and international cooperation. It strives to ensure that African NHRIs effectively undertake their mandate of human rights monitoring, protection, promotion and advocacy towards a continent characterized by human rights culture and justice for all.

The Commission remains a full member of NANHRI and has committed to continue offering institutional support to the Network to enable it undertake its mission of strengthening NHRIs in Africa.

## Strategic Direction for the Financial Year 2016/2017

The Commission's strategic direction as outlined in the 2015-2018 strategic plan is structured as follows:

<b>Vision</b>	A society that upholds human rights for all.
<b>Mission</b>	To protect, promote and monitor the respect for human rights in Kenya through law, policy and practice.
<b>Goal</b>	Increased enjoyment and respect for human rights and fundamental freedoms by all in the Republic of Kenya.

### Values

The Commission believes in and upholds the following core values:

- **Accessibility**
- **Integrity**
- **Impartiality**
- **Independence**
- **Inclusiveness**

### Strategic Objectives

In the Strategic Plan, the priorities and work of the Commission are focused around four Strategic Objectives namely:

- 👍 **To promote the respect and observance of human rights standards by public and private actors.**
- 👍 **To increase the application of human rights principles and standards in institutions and alternative justice mechanisms.**
- 👍 **To enhance the realization of economic and social rights in Kenya.**
- 👍 **To enhance the efficiency and effectiveness of the Commission.**

# Strategic Objective 1:

## TO PROMOTE THE RESPECT AND OBSERVANCE OF HUMAN RIGHTS STANDARDS BY PUBLIC AND PRIVATE ACTORS

Human Rights Protection Mainstreamed In the Processes, Operations and Practice of Selected Public and Private Actors



### PUBLIC AND PRIVATE ACTORS' AWARENESS ON HUMAN RIGHTS PRINCIPLES ENHANCED

**Trained a total of 24 journalists in Busia and Kwale Counties.**

KNCHR trained journalists on the work of HRDs, the role of the media in facilitation the work of HRDs, journalists as HRDs and human rights reporting. The media has an important role to play in the promotion and protection of human rights. It has a wide outreach and can easily influence thought amongst both rights holders and duty bearers. The media also provides human rights education and highlights human rights violations, thereby putting pressure on duty bearers to take remedial action where rights have been violated or are likely to be violated. The EU-HRDs Project which came to an end in September, 2016 sought to secure the support of the media for the work of HRDs and also to get the journalists to begin to see themselves as HRDs. Training of journalists on human rights was one of the strategies employed to achieve this end.

**KNCHR conducted training exercise for 50 HRDs in Elgeyo Marakwet and Baringo counties**

The training was meant to address the capacity gaps identified during the mapping exercise<sup>1</sup>. Through the training, KNCHR enhanced the capacity of 50 HRDs (19 Female - 2 PLWD), 31 male – 2PLWD) on security management as HRDs, Human rights documentation and reporting, advocacy amongst other capacity gaps that had been identified. Four (4) complaints were received during the training and acted upon. KNCHR also received feedback on the draft HRD Policy and Action Plan and has since compiled a revised draft Policy and Action Plan for further action.

<sup>1</sup>The Mapping identified: low understanding of human rights and human rights principles, security management, documentation and reporting of violations as gaps by HRDS.

### **Conducted a training for 80 police officers on electoral laws and democratic policing**

Police officers play a key role in ensuring peaceful and credible elections and it is therefore crucial that they fully understand their role in the electoral process. Secondly, certain situations that may obtain during electoral processes such as campaigns require police to respond in ways that are in conformity with international human rights standards and principles. It is therefore necessary that police acquire a good understanding of the electoral laws in order for them to effectively ensure full observance of the laws. Through support from the Kisumu County Police Commander, the Office conducted a training for the police officers in order to enhance their capacity to detect violations of electoral laws and their capacity to apply human rights principles in their operations. The training was conducted at the Nyanza Region Police Training Centre and it drew participants from all the sub-counties in Kisumu County.

### **Training of 86 youths on rights and responsibilities in the context of elections**

In almost all cases of elections-related violence, most perpetrators of violence and other offences are usually youth from low-income areas. Due to their low economic ability, they can easily be misused by politicians who may want to use violence against their opponents. Assisting the youth to appreciate the need to respect human rights and avoid getting themselves in conflict with the law is an important way of dissuading them from engaging in violent acts that infringe on other people's rights. KNCHR in collaboration with Kisumu Youth Olympic Centre, conducted a half-day training for youth from hotspot areas on the rights and responsibilities in relation to participation in electoral processes. The youth were taken through various topics, including; civil and political rights, rights and responsibilities of individuals and state responsibility in the realization of human rights. There were also discussions on the link between elections, development and the realization of socioeconomic rights.



Photo 1: A participant makes a presentation during the training for youth on human rights and elections.

## Resolution of human rights violations through Public Interest Litigation (PIL)

The following are some of the PIL cases the Commission was involved in.

### PIL Case 1

During the current reporting period, the KNCHR planned to litigate on behalf of victims of 2007/2008 post-election violence by participating as an *amicus curiae* in the prosecution of **Petition No. 18 of 2014** at the Kisumu High Court which seeks to secure redress for victims of police shootings during the 2007/2008 post-election violence. KNCHR had also planned to file a suit on behalf of victims of environmental pollution in Ndhiwa, Homa Bay County. Further KNCHR carried forward a *habeas corpus* petition filed at the Kisumu High Court (Petition Number 1 of 2016) from the previous reporting period. Through the law firm of Olel, Onyango, Ingutiah and Company Advocates, the Office successfully applied to be enjoined as an *amicus curiae* in Petition No. 18 of 2014. The matter is still pending before court. Its hearing has taken a while because the Petition has multiple parties and there were a number of preliminary issues which had to be settled before substantive hearing kicked off on 5th of July.



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### PIL Case 2:

**Petition No. 1 of 2016**, filed at the Kisumu High Court, was withdrawn after the petitioner who was a wife to the disappeared subject repeatedly failed to attend court for hearing. KNCHR later discovered that she was suspected to have been involved in a violent robbery where a civilian was shot, and was being sought by the police. The Commission therefore withdrew the matter.

---

### PIL Case 3:

KNCHR also participated in 2 other cases, one at the Environment and Land Court in Kisumu and the other at the High Court in Migori. The Kisumu Environment and Land Court **Petition No. 2 of 2016** raising questions on the right to a clean and healthy environment was lodged by 5 petitioners against NEMA, the Attorney General, the County Government of Kisumu and 5 individual respondents. The claim is that the sand harvesting activities of the 5 individual respondents in Kochieng' area in Kisumu County had interfered with the terrain of the land in the area, thereby making it prone to flooding. This had in turn led to displacements and interference with water sources. Given that the Petition raises issues touching not only on environmental rights but also on socio-economic wellbeing of the residents of the affected area, the Commission an application to be enjoined as *amicus curiae* in order to offer guidance to the court on the best way to balance the rights of the parties. The application was heard and allowed on 23rd March and the Commission and the parties were directed to file their submissions before the 7th of November, 2017 when the submissions will be orally highlighted.



#### **PIL Case 4:**

**Petition No. 2 of 2017** which was filed at the High Court in Migori is a petition seeking orders of *habeas corpus* against the State. The Petition was filed following the suspected enforced disappearance of a Mr. Daniel Baru Nyamohanga by the police at Kehancha Police Station. Hearing was concluded and the matter is due for judgment on 14th July, 2017.

#### **PIL Case 5:**

KNCHR jointly with the Consultant/Advocate identified to lead the KNCHR in seeking redress for Victims of Okoa Maisha operation conducted a sensitization forum for widows in Mt. Elgon. The Forum targeted widows whose husbands were killed by the army during the operation that was meant to flush out members of the Sabao Land Defence Force. 83 widows were sensitized on the KNCHR mandate; the rights violated during the operation and the redress mechanisms available (PIL by the KNCHR). KNCHR therefore identified potential key witnesses for the widows that will testify in the anticipated PIL.

KNCHR went ahead and collected evidence and filed the PIL which seeks compensation for human rights violations committed by members of the Kenya Defense Forces during the operation. The KNCHR's has served its application to be enjoined in the PIL as an Interested Party. The said application was slated for hearing on 9th October 2017.

### **Complaints analysed and satisfactorily resolved**

Receiving Complaints and investigations constitute one of the core functions of the Kenya National Commission on Human Rights. The Commission processes complaints, conducts preliminary investigations on admitted cases, and carries out field investigations into alleged human rights violations with a view to recommending redress in investigation reports. It also generates appropriate cases for public interest litigation and alternative dispute resolution together with the redressing the same.

During the reporting period, KNCHR's SMS platform recorded increase in its usage specifically for receiving complaints as well as communicating feedback to the public. The commission has continued to benefit largely from an improved complaints management system (PIMS) which is attributed to improved data analysis, reporting, case file management as well as improved turn-around timelines for case file management. It is evident that satisfaction levels of petitioners have risen as a result of successful resolution of complaints, timely response and feedback on complaints processed save for the limited resources to undertake investigations on all admitted complaints.

During the financial year FY 2016/17, the commission received 4,852 petitions. The petitions were received from 4,880 petitioners (64% of these were male and 33% were female and 3% group petitions) who lodged the complaints. Economic, Social and Cultural



rights (ECOSOC) formed the bulk of the complaints received, accounting for 3,057 (63.7%), out of which complaints touching on Labour rights formed a majority. The commission further received 1,472 (30%) touching on Civil and Political Rights, ranking it second in the main category. Under this category, rights of access to Justice lead in this category. Cases on group rights reported during the financial year was 324 (7%), with Refugees seeking asylum forming the bulk in this category.

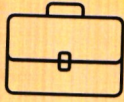
**Table 1: Regional distribution of complaints**

Admission Status	HQ	NERO	NORRO	CORO	WERO	Laikipia	Total
Admitted petitions	395	116	41	53	30	4	<b>639</b>
Legal advice administered	1694	203	920	606	681	102	<b>4,206</b>
Pending	3	-	-	4	-	-	<b>7</b>
Total filed Complaints	2,092	319	961	663	711	106	<b>4,852</b>

Most of the petitioners (86.7%) of the alleged human rights violations were assisted through legal advice, alternative dispute resolution measures or referred to other agencies, 13.2% were admitted for further investigations, while the remaining 0.41 % were awaiting submission of more supporting documents.

**Table 2: Mode of lodging complaints**

Mode Of Lodging Complaints	HQ	NERO	NORRO	CORO	WERO	Laikipia	Total
Email	60	-	7	-	4	-	<b>71</b>
Huduma Centre Eastleigh	96	-	-	2	-	-	<b>98</b>
Huduma Centre Kiambu	222	-	1	22	-	1	<b>246</b>
Investigations	6	-	1	-	-	-	<b>7</b>
IPCRM	3	-	-	2	5	-	<b>10</b>
Mail	47	1	5	-	23	4	<b>80</b>
Physical	1137	244	858	567	520	90	<b>3,416</b>
Print media	7	-	-	-	-	-	<b>7</b>
Public Forums	181	43	17	37	84	4	<b>366</b>
Referral	10	3	3	3	2	-	<b>21</b>
SMS	69	-	8	10	7	-	<b>94</b>
Telephone	224	28	58	19	63	7	<b>399</b>
Website	28	-	-	-	-	-	<b>28</b>



## Resolution of human rights violations through litigation

In the reporting period, the Commission concluded the following, amongst other, successfully:

### Petition 227 of 2016 - Refugee Case

The case protesting about the intended closure of Dadaab and the forced repatriation of all its Somali dwellers. Also, the disbandment of the Refugee Committee instituted under the Refugee Act (2006). The Commission through took part in the case as petitioners and the judgement was as follows:

A declaration was issued declaring that the directive issued by the 4th Respondent namely, Dr. (Eng) Karanja Kibicho on the 6th May 2016 disbanding the Department of Refugee Affairs is ultra vires the 4th Respondent powers and hence void.

THAT the directive issued by the 3rd Respondent, namely Major General (RTD) Joseph Nkaisery on the intended repatriation of refugees and asylum seekers of Somali origin on 10th May 2016 is arbitrary, discriminatory and indignifying and hence a violation of Articles 27 and 28 of the constitution and consequently the same is null and void.

THAT to the extent that the decision of the Government of the Republic of Kenya to close Dadaab refugee camp was undertaken without giving the stakeholders and the affected parties an opportunity to make representations either in person or through their representatives, the right to a fair administrative action as guaranteed by Article 47 of the Constitution has been denied, violated, infringed or is threatened, hence the said decision is null and void.

THAT the 3rd and 4th Respondents acted in excess and in abuse of their power, in violation of the rule of law and in contravention of their respective oaths of office contrary to Article 2, 3, 10, and 75 (1) (c) of the constitution. A declaration that the decision of the Government of Kenya to collectively repatriate all refugees in Dadaab camp to the frontiers of their country of origin against their will violated the principle of non-refoulment as expressed in Article 33 of the 1951 UN Convention relating to the status of refugees as well as section 18 of the Refugee Act 2006 .

THAT the Governments decisions specifically targeting Somali refugee is an act of group persecution, illegal, discriminatory and therefore unconstitutional.

An order of certiorari was issued to remove into this honourable court for the purposes of quashing the directives of the 3rd and 4th Respondents dated 10th May 2016 and 6th May 2016 respectively.

An order of mandamus was issued directing the 1st , 2nd, 3rd , and 4th Respondents to, with immediate effect, restore the status quo ante predating the impugned directive with regard to administration of refugee affairs in the Republic of Kenya and, to specifically and with immediate effect, reinstate and operationalize the Department of refugee affairs.



