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REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT – THIRD SESSION
THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

FIRST REPORT ON THE STATUS OF IMPLEMENTATION OF THE
CONSTITUTION BY THE FOLLOWING INDEPENDENT COMMISSIONS:

1. KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
2. THE NATIONAL LAND COMMISSION; AND
3. THE NATIONAL GENDER AND EQUALITY COMMISSION

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 THE NATIONAL ASSEMBLY PAPERS LAID	
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TABLED BY:	HON. GATHONI KAMUKIOMBA (CHAIRPERSON)
CLERK-AT THE-TABLE:	INZOU MWALE

Directorate of Audit & General Purpose Committees
National Assembly
NAIROBI

Contents

LIST OF ABBREVIATIONS AND ACRONYMS	2
1 PREFACE.....	4
4.3 1.1 Mandate of the Committee	4
4.4 1.2 Committee Membership.....	4
4.5.....	5
4.6 1.3 Committee Secretariat	5
2 INTRODUCTION.....	6
3 THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR) ...	6
4.7 3.1 Establishment and Mandate	6
4. THE NATIONAL LAND COMMISSION	10
4.1 Establishment and Mandate.	10
4.2 Submissions by the National Land Commission.....	11
4.3 COMMITTEE OBSERVATIONS.....	12
4.4 COMMITTEE RECOMMENDATIONS	12
5. THE NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)	13
5.1 Establish and Mandate	13
5.2 Submissions by the National Gender and Equality Commission (NGEC)	13
6. ANNEXURES	
Annex 1 Minutes of the Committee	
Annex 2 Adoption List	
Annex 3 Submission by the Kenya National Commission on Human Rights on the Status of implementation of their mandate as per the Constitution and challenges faced	
Annex 4 Submission by the National Land Commission on the Status of implementation of their mandate as per the Constitution and any challenges faced	
Annex 5 Submission by the National Gender and Equality Commission on the Status of implementation of their mandate as per the Constitution and any challenges faced	

LIST OF ABBREVIATIONS AND ACRONYMS

1. CBC - Competency Based Curriculum
2. IEBC - Independent Electoral and Boundaries Commission
3. KNCHR - Kenya National Commission on Human Rights
4. NLC - National Land Commission
5. NGEC - National Gender and Equality Commission

CHAIRPERSON'S FOREWORD

1. This Report contains proceedings, observations and recommendations of the Constitutional Implementation Oversight Committee in its interactions of reports and oral submissions provided by four Constitutional Commissions provided for in Chapter 15 of the Constitution of Kenya, 2010.
2. The Constitutional Implementation Oversight Committee is established under Paragraph 4 of the Sixth Schedule of the Constitution to oversee the implementation of the Constitution.
3. Pursuant to this mandate, the Committee has so far invited four Constitutional Commissions with a view of understanding their operations vis-a vis their constitutional mandate and any impediments in the performance of their role. The Commissions are: the National Police Service Commission, the Kenya National Commission on Human Rights, the National Land Commission and the National Gender and Equality Commission.
4. Hon. Speaker in consideration of the implementation status of the Constitution, pursuant to its mandate, the Committee made the following observations:
 - (i) The inability of the Constitutional Commissions to execute on their mandates was due to lack of adequate budgetary allocation;
 - (ii) Despite the fact that Constitutional Commissions submit their annual performance reports to Parliament pursuant to Article 254 (1), these reports are not examined and debated in Parliament; and
 - (iii) Constitutional Commissions lack effective representation at Cabinet level leading to the existence of conflict between them and the Executive. For instance, the Cabinet Secretary for Lands does not represent the interest of the National Land Commission in Parliament and at times may even take a divergent opinion of the Commission.
5. The purpose of this report is, therefore, to bring to the attention of the House the achievements of the Constitutional Commissions, the challenges faced by these bodies and recommendations to address the said challenges.
6. Hon. Speaker, I wish to express my appreciation to my fellow Honorable Members of these Committee, the Office of the Speaker, the Clerk of the National Assembly and the Secretariat for facilitating the production of this report.
7. Hon. Speaker, pursuant to Standing Order 199, it is my pleasant duty and privilege, on behalf of the Constitutional Implementation Oversight Committee, to lay this report on the Table of the House and urge the House to adopt the recommendations contained therein.