### **Petition No. 351 of 2015 - Trusted Society Organization v Attorney General**

This petition was filed by the Trusted Society for Human Rights in 2015 to compel the Minister for Devolution who was the legal custodian of this docket at the time, to commence the Public Benefits Organizations Act (PBO Act). The Commission led the preparatory meetings which were held in its board room by several stakeholders. The Commission joined the petition as amicus. Judgment was rendered by the court on 31st October 2016 ordering the CS to commence the Act. This did not happen, and instead, the government transferred the functions of the Act to the Ministry of Interior and Coordination of National government. One of the parties brought a contempt application to cite Kiunjuri and Nkaissey for contempt of court in December. The Commission also joined that application. The court ruled that firstly, Nkaissey should be substituted and made the 1st Respondent. Second, he was given 30 days to comply with the judgment and in default he will be liable to be cited for contempt of court.

### **Petition No. 371 of 2016 - 2/3 Gender Case**

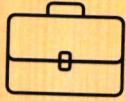
The core issue raised in this petition is whether or not Parliament has failed to fulfil an obligation the Constitution imposes on it. The specific question is whether or not Parliament has passed legislation that gives effect to the two thirds gender rule. If not, Parliament is in breach of its constitutional obligation. Parliament failed to enact legislation to promote the representation in Parliament of, among other groups, women; effective date is the 27th of August 2010; Respondent did not pass the required legislation by the deadline of 27th August 2015; enactment of the two-thirds gender principle is essential for the enjoyment of the fundamental rights of equality and non-discrimination enshrined in Article 27 of the COK. The failure of parliament to enact the crucial legislation in time as required by the COK represents a serious violation of the Constitution which they swore to and are obligated by Article 3 to fully defend; hence the commission's petition to Court.

Judgement was delivered by Justice Mativo J. on 29/3/2017 where the court found that; the National Assembly and the Senate have failed in their joint and separate constitutional obligations to enact legislation necessary to give effect to the principle that not more than two thirds of the members of the National Assembly and the Senate shall be of the same gender.

The failure by parliament to enact the legislation contemplated under article 27 (6) & (8) and 81 (b) of the constitution amounts to a violation of the rights of women to equality and freedom from discrimination and a violation of the constitution.

An order of mandamus was issued directing Parliament and the Honourable Attorney General to take steps to ensure that the required legislation is enacted within a period of sixty (60) days from the date of this order and to report the progress to the Chief Justice.

If Parliament fails to enact the said legislation within the said period of (60) days from the date of the order, the Petitioners or any other person shall be at liberty to petition the Honourable the Chief Justice to advise the President to dissolve Parliament.



### **Petition 323 of 2013 – Wilfred Olal Vs A.G**

This Petition was filed on 25th March 2014 by four human right defenders, KNCHR and IMLU to challenge the constitutionality and continued prosecution of the four petitioners in criminal case No.251 of 2014 in which the four petitioners are charged with offences relating to a peaceful demonstration organized on 13th February 2014 to protest against corruption, mutilation of the constitution, poor governance among other issues. Judgement was delivered on 28/6/2017 as follows:

There was no evidence showing that the 1st to 4th petitioners were violent or resisted arrest as alleged by the police officers. Further, that there was no evidence showing that a notice of cancellation of the peaceful demonstration was issued or even evidence showing the proclamation being read out for the demonstrators to disperse. In addition to the above, the petitioners' right to be informed of the reason of arrest and charge against them was not adhered to and therefore the right to a fair hearing was also breached. In light of the above, the court awarded damages of Kshs. 250,000 to each of the 4 petitioners and quashed the criminal proceedings.

## **Resolution of human rights violations through public inquiries**

### **Conducted public inquiry on security situation and human rights in the Coast of Kenya**

The KNCHR is expected by the provisions under Chapter Four and mandated by the Article 59 of the Constitution specifically but to ensure that human rights in the Republic are protected and guaranteed. In furtherance of this mandate, the commission conducted this public inquiry which seeks to analyse the state of security in the country with a human rights lens. The Inquiry aimed to generally audit the effects of insecurity reported in the country and ascertain human rights that are upheld in spite of insecurity. All with the main aim of making appropriate recommendations to the various agencies of government on the structures that may be required so as to tighten the security situation in the country.

The 2016 Public Inquiry into security in the coast looked into the impact of insecurity on human rights in the four counties of Lamu, Mombasa, Tana River and Kwale. The inquiry was undertaken through a consultative process guided by three objectives, namely: provide a platform for the public to articulate their experiences; to determine the nature of rights violations; to make recommendations that will ensure accountability for the rights violations and to raise public awareness and promote the debate on obligations of the state as to the right to security of the person and property.

The findings from the public inquiry have been summarised into a report on the status and impact on human rights in the 4 coastal counties. The report traces the historical background alluding to linkage in causes of current conflict; it captures violations presented during the inquiry consequent to insecurity such as Social Economic and cultural rights (Education, Water and health, unfavourable working environment of security officers), Civil political rights (right to life, right to property, human wildlife conflict, Right of association, Freedom of worship, violation of group rights and displacement)



### **Conducted a public inquiry in the North Rift on Insecurity and Human Rights**

In May 2016, KNCHR embarked on a Public Inquiry on insecurity in the North Rift (Baringo, Elgeyo Marakwet, West Pokot, Turkana and Samburu Counties) and its impact on the enjoyment of Human Rights. The inquiry was confined to the period between 2005 and 2015 though the conflict within the North Rift region can be traced to periods before pre-colonial times.

The objectives of the inquiry was to ascertain the motivators and impact of the conflict on individuals, families and communities in the context of human rights violations; to raise public awareness and promote debate on obligations of the state in regard to the right to security of the person and property; and to secure accountability for the human rights violations in North Rift.

The Commission's decision to conduct this inquiry was also informed by the fact that such a mode of action (the inquiry) best addresses complex human rights situations that have historical and systemic natures and thus require comprehensive examination and reporting as was the case in the North Rift.

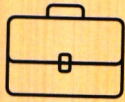
The inquiry used mixed methods approach in gathering and analysing the relevant information; desk research, pre-inquiry hearing forums, mobilisation of the public and identification of witnesses, public hearings, meetings with state and non-state actors and site visits, use of security expert consultant, submission of memoranda and engagement of the media.

Noteworthy is that persons adversely mentioned during the inquiry were offered a right of reply on diverse dates between July and December 2016 after which the KNCHR finalized the inquiry report.

The KNCHR plans to launch the report and disseminate its findings in June 2018 with advocacy for implementation of the inquiry recommendations to begin immediately after the launch.

### **Review of laws and policies of public institutions**

The Commission reviewed bills and policies to ensure that they were compliant with the Constitution. During the reporting period the KNCHR reviewed 20 bills and submitted similar number of advisories to relevant policy makers and focal points on the various pieces of legislation and policy. This financial year also saw the Commission reviewing and submitting advisories on county legislation from Wajir and Nairobi upon written request by the respective County Assemblies. The Bills include the Wajir County Persons with Disabilities Bill, 2017 and the Nairobi City County Child Care Facilities Bill, 2017. It is also important to note that the Commission was invited by the Ministry of East Africa, Labour, Social Services and the Ministry of Health, to provide technical support in development and validation of the National Social Protection Bill and the Environment and Public Sanitation Bill respectively. This ensured that the Commission was able to integrate human rights principles and norms within the proposed legislation at its development stage. The other bills reviewed are: Contempt of Court Bill, Sexual Offences Act (Amendment) Bill, Refugee Amendment Bill 2016, The Energy Bill of 2015, Political Parties (Amendment) Bill 2016, Persons with Disabilities (Amendment) Bill, County Government (Amendment) Bill No 4 of 2014, Information Communication Practitioners Bill, Community Land Bill 2015, Penal Code (Amendment) Bill 2016 and a review of a Private Member's



Bill recommending amendment of the IDP Act. Advisory on the East African Community Gender Equality and Development Bill, 2016; the Children Bill, 2016; the East African Community Prohibition against Female Genital Mutilation bill; 2016; Election Offences (Amendment) Bill, 2017; National Disability Mainstreaming Strategy.

An audit of the advisories prepared indicates that 44% of the proposals made by the Commission were accepted and incorporated in the ensuing legislation. The audit is based on the bills which KNCHR has reviewed and have been subsequently enacted into law.

## **Thematic /Occasional reports on human rights**

### **Research and Publication of Briefing Paper on Article 12 of the Convention on the Rights of Persons with Disabilities regarding Legal Capacity**

The Commission commenced a study on the legal capacity in Kenya with the aim of detailing the situation of the right to legal capacity for persons with disabilities in Kenya and how it is currently being implemented and interpreted at the institutional level. The study identifies challenges faced by individuals and institutions in implementing and achieving legal capacity from care givers and persons with disabilities. The study was conducted through seeking views and perceptions of various actors in implementing Article 12 of the Convention of the Rights of Persons with Disabilities who include the members of professional bodies such as the judiciary, financial and insurance institutions, care givers and person with disabilities. The Study also provides an analysis of the various legal and policy provisions on legal capacity and how different agencies implement them. Amongst the key findings was that there is needs for urgent review of all laws that touch on legal capacity or equal recognition before the law to ensure compliance with Article 27 of the Constitution and Article 12 of the Convention on the Rights of Persons with Disabilities. Secondly, due to societal attitudes and prejudices against persons with disabilities, there is need for awareness creation on the implications of article 12 of the Convention on the Rights of Persons with Disabilities. The findings of the study will be key in advising the state on the National Disability Mainstreaming Strategy and the formulation of policy framework on legal capacity in Kenya.

### **Research on Counter-Terrorism legislation analysis**

The Study was commissioned with a view to analysing, from a comparative perspective, existing counter-terrorism measures including policies and legislation and the safeguards therein to protect human rights. The review was also based on whether the counter-terrorism measures complies with the international standards and best practices. This report has been finalized and published. The report will hopefully add value to the Commission's efforts of pursuing holistic security sector reforms especially in the fight against terrorism.

### **Research Report on Inter-Sex persons in Kenya**

The Commission initiated a study on the rights of inter-sex persons in Kenya with a view to guiding its work on advocacy for legal and policy reforms in Kenya. The Research report is titled '*Equal in Dignity*



*and Rights: Recommendations for Promoting the Rights of Inter-Sex Persons in Kenya'.*

The Research was commenced following the Commission's engagement with the National Assembly departmental committee on Administration and National Security and the Office of the Attorney General on violations suffered by inter-sex persons in Kenya. The study documents human rights violations suffered by inter-sex persons in Kenya and makes recommendations to various stakeholders towards protection of inter-sex persons in Kenya. The report will inform KNCHR's submission to the Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding Inter-sex Persons in Kenya constituted by the Attorney General on 18th May 2017.

#### **Audit of the situation of women and other vulnerable human rights defenders in Kenya**

The research was commissioned with a view to: document the situation of women human rights defenders and other vulnerable human defenders; understand their roles, and risk factors and; recommend the best practices for their protection. The research was conducted between November and December 2016 in six selected counties. Data analysis, report writing and publication was done in quarter 3. The key findings of the research include that women HRDs require differential support and protection that responds to the specific threats they face which include arbitrary arrest for trumped up charges such as incitement to violence and disobedience of law enforcement officials, physical and sexual assault, domestic violence. The report findings and recommendations will act as a baseline of the situation of human rights defenders in the country and will be used as an advocacy tool towards enhancing better protection of human rights defenders.

#### **Research report on cost of impunity**

The Commission during the quarter finalized and published the research report on the cost of impunity titled: '*Footprints of Impunity: Counting the Cost of Human Rights Violations*'. This research was commissioned between October and November 2016 to document the cost of human rights violations especially where the same were occasioned by acts of impunity. To this end, the Commission sought follow up on whether the government compensated the Nyayo house torture victims as per the court orders and highlight the plight of torture victims as an example of the attitude of impunity by the state to victims of human rights violations. The Commission further sought to establish whether all the Nyayo House victims were reached and how much they were compensated and to establish the overall cost of impunity to the country and the victims and survivors of torture. The report's key finding is that there was need to pursue other forms of reparation other than monetary compensation because monetary compensation counts for nothing in comparison with the losses experienced by victims and their families i.e. death, loss of income, loss of education and employment, broken family relationships and ill health. In addition the cost to the economy includes KShs 372,524,868 in compensation claims. Furthermore, due to the inordinate delay in filing claims within courts some victims of torture have been unable to secure compensation for their ordeal. It is on this basis that the report recommends for concerted efforts towards: the operationalization of Reparation Fund; securing rehabilitation including medical, psychological, legal and social services for the victims; and advocating for guarantees of non-repetition. The recommendations in this report shall act as an advocacy tool towards implementation of the Truth Justice and Reconciliation Report and the full operationalization of the Victim Protection Trust Fund and Board.



## EMPOWERED COMMUNITIES THAT ARE ABLE TO CLAIM THEIR RIGHTS

### Enhancing capacity of citizen to claim their rights

One of the functions of the KNCHR as set out in section 8 of the KNCHR Act is to formulate, implement and oversee programmes that are intended to raise public awareness of the rights and obligations of a citizen under the Constitution. Enlightening members of the public about their rights and responsibilities is an important way of empowering communities and enabling them to claim their rights. Further, empowered citizens are better placed to detect violations of their human rights and to seek redress for the violations.

The Commission's constitutional mandate to promote and protect human rights requires the Commission to have a country-wide presence. However, the Commission has so far managed to have only six offices spread far and wide. As a result, communities especially the less privileged in far remote rural areas are at risk of being left out of the usual Commission programmes. In an effort to bridge the gap and serve all Kenyans, especially the often marginalized country side, the Commission held human rights/legal aid clinics, commemorated key thematic Human rights days reaching a total of 5900 members of the public.

### Public forums and human rights clinics

During the current reporting period, KNCHR held human rights clinics in Matungu and Ikolomani sub-counties in Kakamega County, and in Hamisi and Vihiga sub-counties in Vihiga County. A total of 824 participants were enlightened through the forums. Some of the key human rights concerns highlighted by the participants during the forums include: harassment of residents by the police; spousal neglect; non-recognition of women's land rights; sexual offences against minors; police inaction and poor access to health care. The forums conducted in Vihiga were supported by partners under the IPCRM platform.

Also a legal aid clinic in the Wajir GK prison in collaboration with CUC members was organized with the aim of reaching out to the inmates who are in dire need of legal services within the jail. Through this clinic KNCHR received 40 petitions and reached out to one hundred and thirty (130), one hundred and twenty four (124) men and six (6) women held within the confinements.

In Nyeri County 700 farmers in Mt. Kenya Forest under the Shamba System attended the forums while 4,900 members of the public attended the forums held in Nakuru County in Naivasha (Moi Ndabi/ Maiela settlement scheme), Kuresoi North (Kuresoi Township) and Molo (Molo Town) Sub-counties. In the forums held with farmers in Mt. Kenya forest, the participants were sensitized on basic human rights and the mandate of the Commission. The forums were necessitated by the existence of recurring conflict between farmers and the local wildlife and forest agencies arising from human wildlife conflict in the area.



The forums in Nakuru County brought together 23 institutions, constituting government agencies and CSOs, which form the complaints referral partners of the Commission. The participants were sensitized on human rights, and on the mandate and functions of all the participating organizations. The Commission also received and handled complaints and concerns from the participants. In Nyeri human wildlife conflict was the main issue of concern for the community while in Nakuru, land disputes and compensation of displaced persons dominated the forums with cases of double allocation of land being the constant complaint in Moi Ndabi and Kuresoi.

Over 300 members of the public were sensitized on their rights and the need to stand up for their rights during The International human rights day. The International human rights day is observed globally on 10th December every year to commemorate the UN General Assembly Universal Declaration on Human Rights adopted in 1948. In 1950, the Assembly passed resolution 423 (V), inviting all States and interested organizations to observe 10th December of each year as Human Rights Day.

The Commission held a public forum with 25 HRDs, 15 Duty Bearers and 10 Members of the Public. The objective of the forum was to discuss on topical human rights issues, strengthen the capacity of HRDs and duty bearers to engage in protection and promotion of human rights. It also intended to enhance awareness and profile the works of HRDs and duty bearers in the promotion of human rights, share on the challenges such as non-cooperation from County government officials and lack of funding. Among the successes by the HRDs have formed and registered a network amongst themselves to strengthen their capacity as HRDs. The topical issues that were being discussed were on land, labour and compensation, culture and education and insecurity in the region.

The Commission conducted a public forum on complaints handling in Sibanga with an aim of empowering residents to claim their rights. The forum was informed by the escalating number of complaints from the area regarding police brutality, inaction by government offices among other human rights violations. KNCHR enhanced knowledge of approximately 100 members of the public on the Commission and admissibility criteria for filing complaints. Approximately 200 IEC materials were distributed. 14 complaints were received during the forum, 3 of which were admitted for further action while legal advice was given to the rest.

#### **Participation in Kitale Agricultural Society of Kenya (ASK) Show**

KNCHR participated in the 2016 Kitale ASK Show which was held at Kitale Show Ground. The KNCHR had a tent where members of the public could walk in and learn about its mandate, make enquiries and pick IEC materials. Through the ASK show, KNCHR enhanced the capacity of approximately 300 members of the public (189 male, 111 female and 6 PLWD) participants on the KNCHR, its establishment, structure and mandate/functions; admissibility criteria and the KNCHR's engagement with various referral partners to process complaints and improve access to justice. Approximately 200 IEC materials were disseminated. KNCHR received 3 complaints two of which were offered appropriate legal advice and 1 admitted for further processing. Investigations have since been conducted on the admitted complaint and the matter referred to the County Police Commander who has since ensured reconstruction of the missing file and issuance of warrants of arrest against a suspect in a defilement case. The suspect has since been charged in court and file closed.

### **Marking of International Day of the Victims of Enforced Disappearance (IDVED) 30 August**

This year's IDVED came at a time when cases of enforced disappearances and extrajudicial killings have spiralled in Kenya particularly in the context of the fight against terrorism. The Commission marked IDVED through two public forums in Garissa and Wajir towns. In Garissa, KNCHR held the forum in a government hall where 47 representative from victims' families and local NGOs were sensitized on the International Convention for the Protection of all Persons from enforced disappearance. KNCHR also discussed with the participants its locus in matters extrajudicial killings and enforced disappearance. A public lecture in Garissa University was also held where the University staff participated in very engaging discussions around CVE and extrajudicial cases.

In Wajir the forum was attended by families of the victims, survivors, witnesses, CSOs' representatives, Religious and political leaders. A prayer sessions was held in remembrance of the victims of enforced disappearances. During the forum families of victims/witnesses and the survivors of enforced disappearances narrated their ordeal.

### **Public empowerment through radio talk shows**

In partnership with Transparency International, 9 radio talk shows were held during the reporting period. 6 talk shows focused on HRDs working in Busia County. The talk shows provided 6 HRDs with a platform to highlight the contributions HRDs make to the society and to call for support from the communities. KNCHR, in conjunction with its partners under the IPCRM platform, also participated in 2 radio talk shows. Through the shows, the various institutions under the IPCRM platform informed members of the public about their mandate and also discussed various human rights issues. According to the host radio station's data sheet, a total of 34,314 listeners were reached through the talk shows. KNCHR further participated in a radio talk show sponsored by Transparency International to discuss civic participation in elections. A total of 9,000 members of the public were reached.



## **ENHANCED STATE COMPLIANCE WITH REGIONAL AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS**

### **Sessions attended on regional and international mechanisms**

**Review of Kenya by the Committee on the Elimination of Racial Discrimination (CERD) on her implementation of the International Convention on the Elimination of all Forms of Racial Discrimination.**

The Commission attended Kenya's review of her implementation of the International Convention on the Elimination of all Forms of Racial Discrimination. The Commission engaged the CERD committee members in a side event and apprised them about the Human Rights situation in Kenya. The concluding observations made by the committee are indicative of the input made by the Commission

both in its alternative report and engagement during physical review. The concluding observation and recommendations made are key to assisting the state to fully implement the provisions of the Convention hence contributing towards state compliance. The KNCHR will monitor the implementation of the concluding observations and recommendations and provide guidance on possible courses of action.

### **10<sup>th</sup> state of party conference on the convention on the rights of PLWDs**

KNCHR participated in the 10th Session of the Conference of State Parties to the Convention on the Rights of Persons with Disabilities between the 13th and 15th of June 2017. The Conference which is mandated under Article 40 of the Convention brings together state parties, National Human Rights Institutions, UN Agencies, Civil Societies and PWDs with a view to finding better ways to improve the lives and well-being of PWDs. The theme of this year's conference focused on inclusion and full participation of PWDs and their representative organizations in the implementation of the Convention. The Commission had an opportunity to participate in panel discussion where it apprised member states on the inclusion of PWDs in the work of National Human Rights Institutions while monitoring and promoting the implementation of the Convention. The Chairperson highlighted the Commission's role in monitoring the implementation of the Convention and the Commission's reports on monitoring of implementation of CRPD and Legal Capacity in Kenya.

The Commission was also able to participate in 13 side events where the key information, best practices and action points for implementation were picked up. The information picked will be key to infusing best practice in KNCHR role as the main monitoring agency under article 33 of Convention on the Rights of Persons with Disabilities.

### **Submission of reports to regional and international mechanisms**

#### **Preparation and submission of ICCPR & CAT alternative reports**

The Commission prepared a draft report on the ICCPR and response to the list of issue under the Convention against Torture to be submitted to the Human Rights Committee and the Committee against Torture respectively. The report and reply to the list of issues was prepared with input from civil society partners and Independent Commissions. The Commission also organised a two day meeting to validate the draft alternative report on ICCPR and response to the list of issued under CAT. The Commission collated and incorporated changes to the draft reports during the validation meeting. The report will be finalised once the state has submitted its periodic report to the Human Rights Committee and the Committee against Torture respectively. It is on the basis of the state report that the Commission will finalise, publish, and submit its reports to the respective committees.

#### **Preparation of Mid-Term UPR Report**

The Commission convened stakeholders to plan the drafting of the UPR mid-term report, the plans were concluded and the dates for the drafting retreat planned for Mid-July 2017. The State has however, indicated that it can only be able to convene a drafting retreat until after elections in August.

### **Launch and dissemination of compendiums and concluding observations of the Committee on Economic, Social and Cultural Rights (ECOSOC), Committee on Rights of the Child (CRC) and the Committee on the Rights of Persons with Disabilities (CRPD)**

The Commission launched the CRC and CRPD Compendiums on 13th September 2016 at Panafric Hotel, Nairobi and the ICESCR Compendium on 15th September 2016 at Kitale. The Compendiums contain submissions of organizations partaking in review of process before Treaty Body Mechanisms and concluding observations made by various treaty body mechanism. The Compendiums will serve as an important source of information and will act as a reference point on various aspects of rights covered by particular treaties.

The Compendiums were then disseminated to various partners for their use in follow up of the recommendations made by the various committees to the State. The Commission conducted dissemination forums in Kakamega and Eldoret with respect to the recommendations made to Kenya by the Committee on Economic, Social and Cultural Rights, Committee on the Rights of Persons with Disabilities, Committee on the Rights of the Child and the recommendations accepted by the state under the Universal Periodic Review (UPR). The CSOs were taken through the process of reporting under the various treaties and the resultant recommendations made to the state, their role with respect to monitoring the implementation of recommendations was underscored by use of the UPR implementation matrix. The knowledge and understanding of CSOs on the concluding observation of various treaty body mechanisms was therefore increased and their commitment secured to monitor progress of implementation through preparation of monitoring plans.

### **Re-Designation of KNCHR as the Monitoring Agency under Convention on the Rights of Persons with Disabilities (CRPD)**

On 9th June 2017, the Attorney General in a letter to the Committee on the Rights of Persons with Disabilities formally re-designated the Commission as the monitoring agency under the Convention on the Rights of Persons with Disabilities. The nomination of the Commission is an important milestone towards monitoring and advising the state on its obligations under the Convention on the Rights of Persons with Disabilities and the Constitution of Kenya, 2010. The Commission is expected to work with the National Gender and Equality Commission in its role as the monitoring agency.

The re-designation of KNCHR as the monitoring agency under Article 33 of the Convention has been made pursuant to the Concluding Observations of the Committee on the Rights of Persons with Disabilities upon Kenya's review on its implementation of the Convention. The Committee in expressing its concern that the Commission did not form part of the national mechanism for monitoring the Convention, specifically recommended that *'...the state party establish a national mechanism to monitor the implementation of the Convention with the participation of the Commission as an institution in compliance with the Paris Principles.'*

In addition, the State on 2nd June 2017 deposited its instruments of ratification of the Marrakesh Treaty to Facilitate Access to Published works for Persons who are Blind, Visually Impaired or Otherwise Print

Disabled. The treaty is part of a series of treaties administered by the World Intellectual Property Rights Organizations which includes clear human rights perspectives. The provisions of the treaty are geared towards ensuring improved access to books and other printed works for persons with disabilities by:

1. Firstly, obligating contracting parties to provide for limitations or an exception to copyright in order to allow persons with disabilities and authorized entities to undertake changes needed to make copies of a work in an accessible and alternative formats for persons with print disabilities.
2. Secondly, allowing the exchange across borders of those accessible copies produced according to the limitation and exception provided within the Marrakesh Treaty or in accordance with the operation by law.

The ratification of the treaty is significant in ensuring information is available in accessible formats for persons with disabilities as mandated in the Convention on the Rights of Persons with Disabilities. The Commission through its report on monitoring the state compliance with the Convention of the Rights of Persons with Disabilities and its alternative report to the Committee on Rights of Persons with Disabilities has called upon the state to take measures towards ensuring availability of information in accessible formats. The ratification of the Marrakesh Treaty is a critical step towards addressing the concerns highlighted by the Commission

#### **Preparation of report on the progress made in the fulfilment of international obligations under Article 132 (c) (iii)**

Article 132 (c) (iii) requires the H.E. the President on an annual basis to address a special sitting of Parliament and submit a report for debate on the progress by government in fulfilling the international obligations of the Republic. The Commission engaged in this process through the KNCHR Chairpersons Status Speech on the State's Fulfilment of its International Obligations and the Preparation of Comprehensive Report detailing the Progress made in fulfilment of international obligations under article 132 (c) (iii) of the Constitution.

The Commission prepared the status speech for the chairperson which was read prior to the President's State of Nation address to parliament. The status speech highlighted KNCHR position on the state of human rights within the nation for the period 2016 to 2017. The Speech was then shared with the Office of the President who wrote back to the Commission to give detailed feedback for action. The Status Speech highlighted amongst other things the need for the State to submit its Periodic Report on the ICCPR and CAT. An immediate result of this was that the Attorney General made a commitment to submit the Periodic Reports on ICCPR and CAT before August Elections which were due in July 2015 and May 2017 respectively.

#### **Launch of the National Policy and Action Plan on Human Rights (HRPAP) Sessional Paper No 3 of 2014.**

The commission in conjunction with the Office of the High Commissioner for Human Rights and the Department of Justice launched the HRPAP at Intercontinental hotel. The Commission in the development of the Policy and has been advocating for the adoption of the Policy through its work on

state compliance and its engagement with Parliament. The adoption of the HRPAP is a key milestone towards the entrenchment of human rights principle within national policy framework. The policy provides a comprehensive and coherent framework which restates the government's commitment to human rights. The HRPAP outlines specific priority areas to guide the state in the implementation of its human rights obligations. It further clarifies the responsibilities of the various state agencies in the implementation of rights. The HRPAP will guide the government in the implementation of its human rights obligations for a period of five years. The Commission together with the other article 59 Commissions are expected to monitor and evaluate the implementation of the policy. The Commission is also expected to continuously advise of suitable human rights indicators and build capacity for public and private bodies to enable them take responsibilities envisaged in this policy.