HON. DR. GATHONI WAMUCHOMBA, HSC, MP.
CHAIRPERSON, CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE

1 PREFACE

4.3 1.1 Mandate of the Committee

1. The Constitutional Implementation Oversight Committee is established under Paragraph 4 of the Sixth Schedule to the Constitution which provides as follows:

There shall be a select committee of the National Assembly to be known as the Constitutional Implementation Oversight Committee which shall be responsible for overseeing the implementation of this Constitution and which, among other things—

- (a) shall receive regular including reports concerning—*
- (i) the preparation of the legislation required by this Constitution and any challenges in that regard;*
 - (ii) the process of establishing the new commissions;*
 - (iii) the process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff;*
 - (iv) the devolution of powers and functions to the counties under the legislation contemplated in section 15 of this Schedule; and*
 - (v) any impediments to the process of implementing this Constitution;*
- (b) coordinate with the Attorney-General and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by this Constitution; and*
- (c) take appropriate action on the reports including addressing any problems in the implementation of this Constitution.*

4.4 1.2 Committee Membership

2. The Committee membership comprises of the following: -

Chairperson Hon. Dr. Wamuchomba Gathoni, HSC, MP Githunguri Constituency UDA Party	
Vice-Chairperson Hon. William Kamket, MP Tiaty Constituency KANU – Party	
MEMBERS	
Hon. Sylvanus Osoro, MP South Mugirango Constituency United Democratic Alliance	Hon. Aramat Lemanken, MP Narok East Constituency United Democratic Alliance
Hon. Benjamin Langat Kipkirui, MP Ainamoi Constituency United Democratic Alliance	Hon. Jesica Mbalu Nduku Kiko, CBS, MP Kibwezi East Constituency Wiper Democratic Movement
Hon. George Risa Sunkuiya, MP	Hon. Patrick Ntwiga Munene, MP Chuka, Igambang'ombe Constituency

Kajiado West Constituency United Democratic Alliance	United Democratic Alliance
Hon. Peter Oscar Nabulindo, MP Matungu Constituency Orange Democratic Movement	Hon. Lawrence Aburi Mpuru, M.P Tigania East Constituency NOPEU
Hon. Ruth Odinga, MP Kisumu (CWR) Orange Democratic Movement	Hon. Hamisi Kakuta Maimai, MP Kajiado East Constituency Orange Democratic Movement
Hon. John Murumba Chikati, MP Tongaren Constituency United Democratic Alliance	Hon. Geoffrey Ekesa Mulanya, MP Nambale Constituency Independent
Hon. Patrick Osero Kibagendi, MP Borabu Constituency Orange Democratic Movement	Hon. Daniel Karitho Kiili, MP Igembe Central Constituency Jubilee Party
Hon. Ali Abdisat Kalif, MP Nominated Member United Democratic Alliance	Hon. Betty Njeri Maina, MP Muranga (CWR) United Democratic Alliance
Hon. John Mukunji Mwaniki, MP Manyatta Constituency United Democratic Alliance	Hon. Augustine Mwafrika Kamande, MP Roysambu Constituency United Democratic Alliance
Hon. Jackson Lentoijioni Lekumontare, MP Samburu East Kenya Africa National Union	Hon. Charles Ngusya Nguna, MP Mwingi West Wiper Democratic Alliance
Hon. Harun Mohamed Umulkher, MP Nominated Member Orange Democratic Movement	

4.5

4.6 1.3 Committee Secretariat

3. The Secretariat facilitating the Committee in executing its mandate comprises of:

Mr. Oscar Namulanda Deputy Director Committees Lead Clerk	
Ms. Hellen Masiyoi Clerk Assistant I	Ms. Damaris Kafuyai Clerk Assistant III
Ms. Emma Essendi Senior Legal Counsel	Mr. Alvin Ochieng Research Officer III
Ms. Lilian Kiende Mburug Media Relations Officer	Mr. Kelvin Lengasi Audio Officer
Ms. Pauline Sifuma Hansard Reporter	Anthony Kariuki Sergeant -at- Arms