#### **Held public hearings on the death penalty**

This activity was supported by the French embassy with the main objective of sensitizing members of the public and offering a platform to engage in a public debate on capital punishment. This is an activity that is being carried out in conjunction with the Power of Mercy Advisory Committee (POMAC) and the National Crimes Research Centre (NCRC) and shall feed into the national wide inquiry report to be presented to His Excellency the President. The bulk of the activity was postponed following advice from POMAC that it was critical that their new members to their committee be in office to engage in the process. However as at that the time of reporting KNCHR in conjunction with POMAC held a public hearing at Kamiti maximum prison on the 13th of March 2017 targeting 42 prison officers (38 male and 5 female) and 450 inmates. The forum offered an opportunity to hear from both sides of the coin, those supporting the sentence and those calling for the abolition and their reasons thereof. The information collected at Kamiti is extremely useful as it was coming from the inmates themselves who are on death row, those that have been commuted from death row and the officers that are with them on a day to day basis. The officers and inmates were also sensitised on the national and international frameworks and the global trends on the death penalty. The Commission also held an internal debate on the 17th of March 2017 among members of staff of KNCHR and provided an opportunity to candidly debate on this controversial subject without the hat of the institution. The information collected was extremely useful as it emanates from a background of human rights practitioners but who are also part of a bigger society and this information shall provide a basis of the advisories that the institution engages in future with regards to the death penalty.

## Strategic Objective 2:

### TO INCREASE THE APPLICATION OF HUMAN RIGHTS PRINCIPLES AND STANDARDS IN INSTITUTIONS AND ALTERNATIVE JUSTICE MECHANISMS

#### Increased utilization and strengthened Alternative Justice Resolution Mechanism

#### Resolution of human rights violations through Alternative Dispute Resolution (ADR)

##### Institutionalizing of ADR in the Commission

Commission staff were trained on ADR by the Mediation Training Institute. This was a move that was aimed at not only capacity building of staff in order to take up the mediation role but also to equip them to be trainer of trainers. In so doing KNCHR went ahead and institutionalized ADR by drafting, validating and publishing of the ADR guidelines, a training curriculum and case identification guidelines.

With the training kit in place, KNCHR through an invitation by Kituo Cha Sheria participated in training for Alternative Justice System actors where capacity of 30 AJS Actors (20 Male 10 Female) on infusion of HRBA in ADR, traditional justice mechanisms, understanding conflict, and negotiation and mediation skills was enhanced.



### INCREASED INTEGRATION OF HUMAN RIGHTS STANDARDS IN THE ADMINISTRATION OF JUSTICE

#### Advisories on infusing human rights principles in human rights principles in the justice mechanisms

##### Advocacy on enactment of reparation regulations

Following the successful drafting of reparation regulations that was forwarded to the Attorney General, the KNCHR has been holding various high level advocacy meetings to push the government

operationalize the 10 billion restorative justice fund that had been set aside by the president in 2013.

In the period under review, RAP participated in two meetings; one hosted by the UN Office for Human Rights (OHCHR) and the other by the Kenya Transitional Justice Network (KTJN). In the first meeting the KTJN celebrated the International Day for the right to truth concerning Gross Human Rights Violations and for the Dignity of Victims. This meeting was hosted by OHCHR. The KNCHR under the umbrella of the KTJN submitted a copy of proposed regulations for victims of historical injustices to the Kenyan Attorney General (AG). The AG had earlier asked KNCHR to lead KTJN in drafting Reparations Regulations. These regulations are anchored in the Public Finance Management Act. Regulations provides for the formation of a Technical Committee (Board) to oversee reparations in Kenya.

The immediate result from this meeting is that the Attorney General gave his firm support and commitment to move forward the process of formalizing the reparations regulations. He agreed to propose for the allocation KShs 1 Billion for reparations each year and KShs 100 Million for administration costs each year for the entire reparations period.

There was also an understanding that the proposed regulations required a policy prior to their adoption. While the AG's office is doing its policy proposal to the Cabinet, the International Centre for Transitional Justice (ICTJ) procured for a consultant to draft the policy proposal. On June 28th – July 1st 2017, the KTJN held a meeting at Southern Palm Beach, Kwale, to deliberate on a proposed policy to serve a stand-by draft policy that gives clarity to the provisions within the Reparations Regulations.

The output of this meeting was a draft "Reparations for Historical Injustices Policy 2017" edited and agreed upon, ready for submission to the Attorney General.

The Commission inputted into the advisory on the High Court (Organization & Administration) Rules, 2016. The Commission also participated in inputting in its submissions as applicants in the Supreme Court advisory No.1 of 2017.

#### **Court User Committee (CUC) Meetings**

The Commission participated in the Kitale and Lodwar Law Courts CUC meetings. KNCHR strengthened existing partnerships with members of the CUC among them the Judiciary, Police, Prison service, Office of the Director of Public Prosecution and Probation department. During the meeting a committee to deal with pro-bono cases was formed. The committee will be receiving matters pertaining to children and capital offences cases and distribute to Advocates for representation. This will help in effective representation in court and increase the application of human rights principles in judicial service. Other CUC meetings were also held in Wajir and Mandera.

#### **Audit /monitoring reports of prisons, remand homes and borstal institutions prepared**

KNCHR conducted a monitoring visit to Kibos Main and Migori Prisons during this reporting period. At Kisumu Main Prison, a recommendation was made to rename the 'Segregation Block' to a more suitable name to avoid creating an uncomfortable distinction between inmates in the segregation Block and inmates in other blocks. This recommendation was immediately implemented by the Officer



in Charge and all the blocks were renamed using letters of the alphabet. The commission also gave a commitment to support the paralegals working in the Prison's Justice Centre by providing them with judicial authorities and other legal documents.

At Migori Prison, it was noted that there was dire inadequacy of funds due to the inordinate delay in the disbursement of the funds. The Officer in Charge mitigated the situation by partnering with the County Government of Migori and other private actors. Through this partnerships, the County Government of Migori supplied the prison with 200 mattresses and 400 blankets. A local NGO also regularly supplies the Prison with disinfectants.

Generally, the prison was found to be clean and well run. However, congestion especially in the men's remand cells was still a major challenge. As an immediate outcome of the visit, the Officer in Charge of the Prison agreed to create a complaints register where inmates could register their complaints and the same could be followed up. He also agreed to activate the Prison's Human Rights Office.



Photo 2: An inmate at Migori Women's Prison speaks to Commissioner Jedidah.

### **Training of inmates**

Since its establishment, the Commission has visited nearly all the prisons in the Western Region. During such prison visits, the Commission not only inspects the prisons to establish their level of compliance with national and international standards on the human rights of prisoners, it also takes complaints from prisoners on rights violations.

One of the most repeated complaint is violations against the right to fair trial. Prisoners repeatedly complain about various forms of unfairness during the criminal process. There have also been complaints about the failure by the State to ensure that each accused person has legal representation. While it is understandable that the State cannot immediately ensure legal representation for each

accused person, it is important to ensure accused persons fully understand the criminal trial process even in such circumstances. For example, it is important to ensure that accused persons understand the full content of the right to a fair trial to stand firm against actual or potential violations.

The Commission conducted training for 92 inmates from Kibos, Kericho, and Kakamega Main Prisons, as well as at Kericho Women's Prison. The trainings aimed at empowering inmates with information on their right to fair trial as well as on the criminal process. The trainings enabled the inmates to engage in discussion about elements of the right to a fair trial and what to expect in a criminal process. At the end of the trainings, inmates were able to highlight various violations which occur some of which they previously did not recognize as violations.



Photo 3: A section of the prisoners who participated in the training.

### **Civil rights and right to health care in prisons**

KNCHR was involved in mass voter registration of prisoners in 10 prisons. In undertaking this activity the commission generated a draft report on the access to health by inmates and findings of the voter registration with key recommendations to the relevant stakeholders. Key findings with regards to health included overcrowding, poor sanitary conditions, inadequate ventilation and lighting, extreme temperatures, inadequate means for maintaining personal hygiene, a lack of access to clean drinking water, and the provision of nutritionally inadequate food are common in prisons.

These poor conditions invariably exist within a climate of violence, humiliation and discrimination that creates barriers to accessing health care services, which are often weak or inadequate to being with. With prison health still typically falling under the jurisdiction of the Ministry of Interior and Co-ordination of National Government, rather than the Ministry of Health, there is often not only a

disjunction, but also a marked disparity, between the health care provided to prisoners and the health care provided to the broader community.

In terms of the voter registration the findings highlighted that the turnout was low because of lack of identification cards. KNCHR established the need to engage with IEBC to come up with proper regulations guiding the voting of inmates and the need to embark on voter education among the inmates to assist them make informed choices in the August 2017 elections.

### **High level consultative meetings stakeholders on recommendations from the presidential pleasure survey report**

The KNCHR held a meeting with high level officers at the Kenya Prisons Service (KPS) on 23rd February 2017 and presented the KPS with a memorandum on several key issues emanating from our presidential pleasure report including inmates with mental disability, juveniles and the indefinite detention that they face despite their vulnerabilities. The KPS were open to a larger stakeholder engagement to address this issues since the mandate to protect these groups lies with several other organs and were further in agreement with KNCHR that there needs to be a concerted effort to reform the presidential pleasure sentencing.

The KNCHR also brought to the attention of the KPS that there is a category of inmates that were denied the right of remissions following a legal amendment on the prisons act.

In addition, the KNCHR brought to the attention of KPS the findings from Lodwar prison following an impromptu inspection among others inmates being subjected to undercooked food and lack of uniform. KPS agreed to incorporate the KNCHR in its uniform committee to provide insights from a human rights angle.

On the issue of prison officers' recruitment the KNCHR shared the findings of its 2016 monitoring exercise and opened up the partnership for the development of regulations. The KPS stated that they have guidelines that are being revised to comply with the constitutional provisions and the same shall be shared with us once complete. To that end, the KNCHR asked for disaggregated data on the current numbers of prison personnel for its analysis on compliance to constitutional provisions.

Lastly the KNCHR urged the KPS on the need to immediately reinvigorate CAP 90 and 92 as a matter of urgency as it is only in the enactment of these revised laws that the protection of human rights for inmates can be achieved.

As an immediate result of this meeting the following were the immediate achievements:

1. The KPS held an urgent stakeholder meeting on 28th February on CAP 90 and 92 and finalised its review. The documents have now gone to the next stage of submitting to the Attorney General
2. The Officer in charge of Lodwar was immediately contacted and alerted of KNCHR's findings. As a result the Commissioner General took up the matter, procured two boilers (pans) for the prison which has improved their cooking style and ultimately the right to food of the inmates

In addition and as a result of this meeting the KNCHR obtained the following critical statistics that will aid its future interventions on penal reforms;

1. 4,200 prisoners who did not benefit from remission and are currently held in various penal institutions.
2. There is a total of 23,905 officers at the Kenya Prison officers (male-19,833) and (4,072 female)
3. The total number of inmates serving below 3 years as at March 2017 is a total of 13,568 (with 3017 serving exactly 3 years and 10,551 serving below 3 years)

## **Monitoring reports of security, electoral institutions**

### **Monitoring of the 2017 police recruitment exercise**

KNCHR has in the past played a critical role on this exercise. The Commission was able to effectively monitor the elections through creative interventions on utilising the election monitors who were already on the ground. This monitoring exercise of recruitment of Police Constables in 2017 was carried out by 75 Monitors in 75 recruitment centres that were spread in 29 Counties in different recruitment centres and by the KNCHR regional offices in Wajir, Laikipia, Kisumu, Kitale and Mombasa leading to the monitoring of a total of 84 Recruitment Centres out of the total 292 Recruitment Centres. This field team was supported by a team at the KNCHR Head Office at the monitoring hub operated by the KNCHR staff.

Utilizing the Internal management system, the following were the findings that were documented and recommendations provided:

- That the National Police Service and the National Police Service Commission continue to disregard critical sections of their own recruitment and appointment regulations since their gazettment in 2015. For example, the regulation calls for the application of a two-tier process that calls for advertisement of the positions, shortlisting of candidates, call for information on the candidates through the media and aptitude tests.
- There is need for uniformity in the application of the regulations such as the requirement for a public announcement on the number of candidates to be selected at each centre before commencement of the exercise. This was still being applied at the discretion of the heads of recruitment centres.
- That there is still some level of unpreparedness to deal with medical emergencies that arise from the candidates' participation in the physical exercise stage. There is need to have adequate on-sight medical services that can prevent any loss of life such as the one witnessed in Webuye where a female candidate lost her life.
- There is need to put in place concrete affirmative action measures to ensure that more female candidates are recruited into the service. The ratio of successful male candidates remains way higher than that of their female counterparts.

### **Police vetting**

The engagement of KNCHR in this phase of vetting of members of the National Police Service has seen the KNCHR participate as panellist in the ongoing process and vetted a total of 741 traffic officers in Nairobi, Kisumu, Nakuru and Kakamega Counties. The engagement of KNCHR to participate is key as it points to the important role that we have played and continue to play in the police reforms process in Kenya.

The vetting process looked mostly on financial probity. There were no human rights complaints made against the vetted officers. The National police service commission will make the final decision on action to be taken on officers who failed the vetting process.

The Commission has made a decision to have continued participation in the process but use the opportunity to have an advocacy platform through development of a policy brief entitled "Police Vetting in Kenya; Challenges and Opportunities for Police Reforms". This policy brief shall be key in espousing our position on how best the process can be improved and used as an avenue in realizing the intended reforms.

### **Monitoring of the political party primaries**

The political party primaries are an integral cycle of the electioneering period as it sets the pace for campaigns and also determines which candidates have been endorsed by members of the various political parties to run for the General election in the 6 elective positions across the country. The political party primaries exercise was carried out from 13th April 2017 to 29th April 2017 across the country. KNCHR with support from UNDP recruited, trained and deployed 84 monitors to 29 counties and further its officers supplemented the process in the nearby counties. In total 232 centres were monitored in the 33 counties that the KNCHR had presence. The monitoring exercise was based on 10 parameters that were carefully selected on the basis of issues that may interfere with the right to vote and be voted. These parameters were the following: Bribery and manipulation of voters; Violence; Missing Names; Lack of Sufficient Voting Materials; Late Opening and Early/Late closing; Provision on Security; Harassment and duress; Intimidation and violence against marginalized groups; Absence or manipulation of political parties membership lists; and, Misuse of public resources.

The reports compiled by the monitors was carefully validated and resulted to a documentation of a human rights accounts of the nomination process titled the "*Fallacious vote: A Human Rights Account of the 2017 Political Party Primaries*". The report highlighted low level of compliance to human rights, rule of law and democracy. The findings highlighted the fact that none of the political parties used an authentic party register to carry out the exercise leaving it at the discretion of all members of the public with national identification card.

Out of these parameters the highest ranking was missing names recorded in 116 centres, 81 centres reporting lack of adequate security, late opening and early closing, 34 centres reporting lack of sufficient materials, violence in 17 centres, 12 incidences of bribery and harassment and duress and 2 cases of misuse of public resources.

In all the 33 Counties monitored KNCHR registered cases of violence. 17 of these cases were of a

serious nature. These ranged from assault on aspirants and their supporters and agents and voters, rivalry during rallies, attempted rape, alleged abductions, use of firearms to threaten aspirants and intimidation.

KNCHR recorded 115 centres with names of voters and aspirants missing. Based on the Commission's findings, this was attributed to lack of credible party registers as political parties resorted to using the 2013 IEBC register. This exhibited gross levels of disorganization and ill-preparedness on the part of the parties.

In some constituencies, many voters were turned back and failed to vote since their names were either missing on the available registers or due to the merger of the polling centres. This happened without a prior notice to the voters.

Following these and other findings the KNCHR was able to effectively raise the red flag and made key recommendations to key organs.<sup>2</sup>



Photo 4: An elderly voter casts his vote at a polling centre in Seme, Kisumu West. Information collected from the various monitoring exercises across the country was used in the preparation a report (The Fallacious Vote) which was shared with various stakeholder. Monitoring to enhance the credibility and legitimacy of elections, thereby helping to reduce electoral malpractices.

<sup>2</sup>KNCHR, 2017. Fallacious vote: A Human Rights Account of the 2017 Political Party Primaries. Accessed at <http://www.knchr.org/Portals/0/OccasionalReports/Party%20Nominations%20Report%20-%20KNCHR.pdf?ver=2017-05-15-110816-540>

# Strategic Objective 3:

## TO ENHANCE THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN KENYA

Enactment and implementation of laws and policies that promote the realisation of economic and social rights

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### Advisories on bills and policies on Economic, Social and Cultural rights

#### Preservation of human dignity and implementation of economic and social rights bill engagement with parliament and other stakeholders

KNCHR successfully held consultation meetings with several members of Kenya Parliamentary Human Rights Association (KEPHRA). The meetings were an advocacy strategy aimed at lobbying the members of parliament to support a bill aimed at providing a framework law for implementation of Article 43 of the constitution of Kenya (on economic and social rights). The first meeting was to get the buy-in of KEPHRA's lead members. This worked well, with the meeting recommending that KNCHR hosts a retreat for the entire KEPHRA membership and selected civil society representatives. The retreat was aimed at deepening the participants' understanding and buy-in of the proposed Preservation of Human Dignity and Implementation of Economic and Social Rights Bill (Dignity Bill).

Consequently, KNCHR hosted a one-day retreat in Mombasa for KEPHRA members. The retreat, attended by 13 members of parliament, agreed on a strategy to get the support to the bill by a majority of national assembly members. The bill is currently awaiting third reading in the Senate before onward forwarding to the National Assembly for concurrence.

#### Resolved ECOSOC rights violations through ADR

The commission conducted a mediation exercise into a dispute between community members in Awasi and two Quarry companies, whose activities were alleged to have had adverse effects on the community. The Community complained that the blasting of rocks carried out by the companies came with excessive dust which caused them illnesses. Further, the tremor during the blasting caused their houses to crack and caused them discomfort as they had to move away from their houses during the blasting. KNCHR conducted investigations and subsequent engagements with both parties held. The parties agreed to solve their dispute through mediation. The mediation process commenced under the direction of KNCHR mediators. The parties were able to come to an agreement on how to resolve several issues. The agreement was signed by all the disputing parties

and implementation is on course. The companies have also already taken some remedial measures and have started the process of compensating residents whose property were destroyed

### **Conducted Taita Taveta inquiry on mining and human rights**

Following immense complaints for the public on human rights violations in the mining sector in Taita Taveta County, the Commission set to unravel the human rights issues in the sector. KNCHR with support from GIZ, set out to investigate and document the human rights situation in the mining sector in Taita Taveta. Under the project "*Promoting Transparency and Accountability in the Extractives*", the Commission set out to carry out project activities in Kitui and Taita Taveta counties. The objectives of the projects was to:

1. To empower communities to participate in decision making in the extractive sector within their localities
2. To demand accountability and redress for human rights violations in the extractive sector through a public inquiry in Taita Taveta county.
3. To entrench human rights principles and standards in the extractive sector

The Commission carried out preliminary activities in preparation for the inquiry in Taita Taveta. These are:

- Situational analysis in the mining sector.
- Capacity building for community members on human rights and the extractives.
- Capacity building and experience sharing for the businesses and the government agencies on the human rights situation in the mining sector.
- Witness identification and preparation for the inquiry.

Through the various activities above, the Commission found sufficient grounds for further interrogation and investigations of the issues through the public hearings (inquiry). In its preparatory process, KNCHR team had identified 3 areas (Mwatate Sub-County, Kasighau in Voi Sub-county, Kishushe in Wundanyi Sub-County).

The hearings were held in the locations identified and was attended by officials from the National and County Government. The County Commissioner for Taita Taveta led her team of the National Government in the opening ceremony and also pledged support throughout the process- which was duly accorded throughout the inquiry. The County Government was led by H.E The Governor of Taita Taveta County Engineer John Mruttu and his Deputy, Members of his government and MCAs. It is important to note that the Deputy Governor attended most of the hearings in the three identified areas. Also present were members of the CSOs, CBOs, Media and community members. The activity was well covered in the media and drew a lot of interest from the public. From the Commission, the inquiry was led by the Chairperson, the Vice Chair, The CEO and a representation of the entire Commission.



A total of 51 witnesses appeared before the panel. There are issues that need further follow-up: these include:

- Further investigations on police violations
- Further investigations on sexual and gender based violence by Lilian Mercy Mining Co
- Determination of cases for ADR targeting Wanjala Mining Co vs Kishushe Ranch and Betina Mutongolo vs Partners in Kitina Mines
- Training of artisanal and small scale miners on the new Mining Act

#### **Post inquiry follow-up**

In September, there were follow-up activities on the pending matters of the inquiry. The matters that needed follow up were those relating to ADR in which it was to be established that there are cases that could be subjected to ADR or which needed to be resolved through ADR.

- In the case of Teresia Mukami Vs Mgeno Ranch, the KNCHR team met with the chairman of the ranch and one director, in which they agreed to give Teresia priority to return to her mining area once they begin allocation some sections for mining. However, she needed to formally apply for the same together with other members of the public.
- On Kitina Mines (Betina Mtongolo Vs Partners), there were plans to have a meeting to discuss the possibility of ADR but the partners withdrew the night before the said meeting. They claimed that their lawyer had advised against such a meeting since the matter was in court.
- Wanjala Mining and Kishushe Ranch agreed to engage in ADR so as to resolve the matters. Subsequent meetings with KNCHR team prepared ground for beginning the ADR process.
- On the Case of Mary Nduku Vs Titus Ndonye, the matter could not proceed as the respondent (Titus Ndonye) turned down a meeting citing court proceedings. It was also not possible to meet Lilian Mercy as the Panel had proposed she be invited for a hearing later on.
- In October, training for community members and their organisations was carried out in which 60 community members and representatives of their organisations were trained on the new Mining Act 2016 and the draft rules and regulations on the same Act. Further the second draft of the inquiry report was received and subsequently comments were made and sent to the consultants. It is expected that the document will be finalized by mid- December and sent for publishing.

### **Advocacy initiatives undertaken towards setting up Kenya as the first African Country to develop a draft National Policy and Action Plan on Business and Human Rights**

The National Action Plan on Business and Human Rights: The process was launched successfully by the Office of the AG, setting the stage for DOJ and KNCHR to proceed on developing the NAP. The process is based on the guidelines issued by the UN Working Group on Business and Human Rights and the progress realised so far is in conformity. There are expectations that the initial draft will be realised by October 2017 setting Kenya as the first African Country to develop NAP. This will help in monitoring businesses compliance with human rights.

- **Induction Seminar for the NAP steering committee**

The Attorney General commissioned a National Steering Committee on business and human rights with members drawn from; Ministry of Mining, Ministry of Energy and Petroleum, State Department of Labour, Kenya Human Rights Commission, COTU, Federation of Kenyan Employers, OHCHR, Council of Governors, Institute of Business and Human Rights, KEPISA and Global Compact. The DOJ and KNCHR provide the secretariat to the steering Committee.

The Committee is expected to provide strategic guidance to the NAP development process. The need to sensitize members on the Guiding Principles was apparent. It is in this regard that KNCHR and DOJ organized an induction seminar. The induction was done by Prof. Ado, a member of the UN Working group and The National Contact Point for Norway. The two resource persons were useful in demystifying the NAP process and also provided a learning platform through sharing experiences from Norway and UK.

- **Policy dialogue meetings**

The Commission in conjunction with the National Steering Committee on Business and Human rights organized several meetings to enhance participation by all stakeholders in the development of the NAP.

The first meeting was held with businesses that are members of the Global Compact and members of the Kenya Association of manufacturers who have signed on to the code of business ethics in Kenya. Participating in this meeting was a key strategy as most of these businesses that have already identified themselves with the need to safeguard human rights. The second meeting was for other stakeholders including Government controlled businesses, Trade Unions, Federation of Kenya employers, CSOs, relevant government departments and agencies, the and the Office of the High Commissioner for Human Rights, Nairobi office. The main objective of these two meetings was to agree on the modalities of consultations and engagement, especially on who would be included in the National Advisory Steering Committee. The third meeting was facilitated by the Norwegian Embassy with Kenyan companies doing business with Norway and Norwegian companies doing business in Kenya.

In October, the Commission held 3-day policy dialogue meetings with state actors, non-state actors and administration of justice players. The policy dialogue meetings were geared to promote the development of the National Action Plan on business and human rights. The policy dialogues

successfully mapped regional stakeholders, identified areas of priority for the NAP and policy gaps. Policy dialogue meetings were vital to inform subsequent stakeholder consultations.

- **Regional Stakeholder consultations**

Commanding the confidence of stakeholders is an important prerequisite to the legitimacy and credibility of the NAP. In the reporting period, the Commission conducted the first phase of NAP consultations in Mombasa and Turkana that serve to inform the approach of the consultations and development of NAP. The consultations advanced awareness around the UN Guiding Principles, provided feedback for NAP development, enhanced information collected by baselines and increased the capacity of actors to engage in business and human rights.

- **International Advocacy around the NAP**

The Commission participated in the UN Business and Human rights forum in Geneva Switzerland. Kenya has adopted to use the guidance of the UNWG on the development, implementation and update of its NAP. In line with this guideline the steering committee attended the forum represented by the Attorney General and a KNCHR representative. The forum was useful as it encourages states to identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to assess and make recommendations thereon. In that context, we were able to seek and receive information from relevant sources, including governments, transnational corporations and other business enterprises, national human rights institutions, civil society and rights-holders about the NAP development in Kenya.

- **NAP Website ([nap.knchr.org](http://nap.knchr.org))**

A NAP development process usually entails wide stakeholder consultations, reports and other documentation which can easily be hard to follow up with. It is in this regard that the Commission fundraised for a website to act as a venue to gather and consolidate stakeholder views, communicate dates of consultations in advance and also provide opportunity for members of the public to consult. The website was launched during the steering committee induction seminar in August.

## **Thematic /Occasional reports on ECSR rights**

### **The cost impact of access to free primary education in Kenya**

The Commission in partnership with partnership with the Laikipia University carried out a research activity that has been finalized and published. The study sought to establish the extent to which the financing of Free Primary Education (FPE) impacts on access and quality of education from a human rights perspective. The key findings of the report that whereas as Free primary Education has enhanced the access of education to many, parents still bear the costs of education. In addition, major stakeholders within the education sector have not been fully sensitized on their role in implementation of the FPE as evidenced in the lack of co-ordination among education agencies and stakeholders in the implementation of strategies for free primary education. Key recommendations include increasing the capacity of schools in form of expanded infrastructure, employment of teachers and equipment to cater for increasing enrolment of children. Furthermore, the government needs to chart out clear

policies in consultation with the devolved government at the county level on clear modalities of financing of education at the school level.

### **Research on the right to health in Kisumu County**

The Commission conducted a study with a view of determining the extent to which the County Government of Kisumu is enhancing the right to the highest attainable standards of health. The research also sought to establish the impediments to the right to health within Kisumu County. The research was commenced following various complaints received from the public relating to issues of accessibility, adequacy, availability and quality of health services within the County. The primary objective of the Research was to assess the impact of measures that the County Government of Kisumu has taken to enhance delivery of health services. Other objectives of the Research included, to a) Examine policies that the County has put in place for delivery of health services; (b) Examine the extent to which the county has integrated Human Rights principles in the formulation of policy for delivery of health services in the county; (c) Examine the extent to which the county has taken account of Sustainable Development Goals in the planning for delivery of health services (d) Identify measures taken by the county that have led to enhanced delivery of services to residences and (e) identify barriers obscuring the realization of the right to health and propose strategies to promote access to health care for all.

The research report has been prepared and is awaiting publication and dissemination<sup>3</sup>. The findings and recommendations will hopefully assist stakeholders in the health sector to design appropriate interventions towards achieving the highest attainable standard of health.