2 INTRODUCTION

4. The Constitutional Implementation Oversight Committee in execution of its mandate has so far invited four Constitutional Commissions to gain insight into their operations, their alignment with their constitutional mandates, and any obstacles they face in fulfilling their roles.
5. The report contains the status of implementation of the Constitution as submitted by the following four Constitutional Commissions between February and April 2024 as follows: -
 - a) The Kenya National Commission on Human Rights;
 - b) The National Land Commission; and
 - c) The National Gender and Equality Commission

3 THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

4.7 3.1 Establishment and Mandate

6. The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution established pursuant to Article 59 of the Constitution and Section 3 of the Kenya National Commission on Human Rights Act, (Cap. 71).
7. KNCHR acts as a watchdog over the government in the area of human rights and ensures the Government's compliance with obligations under international treaties and conventions on human rights. The Commission acts as the State's lead agency in promoting and protecting human rights.

3.2 Background

8. The Commission provided key updates on the Human Rights situation in the country, the status of implementation of the Bill of Rights and the Review of boundaries and Constitutional timelines provided.

3.3 Submissions by the Kenya National Commission on Human Rights Commission (KNCHR)

- 4 The Chairperson of the Commission, Ms. Roseline Odede, HSC, appeared before the Committee accompanied by other officials to apprise it on the implementation status of the Constitution. She submitted as follows:

a. Status of Monitoring and Reporting Institutions

- 5 The KNCHR is mandated to promote and protect human rights and develop a culture of human rights across public and private spheres in Kenya. The Commission is the designated state organ in ensuring compliance with obligations arising from human rights treaties that Kenya has ratified/acceded to. Additionally, the KNCHR is mandated to oversight the implementation of the Prevention of Torture Act, 2017 and is also the designated national monitoring agency under Article 33(2) of the Convention on the Rights of Persons with Disabilities.

6 To carry out its mandate, KNCHR has six (6) Regional offices out of forty-seven (47) Counties and a staff capacity of 30% which is below its optimum operational capacity. This impedes effective operations to carry out the Commission's Constitutional mandate.

b. **Status of Implementation of Human Rights**

- 7 ***Economic and Social Rights*** as guaranteed under Article 43 of the Constitution. The KNCHR noted the escalating high cost of living in the country has had huge ramifications on the enjoyment of economic and social rights. It recommended that Parliament reviews legislative and policy measures affecting economic and social rights and that Parliament considers introducing measures to cushion the most vulnerable.
- 8 ***The Right to Education*** as guaranteed by Article 43 (1) (f) and 53(1) (b) of the Constitution. KNCHR noted that the transition from the 8-4-4 system to the current CBC has had challenges and observed that the promised 100 % transition rate was yet to be met.
- 9 The KNCHR reported that they would conduct a public inquiry on the sector to unravel all the issues plaguing the education sector so as to provide a more comprehensive response, tentatively in the 2024/2025 financial year.
- 10 The KNCHR further noted that they had made presentations to the Presidential Working group on Education Reforms in the execution of their mandate of promoting the right to access quality education and some of their recommendations were adopted in the final report.
- 11 ***Right to accessible and adequate Housing*** as guaranteed by Article 43 (1) (b) of the Constitution. The KNCHR noted that the Affordable Housing initiative by the Executive had been marred by several legal challenges.
- 12 The KNCHR noted that they had submitted an Advisory to the Senate and had further requested for an opportunity to make oral presentations on the Affordable Housing Act, No. 2 of 2024.
- 13 ***Right to Life*** as guaranteed by Article 26 of the Constitution. KNCHR noted that they were particularly concerned about the ongoing spate of femicide cases across the country.
- 14 ***Right to life.*** Kenya made history on 27th July 2023 following the recent move on commutation of Death Sentences to Life Imprisonment by His Excellency, the President, Dr. William Ruto as recommended by the Power of Mercy Advisory Committee (POMAC). Chapter IV of the Constitution of Kenya guarantees absolute enjoyment of the right to life and accompanying rights and freedoms. The KNCHR argument still remains that the death penalty is not effective in fighting crime and thus its application does not make society any safer. Concluding observations by the UNCAT Committee called upon Kenya to review its Penal Code and Criminal Procedure Code to abolish the death penalty.