## **ENHANCED DELIVERY OF QUALITY SERVICES SERVICE AND STANDARDS IN RELATION TO HEALTH, WATER, EDUCATION, FOOD AND HOUSING**

### **Compliance audit on selected ECOSOC thematic areas**

#### **Monitor adherence to eviction laws and policies by state actors**

In October 2016, the Commission received a petition on human rights violations related to forced evictions, internal displacement and landlessness from a group of squatters/IDPs in Makueni County. The Commission undertook a fact finding mission to establish validity of allegations raised in the petition. Five targeted bilateral meetings were held with the Makueni County Government Chief of Staff, Deputy County Commissioner, Makindu Sub-county, Makindu Sub-county Administrator, KARI official and Makueni National Land Commission regional coordinator. Others include victims' representatives and victims. The mission established existence of about 22 IDP/ squatters' camps within Kibwezi East and West constituencies. The mission team is working on the zero draft report that will spearhead follow-up responses.

<sup>3</sup><http://www.knchr.org/Portals/0/EcosocReports/Report%20on%20the%20Right%20to%20Health%20in%20Kisumu%20County.pdf?ver=2018-02-19-123045-547>

### **Developed a framework for operationalizing the rights to health and water**

In the reporting year, KNCHR was able to complete work on development of frameworks for operationalization of rights to water and health, except that in regard to the framework for the right to health automation of the monitoring / scoring tool is yet to be done.

In developing the frameworks, KNCHR continued to work well with the Ministry of health, the World Health Organisation (Kenya Office and several civil society organisations working in either health or water sectors.

The framework for operationalizing the right to health comprises of sections defining the human rights to health; norms and standards for health - developed jointly with the Ministry of Health and focusing on Human Resources for Health as well as Health Infrastructure Norms and Standards; a set of indicators for operationalizing the right to health and a scoring tool to monitor progress towards realization of the right to the highest attainable standard of health.

The scoring tool will be automated for ease of use to assess the progress being made by both national and county governments towards realization of the constitutionally guaranteed right to health.

### **Policy advocacy meetings on mental health**

In the reporting period, KNCHR held two meetings with the management of Mathari Hospital to discuss the state of mental health services in the country. KNCHR requesting for the meetings, sought to follow up on issues raised by the hospital management and other stakeholders during celebrations that marked the World Suicide Prevention Day, held at the hospital grounds on 10th September 2016 and at which KNCHR's Chairperson had been invited as the chief guest.

During the two meetings, the management of Mathari hospital painted a grim picture of the state of mental health in the country. They particularly raised concern over congestion, severe understaffing and supply of obsolete medicines to the hospital. In addition, they requested KNCHR to help advocate for review of legal provisions that criminalize addiction and the act of suicide (or attempted suicide). This is because, according to the Mathari Hospital management, the law as it is currently, makes treatment inaccessible for people suffering from acute depression, often manifested through suicidal tendencies. Yet, instead of condemning and confining such people behind bars, they ought to be assisted to get medical and/or psychological counselling which they urgently require. In other words, such people are not criminals but rather people suffering ill mental health.



In regard to understaffing, the management of the hospital informed the KNCHR team that currently serves an average of 147 mental health patients at any given time, which is above the WHO recommended ratio of 1 nurse to 105 patients. This is because the hospital currently has 198 nurses against Mathari Hospital management's recommendation of 720 nurses. This situation leads to staff burn out hence poor quality of service to patients at the facility.

Further, the management lamented about inadequate and dilapidated infrastructure at the health facility.

#### **Development of GoK - UN Joint Programme on Gender Based Violence (GBV)**

In October 2016, the Commission participated in the development of GoK-UN Joint Programme on Gender Based Violence. The consultative meeting was jointly organized by UNFPA and State Department of Gender Affairs and held in Naivasha. The programme is geared towards harmonizing existing duplication of stakeholders' efforts in addressing GBV to ensure the right holders are safeguarded through effective implementation of GBV laws and policies and strengthen the capacities of relevant institutions to implement such policies, legislations and regulatory frameworks. During the meeting in Naivasha, the Commission was nominated to sit in a Technical Working Group to finalize the draft programme. The finalization of the document was held on Thursday 13th October 2016, at Panafric Hotel, Nairobi awaiting the official launch of the same by the president.

#### **Participated in UNFPA/UNICEF joint programme annual review and planning meeting**

The Commission participated in the in UNFPA/UNICEF Joint Programme Annual Review and Planning meeting. The review meeting was held on 7th – 11th November 2016 in Naivasha. The Commission was invited to participate in the Naivasha forum following the meeting held in April 2014 by KNCHR and UNFPA representatives on possible partnership to support the work on reproductive health rights-monitoring the implementation of KNCHR's report of the Public Inquiry into Violations of Sexual and Reproductive Health Rights in Kenya. During the meeting in Naivasha, the KNCHR had an opportunity to present its request that formed part of the 2017 UNFPA/UNICEF joint work plan. After the Naivasha meeting, KNCHR finalized its concept note on monitoring the status of implementation of KNCHR's Report of Public Inquiry into Violations of Sexual and Reproductive Health Rights in Kenya and forwarded to UNFPA for consideration.

### **Work on internal displacement**

In readiness for the 2017 general election, KNCHR in partnership with members of the national protection working group on internal displacement developed and shared with UNOCHA a displacement protection document for integration into Child and GBV overall protection pillar for 2017 Humanitarian Contingency Plan.

KNCHR as a member of the National Coordination Consultative Committee (NCCC) on Internal Displacement continued to offer technical support to the committee to enhance its operations. The support offered in form of contributions during the sittings to ensure compliance with national, regional and international human rights standards while addressing the plight of displaced population. KNCHR reviewed the concept paper prepared by the NCCC's Sub-committee on Education and Public Awareness Creation geared towards development of a framework for Education and Public Awareness Creation on displacement as envisaged under Parts IV and VI of the IDP Act, 2012.

### **Capacity building of CSOs & duty bearers on Business and Human Rights in Turkana County**

The Commission conducted a training for members of the public, business sector, CSOs and Duty bearers from Turkana and Wajir Counties. In Turkana County, KNCHR enhanced knowledge of 31 participants (20 male and 11 female) on United Nations Guidelines on Business and Human Rights, public participation and Extractives Industries Transparency Initiatives.

One CSO platform was established to advocate for issues on Business and Human rights within Turkana South and East. The issues the platform will handle are; human rights violations arising as a result of business operations including, monitor the health implications around waste materials holding sites from the extractive industries/ Tullow Oil, development-related evictions/ displacements. Through the platform, Civil Society Organization will also monitor and share security concerns with the Commission and to the County Commissioner's office.



## **RECOGNITION AND INTEGRATION OF HUMAN RIGHTS IN VARIOUS BUSINESS ENTITIES AND PRACTICES**

### **Audit of business entities and private sector**

#### **Compliance audit of findings of the public inquiry into allegations of human rights violations arising from activities of salt mining companies in Magarini, Malindi Sub-County**

The audit was conducted between 9th and 14th February 2017 by the KNCHR and representatives from the salt sub sector, ten years of a public inquiry into allegations of human rights violations arising from the activities of salt manufacturing companies in Magarini, Malindi Sub- County. Some of the compliance audit findings and recommendations are:

- That concerted efforts have been geared towards resolving the human rights violations documented in the public inquiry report. As a result of the Malindi Inquiry recommendation, a Salt sub-sector was formed in 2013 under the Kenya Association of Manufacturers (KAM) with the general objective for the members of the sub-sector to become self-regulating while maintaining the highest standards of business ethics. The members of the subsector are Kensalt Ltd, Krystalline Salt Ltd, Malindi Salt Ltd, Kurawa Salt Ltd and Kemu Salt Packers Ltd.
- Land ownership within the salt sub sector remains a controversial matters. The audit team obtained official land documents detailing ownership by the salt companies. However the local communities dispute the authenticity of such documents. In an attempt to address this problem, the National Land Commission held an inquiry in early 2016 and at the time of this audit, no report had been released. The audit recommended that this report be released as soon as possible to rest the land issue in the area. The draft report has been handed over to KAM.

#### **Audit of private security companies in Kisumu County**

The Commission's chief mandate is to ensure the promotion and protection of human rights in Kenya. To achieve this mandate the Commission uses a number of strategies including taking proactive measures to ensure that human rights are not violated or threatened. A look at the Commission's data on complaints will reveal that a majority of the complaints relate to labour matters. The complaints usually relate to questions concerning non-payment of wages, unprocedural dismissals and general poor working conditions. Most of the complainants have been employees of private companies, including private security companies.

While the Commission appreciates the importance of the private business sector to the growth of Kenya's economy and the general improvement of the lives of citizens, it also recognizes the importance of ensuring that businesses are run within a framework that respects, promotes and protects human rights. All businesses are under a legal obligation to respect human rights and comply fully with requirements under domestic and international laws such as the various International Labour Organization Conventions.

The Commission audited 9 private security companies working in Kisumu to determine their level of compliance with laws guiding labour practices in Kenya. The audit confined itself to matters relating to employment relations and had the prime objective of addressing various issues that may arise in employment relationships. Of the 9 companies audited, only 2 were fully compliant. The other companies had glaring gaps in compliance and have a long way to go in terms of achieving the minimum standards set by the law. Reports with identified gaps and recommendations for improvement were shared with the various security companies. The Commission will continue to monitor the companies in order to ensure that they improve their labour practices.

#### **Investigation on violation of ECOSOC Rights by Dominion Farms Limited**

KNCHR conducted an investigation into the claims of violations of the socioeconomic rights of the residents of Yala Swamp and environs through the economic activities of Dominion Farms Limited. There were claims of displacements, denial of access to clean and safe water, land degradation and



general social and economic disenfranchisement of the residents of Yala. The Commission held meetings with HRDs, area leaders and members of the public, and the common thread in their narratives was that the operations of Dominion Farms Limited in the area had resulted into more suffering than social and economic progress. The Commission did not meet any representative of the Company since the Director was said to be out of the country. From the meetings with residents and the site visits made, it became evident to the Commission that the company had become a constant irritation to the residents. The presence of the Company in the area is also shrouded in a lot of legal and political controversies. The Commission is making efforts to put together all the necessary information pertaining to the Company's presence and activities in Yala in order to make an informed decision on the appropriate action to be taken.

# Strategic Objective 4:

## TO ENHANCE THE EFFICIENCY AND EFFECTIVENESS OF KNCHR

### An efficient, effective and accountable national human rights institution

#### **Institutional capacity to deliver on its mandate**

The Commission works towards enhancing its capacity to effectively deliver on its mandate. The commission recruited/replaced a total of 18 officers out of 25 within the financial year within a turnaround of 2 1/2 months through external recruitment and internal promotions. A total of 221 trainings were facilitated either individually or via groups. Staff and interns were paid their salaries in good time. However, despite the commission's effort in retaining human capacity, the Labour turnover increased to 8% within the year providing jeopardizing on the quality, efficiency and effectiveness of KNCHR services delivery.

#### **Accessibility to Commission at National and County level enhanced**

The services of the commission are accessible to all through its offices at the Headquarters in Nairobi and regional offices in Coast, Laikipia, North Rift, North Eastern and Western. During the financial year under reporting, no new office was established. The North Rift regional office was relocated to an area that is more accessible to the public. The Commission also undertook renovations and repairs of the existing offices at the HQ and paid rents for the offices in a bid to ensure full and smooth operationalization of the commission

#### **Improved programme performance**

The commission through its M&E function and the secretariat is committed to improve the programs performance through strategies such as quarterly, mid-year and annual departmental performance reviews to reflect on quarterly and annual performance of the Commission. During the meetings, lessons learnt, challenges and recommendations were discussed for each department.

Also during the reporting period, the Commission conducted Grant and Report Writing skills training at the Kenya School of Monetary Studies targeting HODs, regional coordinators and Senior Human Rights Officers (SHROs) who handle various aspects of grant management and report writing work within their departments. A total 18 staff (10 Male; 8 Female) were reached. The 3 day training objectively ensured that the participants have skills and training necessary to effectively and efficiently manage the Commission grants to improve in grants management and reporting,

provided a general training on report writing to guide staff on production of reports that are of high quality (clear and well structured) and Refreshed participants' knowledge about the basic concepts, principles, components and approaches to Monitoring & Evaluation.

Additionally, a total of 54 staff and interns were reached during the staff and M&E training sessions on Project management cycle, linking M&E with the Project Cycle, Basic M&E; result chain, M&E frameworks (including the logical framework approach), indicators and use of M&E Results. The training mainly targeted newly recruited members of staff and interns to bring them up to speed on planning, project management, monitoring and evaluation concepts and reporting. The trained staff were able to improve their knowledge on reporting. Post training assessment showed that over 75% of the staff trained had a grasp of the basics of M&E and Project management cycle. It is projected that the knowledge acquired from the training will help the staff improve in planning, implementation, monitoring, evaluation and reporting.

### **Risk management framework institutionalised and operationalized**

The Commission is required by Regulations developed under the Public Finance Management Act of 2012 to develop a Risk Management Framework. In the 2016/2017 Financial Year, the Commission developed and approved a Risk Management Policy in an effort to achieve its Strategic Objective no 4 of the KNCHR 2013-2018 strategic plan on the enhancement of its efficiency and effectiveness. A Risk Management Procedures Manual was developed and 24 staff were trained on risk management. As a result, risk reporting has now been incorporated in our quarterly and annual departmental reporting capturing institutional strategic risks and the mitigating actions.

Risk Management Framework therefore forms an integral part of the Commission's plan to deliver effectively and efficiently on its mandate.

### **Improved procurement system and procedures**

The entire Public Procurement and Asset Disposal Act and its attendant Regulations are about value for money. Consistently the Commission's procurement has been carried out within the market prices realizing a saving of more than Kshs 2,000,000.00. We further note that the procurement system audit carried out within this period gave a 100% compliance with the set laws and regulations.

The commission has also endeavoured to implement the new directives in procurement including the access to government procurement opportunities by preference groups that include women, youth and PLWDs. Under this category the Commission was ranked among the best three overall out of the seventeen independent commissions and offices and among the best two in awarding tenders to PLWDS. The closing access to government procurement opportunities index for the year was 45% against the mandatory 30% of the total budget.

The Commission automated its Procurement Processes implementing the IFMIS sourcing module fully as per the government directive. The Commission has implemented the new Public Procurement and Asset Disposal Act 2015 and is in full compliance with all the required statutory obligations.

### **Developed ICT solutions**

The commission deployed a brand new responsive website (website that is easily accessible by all portable devices e.g. mobile phones, laptops, tablets) providing a quality user experience. This is in an effort to make sure the commission's website is reached out to these new set of users providing on-the-go access, higher Google search rankings and improved efficiency.

Additionally, the commission installed WAN (Wide Area Network), a communications network that spans a large geographic area such as across cities, states, or countries. WANs often link multiple smaller networks together. To actualize this project, the commission implemented the MPLS (Multiprotocol Label Switching) to improve protocol support for handling of voice and video traffic in addition to normal data traffic in its regional offices of Kisumu, Mombasa and Wajir. With this connectivity, the offices can access shared resources at the head quarter.

KNCHR installed Voice over Internet Protocol (VoIP), that takes advantage of a single network (the Internet) carrying both voice and data. VoIP uses existing broadband Internet connection, thereby eliminating the need for a second phone line and pricey long-distance fees. The network allows staff to call the branch offices at no cost thereby reducing the telephone bills. The Voice over Internet Protocol (VoIP) technology has increased the overall productivity of the organization by allowing employees to multi-task without interruption. It has also allowed the organization to allocate funds usually spent on traditional phone bills to other aspects of the business.

### **Branding strategies developed and implemented**

KNCHR is responsible of meeting its corporate relations and communications expectations through an effective and efficient communication strategy in a bid to brand the commission with the much needed visibility and positive image and perception. During the reporting period, the commission:

- Organized press conferences to highlight and explain issues to the media on newsworthy Human Rights issues,
- Issued press releases and statements on a regular and proactive basis and disseminated vital information to all commission's stakeholders and used newswire services for international media engagement.
- Identified and participated in relevant television and radio and TV programmes in which the profile of the Commission was enhanced.
- Placed advertisements and advertorials in selected newspapers for showcasing the work of the Commission.
- Organised press trips to expose the Commission's work and generate Human Rights stories to the media.

## Commissioners



**Kagwiria Mbogori**  
**CHAIRPERSON**

Ms. Kagwiria Mbogori assumed the position of Chairperson – KNCHR in March 2014.

At the helm of the Commission she provides strategic leadership for the implementation of the Commission's strategic plan for the period 2013-2018, that focuses on the promotion of a culture of respect for human rights in Kenya. She is also charged with convening the ECOSOC and Corporate Affairs Departments and overseeing the Laikipia and North Eastern Regional Office.

Ms. Kagwiria holds a Master of Laws from the University of Notre Dame, Indiana majoring in International and Regional human rights protection systems, International Humanitarian Law and Transitional Justice, a Bachelor of Laws degree from the University of Nairobi and a Post Graduate Diploma from the Kenya School of Law.



**George Morara**  
**VICE CHAIRPERSON**

George Morara assumed the position of Vice Chairperson – KNCHR in March 2014.

He deputizes the Chairperson in providing strategic leadership for the implementation of the Commission's strategic plan. He is also charged with convening the Public Education and Training, Research and Compliance Departments and overseeing the Coast Regional Office.

George Morara holds a Bachelor of Arts Honors from the University of Toronto, Canada and a Master of Political Science from the University of Windsor, Canada.



**Jedidah Wakonyo Waruhiu**  
**COMMISSIONER**

Jedidah Wakonyo Waruhiu assumed the position of Commissioner - KNCHR in March 2014.

In her portfolio she is charged with convening the Complaints, Investigations and Redress Departments and overseeing the Western Regional Office. Commissioner Jedidah also represents the National Commission in the National Council on Administration of Justice and is a member of the Taskforce on Alternative Justice Systems.

She is an Advocate of the High Court of Kenya and holds a Master's Degree in International Human Rights and Humanitarian Law from the University of Nottingham.



**Suzanne Shatikha Chivusia**  
**COMMISSIONER**

Suzanne Shatikha Chivusia assumed the position of Commissioner - KNCHR in March 2014. In her portfolio she is charged with convening Reforms and Accountability and overseeing the Western Regional Office. She represents the Commission at the National Council for Administrative Justice, the National Council for Persons with Disability, the United Disabled Persons of Kenya and the Users and Survivors of Psychiatry in Kenya organizations on the rights of persons with disabilities, Technical Working Group on Minority rights.

She holds a Bachelors of Laws Degree and Master of Arts in International studies from the University of Nairobi, Postgraduate Diplomas from Kenya School of Law and Salzburg Law School; certificates in International Human Rights, Gender and Development, Gender and Disability Mainstreaming, Women's Rights, Monitoring and Evaluation and Contemporary Public Administration Management.

## Secretariat



**Patricia Nyaundi**  
**COMMISSION SECRETARY**

Patricia Nyaundi assumed the position of Commission Secretary in December, 2012.

In her portfolio she is charged with the responsibility of ensuring that the mandate of the Commission to foster promotion and awareness of human rights is achieved.

Patricia Nyaundi holds a Master of Laws in Human Rights from the University of Cape Town South Africa a Diploma in Legal Practice from Kenya School of Law and Bachelor of Laws from University of Nairobi. She is currently undertaking a PhD in Leadership and governance at Jomo Kenyatta University of Agriculture and Technology.



**Dr. Bernard Mogesa**  
**DEPUTY COMMISSION SECRETARY**

Dr. Bernard Mogesa assumed the position of Deputy Commission Secretary in September, 2017 having served as a Principal Human Rights Officer in Research & Compliance and Public Education Training departments.

He deputizes the Commission's Secretary in ensuring that the mandate of the Commission to foster promotion and awareness of human rights is achieved. In his portfolio he is charged with overseeing the Commissions' Programmes and Support departments as well as the Regional Offices.

Dr. Mogesa holds a PhD in Special Needs from America University in London, a Master's Degree in Inclusive Education and a Bachelor's Degree in Education from Moi University, Kenya. Dr Bernard Mogesa is a Certified Professional Mediator.

# INTERNAL AUDIT STATEMENT OF CORPORATE GOVERNANCE

## Statement of Compliance

The Commission confirms that the institution ascribes to its obligations as a National Human Rights Institution in compliance with its constitutional and statutory mandate. The Commission is in compliance with Constitution of Kenya 2010 as well as relevant statutes such as the Public Finance Management Act 2012, The Public Procurement & Asset Disposal Act 2015, Employment Act 2007 and Occupational Safety & Health Act 2007.

The Commission is committed to high standards of ethics and members of the Commission are bound by the specific Leadership and Integrity Code for State Officers in the Kenya National Commission on Human Rights, while the Code of Conduct for the Kenya National Commission on Human Rights staff is applicable to the staff of the Commission.

## Composition

The governing body of the Commission comprises of a Chairperson and four other members appointed in accordance with the Constitution and the provisions of the Kenya National Commission on Human Rights Act No. 2011 (Revised 2012). During the financial year under review, four members were in office as indicated in the table below.

Table 3: Composition of the Commission 2016/17

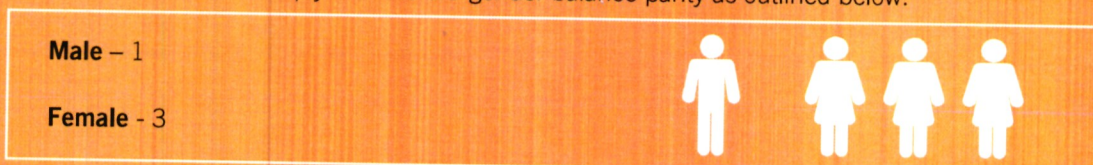
Commission Member	Designation	Appointment Date
Kagwiria Mbogori	Chairperson	4 March 2014
George Morara Monyoncho	Vice chairperson	4 March 2014
Suzanne Shatikha Chivusia		4 March 2014
Jedidah Wakonyo Waruhiu		4 March 2014
*Patricia Mande Nyaundi	Secretary to the Commission	15 December 2012

\* The Secretary to the Commission is the Chief Executive Officer

## Commission Diversity

The Commission has diverse set of skills in the areas of; Law, Human rights, Gender and social development and Social science.

KNCHR continues to comply with the 1/3 gender balance parity as outlined below:



## Authority & Delegation

The Commission's authority is set out in Kenya National Commission on Human Rights Act No. 2011 (Revised 2012) and includes matters set for determination and approval by the Commission.

## Committees of the Commission

The Commission has established two committees which assist in the fulfilment of its responsibilities. These are the Audit & Risk Management Committee and the Finance & Administration Committee.

### 1. The Finance, Human Resources & Administration Committee is responsible for:

- Reviewing and recommending approval of policies and conditions for sound management of the financial processes and operations,
- Reviewing and reporting to the Commission on the annual audited accounts,
- Reviewing and approving policies and conditions for sound management of the Commission's Human Resources and
- Reviewing and approving policies for the sound management of the Commission's ICT systems

### 2. The Audit & Risk Management Committee has the mandate to assist the Commission in fulfilling its oversight responsibilities for

- The financial reporting process,
- The system of internal control,
- Risk management,
- The audit process, and
- The National Commission's process for monitoring compliance with policy, laws and regulations and the Code of Conduct.

The Commission has, in line with provisions of its establishing Act, co-opted into its Committees persons whose knowledge and skills are deemed necessary for the functions of the Commission. The Finance, HR & Admin Committee has co-opted representation from the Directorate of Personnel Service Management while membership to the Audit & Risk Management committee is in line with the provisions of the Public Finance Management Act, 2012.

In addition, each thematic area of the Commission has a Commissioner providing oversight over the planned strategic activities. Similar arrangements have been made with respect to the Commission's regional offices.



Table 4: Commissioners' strategic thematic areas

Commission Member	Strategic Thematic area	Regional Office
Chairperson, Commissioner Kagwiria Mbogori	<ul style="list-style-type: none"> <li>Economic Social &amp; Cultural Rights</li> <li>Human Resources &amp; Administration</li> </ul>	North Eastern and Laikipia
Vice Chairperson, Commissioner George Morara Monyoncho	<ul style="list-style-type: none"> <li>Research</li> <li>Public Education Training</li> <li>Chairs Finance, HR &amp; Admin</li> <li>Elections</li> </ul>	Coast
Commissioner Suzanne Shatikha Chivusia	<ul style="list-style-type: none"> <li>Reforms &amp; Accountability</li> <li>Elections</li> </ul>	North Rift
Commissioner Jedidah Wakonyo Waruhiu	<ul style="list-style-type: none"> <li>Complaints, Investigation &amp; Redress</li> <li>Audit &amp; Risk Management Committee</li> </ul>	Western

## Performance Evaluation

The Commission has a training and development program tailored to ensure Commission members' development in Corporate Governance in order to strengthen their oversight role and effectiveness. During the financial year 2016/2017, four Commissioners attended a Corporate Governance Training at the Strathmore Business School.

## Meetings

The Commission meets at least once every three months in line with its statutory requirements. The Commission may hold further meetings in line with requirements of the business.

Details of the number of Commission's statutory meetings held during the year and attendance at those meetings are set out below. Attendance is expressed as the number of meetings attended out of the number eligible to be attended.

Table 5: Number of Commission's statutory meetings

Commission Member		Meetings
Kagwiria Mbogori	Chairperson	4/4
George Morara Monyoncho	Vice chairperson	4/4
Suzanne Shatikha Chivusia		3/4
Jedidah Wakonyo Waruhiu		4/4
*Patricia Mande Nyaundi	Secretary to the Commission	3/4

\* The Secretary to the Commission is the Chief Executive Officer

## Separation of Powers and Duties

The Secretary to the Commission is the Chief Executive Officer of the Commission and is responsible for carrying out the policy decisions of the Commission, its day to day administration and management and control of other staff of the Commission.

The Commission has established two executive management committees to support the Secretariat in carrying out its responsibilities; the Public Finance Management Standing Committee and the Monitoring & Evaluation Committee.

The Public Finance Management Standing Committee is a Committee comprising of all Commission's heads of department. The Committee is chaired by the Secretary to the Commission with the Finance Manager as its Secretary. The Committee is supported by various sub-committee working groups organised along the following areas: Budget Allocation, Budget Implementation, Risk Management, Internal control, Stakeholder Communication and Corporate governance.

The Monitoring & Evaluation Committee comprises of the Secretary to the Commission, Head of Program and Heads' of department from Monitoring & Evaluation and Internal Audit. Two heads of department from program departments and one head of department representing Strategic Support also serve as member on a one year rotation basis.

# Financial Statements of the Commission

REPUBLIC OF KENYA

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NAIROBI

## OFFICE OF THE AUDITOR-GENERAL

### REPORT OF THE AUDITOR-GENERAL ON KENYA NATIONAL COMMISSION ON HUMAN RIGHTS FOR THE YEAR ENDED 30 JUNE 2017

#### REPORT ON THE FINANCIAL STATEMENTS

##### Opinion

I have audited the accompanying financial statements of Kenya National Commission on Human Rights set out on pages 29 to 59, which comprise the statement of financial assets and liabilities as at 30 June 2017, and the statement of receipts and payments, statement of cash flows and summary statements of appropriation – recurrent, development and combined for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

In my opinion, the financial statements present fairly, in all material respects, the financial position of Kenya National Commission on Human Rights as at 30 June, 2017, and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Cash Basis) and comply with the Kenya National Commission on Human Rights Act, 2011.

Further, as required by Article 229(6) of the Constitution, based on the procedures performed, I confirm that, nothing has come to my attention to cause me to believe that public money has not been applied lawfully and in an effective way.