- 15 Further, The KNCHR noted from their database and those of their partners, extrajudicial killings, enforced disappearances, and related violations had become widespread in the country.
- 16 The KNCHR recommends the review of the existing legal framework to ensure that all forms of enforced disappearances are clearly defined in criminal laws with associated penalties that are proportionate to the severity of the offence.
- 17 Further KNCHR advocated for the operationalization of the National Coroners Service Act, Cap. 89 in order that any investigation into allegations of extrajudicial execution can entail independent forensic examination.
- 18 ***Freedom and Security of the Person*** as guaranteed by Article 29 of the Constitution. The KNCHR noted that insecurity across various counties in the recent past including banditry continues to threaten and violate the human rights of residents and gravely affected communities and this consequently destabilizes national security at large.
- 19 The KNCHR noted that between 2021 and 2024 they had documented human rights violations arising from insecurity in various parts of the country particularly, the North Rift Region, Marsabit, Laikipia, and Samburu Counties.
- 20 The KNCHR's reports recommended various interventions by relevant Government Agencies/Ministries and the efforts they have made to engage the same with a view of addressing the underlying issues.
- 21 ***Right to Assembly, demonstration, picketing, and petition*** as guaranteed under Article 37 of the Constitution. The KNCHR noted that this right came under attack during mass demonstrations witnessed in Kenya for the better part of 2023.
- 22 The KNCHR noted that during this period there was loss of lives, property and violence meted out to assembly participants by both demonstrators and police officers.
- 23 The KNCHR noted that while there are regulations on the use of force and firearms on public order management, the guidelines are yet to see the light of day, and thus violations relating to public assembly continue to be witnessed. Further, lack of accountability for the cases of deaths and property destruction during these periods remains a concern.
- 24 ***Rights of Special Interest and Vulnerable Groups***. The KNCHR advocates for the expeditious review or repeal and replacement of the Persons with Disability Act, Cap. 133 and adoption of a national policy on persons with disability in line with its national and international commitments.
- 25 ***Rights of Intersex Persons***. The Commission has taken a proactive role in pushing for the promotion and protection of the rights of Intersex Persons. Several laws now including the Children's Act 2022, now recognizes the Intersex persons. The Intersex Persons Bill 2024 is yet to be presented before the National Assembly. The African Commission through

adoption of *Resolution on the promotion and protection of the rights of intersex persons in Africa-ACHPR/Re.552 (LXXIV) 2023 on 7th March 2023, called on state parties to promote and protect rights of intersex persons on the continent.*

- 26 **Matters Relating to LGBTQ.** The AU-African Commission on Human and Peoples' Rights (ACHPR) adopted *Resolution 275 on the Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.*¹ Following the Supreme Court decision rendered on 24th February 2023 relating to Petition No.16 of 2019 affirming the right of sexual minority groups to register associations; and the incidences of targeted violence that followed. As at the end of February 2024, the Commission had received and **documented 156 cases of violations** targeting LGBTQ communities across the country. The violations included death threats, physical violence, lack of access to essential drugs and services, evictions, cyberbullying, blackmail, and extortion.

c. Review of Boundaries and Constitutional Timelines

- 27 The KNCHR noted that the timelines provided for in the Constitution for review of boundaries had already lapsed and the country is yet to have a fully constituted Independent Electoral and Boundaries Commission (IEBC) in place that is mandated to undertake the exercise which poses an impending constitutional crisis.
- 28 The KNCHR recommended a Supreme Court interpretation of the issue noting that the delimitation exercise will not happen within the constitutional timelines. Further they advised that the appointment of the Commissioners to the IEBC be undertaken in order to fastrack the boundary review and delimitation process.

3.4 COMMITTEE FINDINGS AND OBSERVATIONS

- 29 Having analysed the submissions from the **Kenya National Commission on Human Rights (KNCHR)** the Committee observed as follows:

THAT-

- 1) The timelines given in the Constitution on review of boundaries lapsed in March, 2024 and the Country was yet to have a fully constituted IEBC in place that is mandated to undertake the exercise which poses an impending Constitutional crisis.
- 2) The KNCHR has six (6) Regional offices out of forty-seven (47) Counties and a staff capacity of 30% which was below its optimum operational capacity.

1 ¹ **Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity - ACHPR/Res.275(LV)2014** available at <https://achpr.au.int/en/adopted-resolutions/275-resolution-protection-against-violence-and-other-human-rights-violations>.

- 3) Further to commutation of the death penalty, the KNCHR advice that Kenya **ratifies the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty** and the **Optional Protocol of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)**. The latter requires State Parties to establish independent National Preventive Mechanisms to conduct inspections of all places of detention and closed spaces.
- 4) The Commission continues to advocate for the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. This, notably, is aligned to the Kenya Kwanza Manifesto. It is also a recommendation made severally to Kenya by the treaty body mechanisms at both regional and international levels. The Commission has previously made submissions before the Public Petitions Committee of the National Assembly calling for speedy investigations of cases of enforced disappearances.

3.5 RECOMMENDATIONS OF THE COMMITTEE

- 30 Based on the Committee's findings and general observations, the Committee makes the following recommendations:
 - 1) Increase budgetary allocation to the Kenya National Commission on Human Rights towards its regional and national offices to enable it carry out its mandates.
 - 2) On the commutation of the death penalty, the State Parties to establish independent National Preventive Mechanisms to conduct inspections of all places of detention and closed spaces.

4. THE NATIONAL LAND COMMISSION

4.1 Establishment and Mandate.

- 31 The National Land Commission (NLC) is a constitutional Commission established under Article 67 (1) of the Constitution. The Commission was operationalized by the National Land Commission Act, Cap. 281.
- 32 Article 67 (2) provides the mandate and functions of the Commission as follows:
 - (a) to manage public land on behalf of the national and county governments;
 - (b) to recommend a National Land Policy to the national government;
 - (c) to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
 - (d) to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
 - (e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
 - (f) to encourage the application of traditional dispute resolution mechanisms in land conflicts;

- (g) to assess tax on land and premiums on immovable property in any area designated by law; and
- (h) to monitor and have oversight responsibilities over land use planning throughout the country.

4.2 Submissions by the National Land Commission

- 33 The National Land Commission appeared before the Committee on 19th April 2024 to deliberate on the following issues-
- a) the status of implementation of the Constitution as per their mandate and impediments to the process if any; and
 - b) the broad mandate and functions of the National Land Commission
- 34 The Chairperson, Mr. Gershom Otachi noted that review of the National Land Policy, 2009, the Rating Act, Cap. 267, Valuation for Rating Act, Cap. 266, and the Stamp Duty Act Cap. 480 had taken too long to be reviewed and aligned with the Constitution of Kenya 2010.
- 35 This delay had impeded the execution of the Commission's service delivery to the citizens of Kenya. Further, he observed there have been several uncoordinated land law amendments that have served to cause more confusion and overlaps in the administration of land in Kenya.
- 36 The Commission reported that it had developed two (2) frameworks or toolkits for monitoring the implementation of the National Land Use Policy (2017) and the National Spatial Plan (2015-2045). Through monitoring and oversight of land use planning throughout the country, the planning authorities (county and national governments) are sensitized to entrench provisions of the policy and the plan in the national, county, and local levels of land use planning. It further highlighted that all Ministries, Departments, and State Agencies including the 47 County Governments had been sensitized on the matter and a follow up is ongoing.
- 37 ***Vesting land to the Government after Compulsory Acquisition:*** NLC noted that land compulsorily acquired by the government has not been vested since independence. This has resulted in the illegal occupation and use of such land for private purposes, charges on public land, and the risk of double acquisition during project expansion. This challenge has been compounded by a lack of budgeting for vesting by the acquiring entities.
- 38 The Chair noted that understaffing had adversely affected the Commission's productivity, implementation of planned activities and, eventually, achievement of the set goals and objectives. Presently, the Commission has 606 staff members against an approved establishment of 1,236.
- 39 NLC sought the support of the Committee on the ongoing amendment of Section 14 of the NLC Act, Cap. 281 on review of grants and dispositions. This will allow NLC to continue