##### Basis for Opinion

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the Kenya National Commission on Human Rights in accordance with ISSAI 30 on Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

##### Key Audit Matters

Key audit matters are those matters that, in my professional judgment, are of most significance in the audit of the financial statements. There were no key audit matters to report in the year under review.

*Report of the Auditor-General on the Financial Statements of Kenya National Commission on Human Rights for the year ended 30 June 2017*

*Promoting Accountability in the Public Sector*

### **Responsibilities of Management and Those Charged with Governance for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Cash Basis) and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Commission's ability to sustain services, disclosing, as applicable, matters related to sustainability of services and using the applicable basis of accounting unless the management either intends to cease operations, or have no realistic alternative but to do so.

Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

Those charged with governance are responsible for overseeing the Commission's financial reporting process.

### **Auditor-General's Responsibilities for the Audit of the Financial Statements**

The audit objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement and weakness when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit conducted in accordance with ISSAIs, I exercise professional judgement and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances and for the purpose of giving an assurance on the effectiveness of the Commission's internal control.

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*Report of the Auditor-General on the Financial Statements of Kenya National Commission on Human Rights for the year ended 30 June 2017*

## STATEMENT OF RECEIPTS AND PAYMENTS

	Note	2016-2017 Kshs	2015-2016 Kshs
<b>RECEIPTS</b>			
Proceeds from Domestic and Foreign Grants	1	116,485,764	121,738,543
Exchequer releases	2	416,145,00	441,700,000
Contribution in Kind		0	
Other Receipts	3	0	3,166,058
<b>TOTAL RECEIPTS</b>		<b>532,630,764</b>	<b>566,604,601</b>
<b>PAYMENTS</b>			
Compensation of Employees	4	204,019,793	189,803,819
Use of goods and services	5	164,906,382	178,915,305
Transfers to Other Government Units	6	0	13,550,832
Other grants and transfers	7	1,526,407	2,056,884
Social Security Benefits	8	7,151,476	7,494,527
Acquisition of Assets	9	7,337,200	59,058,841
Contribution in Kind		0	
Other Payments	10	95,321,632	87,663,746
Mortgage & Car loan (Transfer)			
<b>TOTAL PAYMENTS</b>		<b>480,262,890</b>	<b>538,543,952</b>
<b>SURPLUS/DEFICIT</b>		<b>52,367,874</b>	<b>28,060,649</b>

The accounting policies and explanatory notes to these financial statements form an integral part of the financial statements. The entity financial statements were approved by the Commission on 14<sup>th</sup> September 2017 and signed by:



Commission Secretary  
Dr. Bernard Mogesa

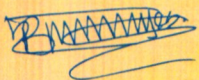


Finance Manager  
John Wamwanga  
I ICPAK Member Number: 2872

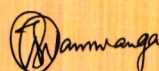
## STATEMENT OF ASSETS AND LIABILITIES

	Note	2016-2017 Kshs	2015-2016 Kshs
<b>FINANCIAL ASSETS</b>			
<b>Cash and Cash Equivalents</b>			
Bank Balances	11A	116,197,965	63,735,113
Cash Balances	11B	200,000	200,000
Cash Equivalent	12		
<b>Total Cash and cash equivalent</b>		<b>116,397,965</b>	<b>63,935,113</b>
Deposits	17.4	7,940,608	7,940,608
Accounts receivables – Outstanding Imprests	13	1,145,134	1,240,111
<b>TOTAL FINANCIAL ASSETS</b>		<b>125,483,707</b>	<b>73,115,832</b>
<b>FINANCIAL LIABILITIES</b>			
Accounts Payables – Deposits and retentions	14	591,297	591,297
<b>NET FINANCIAL ASSETS</b>		<b>124,892,410</b>	<b>72,524,534</b>
<b>REPRESENTED BY</b>			
Fund balance b/fwd		72,524,535	44,463,882
Surplus/Deficit for the year		52,367,874	28,060,652
<b>NET FINANCIAL POSITION</b>		<b>124,892,410</b>	<b>72,524,535</b>

The accounting policies and explanatory notes to these financial statements form an integral part of the financial statements. The entity financial statements were approved by the Commission on 14<sup>th</sup> September 2017 and signed by:



**Commission Secretary**  
Dr. Bernard Mogesa



**Finance Manager**  
John Wamwanga  
ICPAK Member Number: 2872

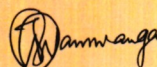
## STATEMENT OF CASH FLOWS

		2016-2017 (Ksh)	2015-2016 (Ksh)
<b>Receipts for operating income</b>			
Proceeds from Domestic and Foreign Grants	1	116,485,764	121,738,543
Exchequer Releases	2	416,145,000	441,700,000
Other Revenues	3	-	3,166,058
<b>Payments for operating expenses</b>			
Compensation of Employees	4	(204,019,793)	(189,803,819)
Use of goods and services	5	(164,906,382)	(178,915,305)
Transfers to Other Government Units	6	0	(13,550,832)
Other grants and transfers	7	(1,526,407)	(2,056,884)
Social Security Benefits	8	(7,151,476)	(7,494,527)
Other Expenses	10	(95,321,632)	(87,663,746)
<b>Adjusted for:</b>			
Changes in receivables		(9,085,742)	0
Changes in payables		591,297	
<b>Net cash flow from operating activities</b>		<b>51,210,629</b>	<b>86,981,301</b>
<b>CASHFLOW FROM INVESTING ACTIVITIES</b>			
Acquisition of Assets	9	(7,337,200)	(59,058,841)
<b>Net cash flows from Investing Activities</b>		<b>(7,337,200)</b>	<b>(59,058,841)</b>
<b>CASHFLOW FROM BORROWING ACTIVITIES</b>			
<b>Net cash flow from financing activities</b>		<b>0</b>	<b>0</b>
<b>NET INCREASE IN CASH AND CASH EQUIVALENT</b>			
		<b>43,873,429</b>	<b>28,060,652</b>
<b>Cash and cash equivalent at BEGINNING of the year</b>		<b>72,524,535</b>	<b>44,463,882</b>
<b>Cash and cash equivalent at END of the year</b>		<b>116,397,965</b>	<b>72,524,535</b>

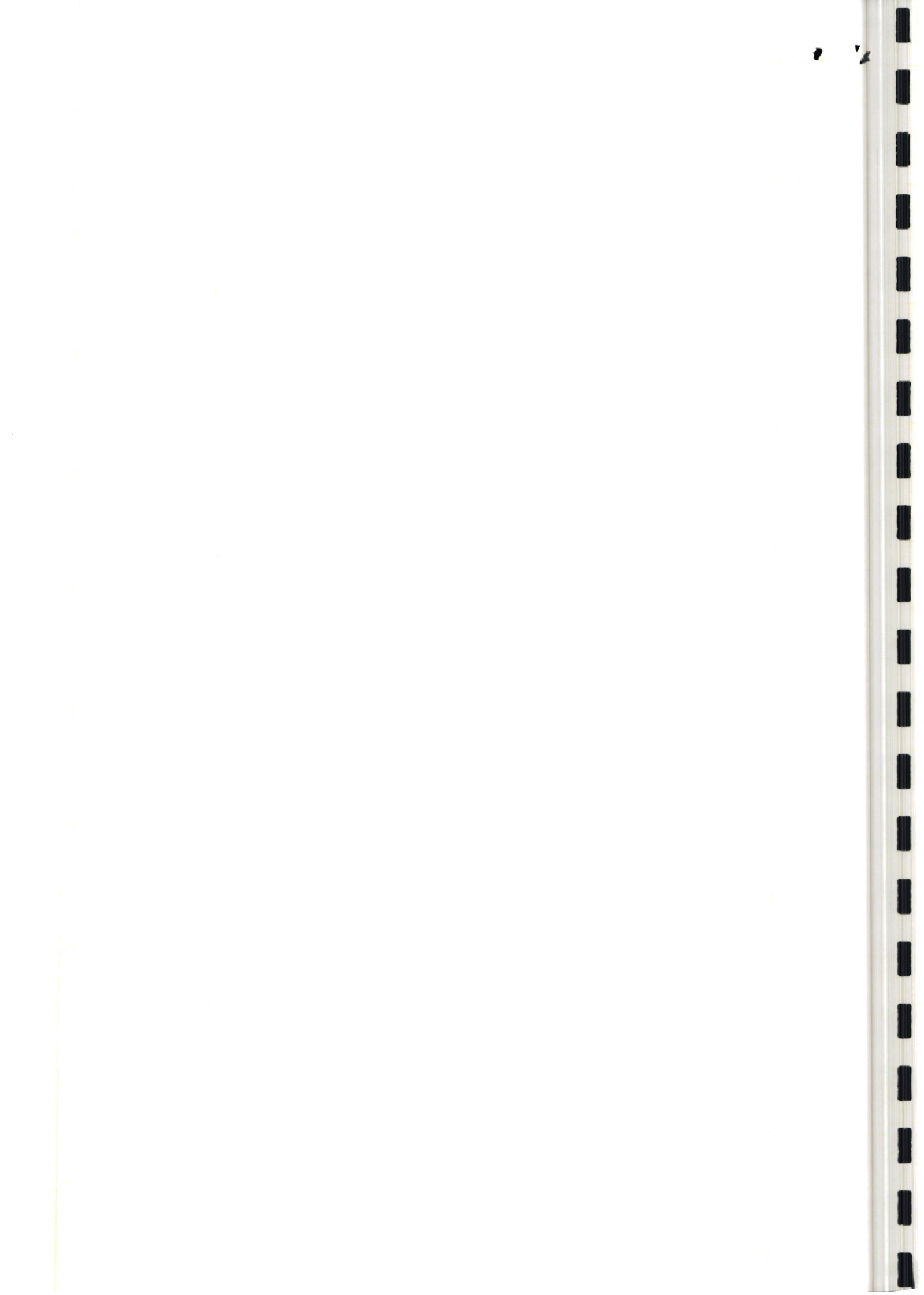
The accounting policies and explanatory notes to these financial statements form an integral part of the financial statements. The entity financial statements were approved by the Commission on 14<sup>th</sup> September 2017 and signed by:



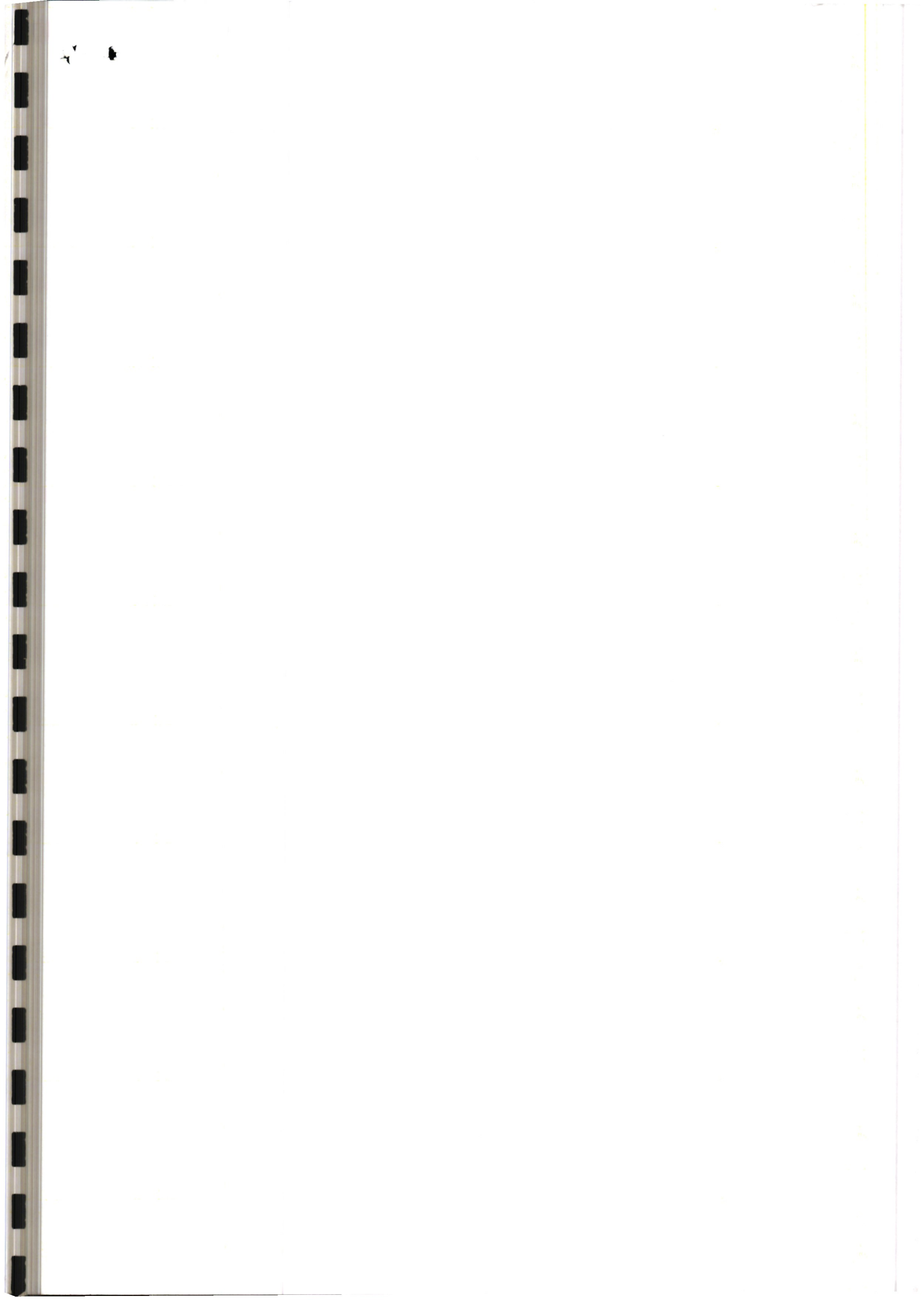
**Commission Secretary**  
Dr. Bernard Mogesa



**Finance Manager**  
John Wamwanga  
ICPAK Member Number: 2872







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

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
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