with the review of grants and dispositions of public land in respect to complaints that were pending before their mandate under that section expired and also allow them to receive new complaints without limitation of time and provide redress.

- 40 Further, NLC sought the support of the Committee on the ongoing amendment to section 15 of the NLC Act, Cap. 281 on historical land injustices. This will allow the Commission to admit, register and process historical land injustices claims continuously to enable handling disputes that were time-barred and execution of the mandate without time limitations.

4.3 COMMITTEE OBSERVATIONS

- 41 With regard to the **National Land Commission (NLC)** the Committee observed as follows:

THAT-

- (i) The National Land Policy, 2009, the Valuation for Rating Act, Cap. 266, the Rating Act, Cap. 267 and the Stamp Duty Act, Cap. 480 have not been reviewed and thus some of the provisions were not aligned with the Constitution.
- (ii) The Commissions was unable to undertake its function due to inadequate funding despite Article 249 (3) of the Constitution providing that Parliament shall allocate adequate funds to enable each Commission and independent office to perform its functions and the budget of each commission and independent office shall be a separate vote. The Commission decried the fact that it was clustered together with the Executive in the Sectoral Working Groups and was thus competing with the Ministries for allocation of funds.

4.4 COMMITTEE RECOMMENDATIONS

- 42 Based on the Committee's findings and general observations, the Committee makes the following recommendations;

THAT;

- (i) The National Land Commission reviews the National Land Policy, 2009, the Valuation for Rating Act, Cap. 266, the Rating Act, Cap. 267 and the Stamp Duty Act, Cap. 480 and presents proposals to the National Assembly for consideration within three months from the date of adoption of this report.
- (ii) The Committee to sponsor an amendment to Standing Order 235 to mandate the Constitutional Commissions and Independent Offices to present their estimates to the Constitutional Implementation Oversight Committee for consideration and making of appropriate recommendations to the Budget and Appropriations Committee.
- (iii) The Committee to sponsor an amendment to Standing Order 216 to provide that at the beginning of every session of Parliament, the Speaker shall allocate time for the debate of the reports by Constitutional Commissions and Independent Offices.

5. THE NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)

5.1 Establish and Mandate

- 43 The National Gender and Equality Commission (NGEC) is established by the National Gender and Equality Commission Act, Cap. 7K, and Article 59 (4) of the Constitution of Kenya. Its functions are outlined under Section 8 of the National Gender and Equality Commission Act, Cap. 7K.
- 44 The mandate of NGEC is to promote and ensure gender equality, principles of equality, and non-discrimination for all persons in Kenya as provided for in the Constitution with a focus on the following Special Interest Groups (SIGs): women, persons with disability, children, youth, and older members of society, minority and marginalized groups.

5.2 Submissions by the National Gender and Equality Commission (NGEC)

- 45 Dr. Joyce Mutinda, the Chairperson, National Gender and Equality Commission appeared before the Committee on 9th April 2024, accompanied by other commissioners and officials to deliberate on several issues touching on their mandate including: the status of implementation of Article 27 (8) of the Constitution which, requires the State to take legislative and other measures to implement the principle that not more than two-thirds of members of elective or appointive bodies shall be of the same gender.
- 46 The Commission noted that since 2018, it had been actively engaged in supporting Parliament in the review and formulation of legislation aimed at aligning national laws with the Constitution. Over this period, NGEC has contributed significantly to the preparation of approximately 140 legislative pieces and has submitted 229 memoranda on various bills. The Commission has intervened on the following Bills in the recent past:
- i. The Gold Processing Bill (National Assembly Bill No. 46 of 2023);
 - ii. The Mining (Amendment) Bill (National Assembly Bills No. 51 of 2023);
 - iii. The Gambling Control Bill (National Assembly Bill No. 70 of 2023);
 - iv. The National Lottery Bill (National Assembly Bill No. 69 of 2023);
 - v. The National Transport and Safety Authority (Amendment) Bill (National Assembly Bills No. 36 of 2023);
 - vi. The Primary Health Care Bill, 2023 (Senate Bills No. 44 of 2023);
 - vii. The Facilities Improvement Financing Bill, 2023 (Senate Bills No. 43 of 2023);
 - viii. The Social Health Insurance Bill, 2023;
 - ix. The Higher Education Loans Board (Amendment) Bill (National Assembly Bills No. 58 of 2022);
 - x. The National Government Co-ordination (Amendment) Bill, (National Assembly Bills No. 25 of 2023);
 - xi. The Vocational Training Bill, Senate Bill No. 3 of 2022;
 - xii. The Public Service Commission (Amendment) Bill, (National Assembly Bill No. 6 of 2023);
 - xiii. The Care and Protection of Child Parents Bill (Senate Bill No. 29 of 2023);

- xiv. The Kenya Sign Language Bill (National Assembly Bills No.1 of 2024); and
 - xv. Considerations for Kenya's ratification of the International Labor Organization Conventions, specifically Violence and Harassment 2019 (No. 190) and Domestic Workers Convention, 2011 (No. 189).
- 47 The Commission noted that despite their substantial contributions, only 20% of its efforts are directed toward County Assemblies, primarily due to resource constraints. However, there has been a noticeable enhancement in the quality of legislative instruments emanating from both Parliament and County Assemblies, as well as policy proposals from the executive arms of the National and County Governments.
- 48 The Gender Commission has actively participated in strategic Constitutional dialogues and decisions, including efforts towards realizing the not more than two-thirds gender principle in Parliament. Further, it has contributed to the formulation of Bills aimed at realizing constitutional provisions, such as Article 100, which addresses issues of gender equality.
- 49 The Commission has issued statements and appeals to law enforcement agencies, such as the National Police Service, to expedite investigations and ensure justice in cases of gender-based violence (GBV) and sexual abuse. NGEC represents victims in court proceedings to ensure their rights are protected and perpetrators are held accountable.
- 50 The Gender Commission has undertaken several public interest litigations aimed at promoting and defending the right to equality and freedom from discrimination.
- 51 On Legal Advocacy and Representation, NGEC continues to closely monitor high-profile cases, such as rape and defilement, and provide legal support to victims, as exemplified by its involvement in cases before various courts across the country.
- 52 From 2018 to date NGEC had actively processed 473 complaints concerning gross violations of rights, with particular emphasis on special interest groups. The Commission noted that proactive handling of complaints has yielded a tangible impact on accelerating access to justice for victims of rights violations.
- 53 Guided by sections 8(b) and (g) of the NGEC Act, 2011, NGEC is part of the Gender task team established by the Intergovernmental Relations Technical Committee. Its role includes working with national and county government representatives to identify and clarify pending constitutionally assigned functions for transfer, review existing legislation, identify resources for transfer, and develop implementation plans.
- 54 Through thorough investigation and advocacy for remedial action, NGEC has played a crucial role in holding perpetrators accountable and ensuring redress for affected individuals. This has contributed significantly to enhancing the protection of rights and fostering a more just and equitable society.
- 55 The NGEC is part of the National Implementation Committee on Business and Human Rights, established by the Attorney-General. This Committee ensures Kenya complies with

international human rights standards in business. NGEC has been instrumental in developing a national action plan to promote human rights principles in business practices.

- 56 Parliament has already adopted the National Dialogue Committee (NADCO) Report and shall proceed to debate it. One of the far-reaching recommendations in this report is that within one year of its adoption, the National Cohesion and Integration Commission (NCIC), National Gender and Equality Commission (NGEC) and Kenya National Commission on Human Rights (KNCHR) be merged, and their mandates be undertaken by the Kenya National Human Rights and Equality Commission as established under Article 59 of the Constitution. NGEC is strongly convinced that The National Dialogue Committee Report Recommendation on scrapping of the Commission will negatively impact on the implementation of the Constitution and in particular Articles 27, 52, 53, 54 and 57 on respectively This shall result in the claw back of the gains made thus far in the gender agenda.
- 57 Among Chapter 15 Commissions, NGEC has the most functions and uniquely oversees private sector compliance with gender equality and non-discrimination. However, it receives the lowest annual budget, consistently under 500 million Kenya Shillings for the past 12 years. The Commission is implementing its complaints mechanism with no budget, risking the loss of these functions in a merger. This highlights the design behind the establishment of the three constitutional commissions (CAJ, NGEC, and KNCHR), which aim for a holistic implementation of the Constitution while balancing separation of powers, independence, accountability, and checks and balances.
- 58 The Kenya National Human Rights and Equality Commission (KNCHR) as designed in Article 59 (1) would have such a huge mandate that is almost impossible to adequately fund, implement, and be accountable. It is for those reasons that the provisions of Article 59 (4) allowed at that time, Parliament to restructure the KNCHR in order to give full effect to Article 59 (2) within the governance principles of separation of powers, checks and balances, independence and accountability. If these provisions are reversed, there will be a serious challenge in the implementation of the Constitution.
- 59 With the merger, the Country will send a negative signal that matters of equality, non-discrimination, and social cohesion are not of priority in the scheme of governance and administration. I also bring to your attention that NCIC is not a Constitutional Commission but a statutory one. To wind up NCIC, we do not require a constitutional referendum. However, NGEC is a Constitutional Commission protected under Chapter 16(1e) of the Constitution and to actualize the recommendation on merger, it would require a constitutional referendum. Given the unrealized mandate, it is extremely untimely to imagine or consider merging NGEC with other agencies.

Challenges faced by the Commission

60 Budgetary constraints that have prevented the Commission from significantly discharge its mandate such as;

- a) Unable to undertake inquiries on notorious violations of principles of equality and freedom from discrimination. For instance, the Commission has received petitions so far on inaccessibility of built environment in both private and public spaces by persons with disabilities but we are unable to conduct the large-scale inquiries due to lack of funds.
- b) Physical presence in counties is limited to 6 counties. This, coupled with limited number of technical (42 out of 108) staff make it difficult for the Commission presence to be felt across all regions.
- c) Limited funding of the gender agenda and inclusion issues in all spheres of life. Gender equality and freedom from discrimination though considered critical in the realization of the 2030 Kenya development agenda, it is yet to receive the necessary political good will and critical financial muscle.

61 Extremely low levels of adherence to legal and policy framework on gender equality and inclusion

62 Gender and SIG related laws are less prioritized at National Parliament and in County Assemblies. For example, a quick analysis of schedule five of the COK shows that since the promulgation of the 2010 Constitution, the law on representation of marginalized groups (Art 100) has not been enacted.

63 Gender equality and inclusion issues are perceived as expensive, invites additional costs, and a driver of ballooning of wage bill. Personal aides to PWD, brailleing of materials, and reasonable accommodations for PWDs is often construed as unnecessarily expensive. Bodies and agencies that work for the SIGs are therefore chocked from receiving necessary financial allocations to promote and implement inclusion and equity.

5.3 COMMITTEE OBSERVATIONS

64 With regard to the **National Gender and Equality Commission (NGEC)** the Committee observed as follows:

THAT-

- (i) The NGEC has actively participated in strategic constitutional dialogues and decisions, including efforts towards realizing the not more than two-thirds gender principle in Parliament however, this two-thirds gender principle has not been implemented.

- (ii) The NCIC is not a Chapter 15 Constitutional Commission and its founding statute is not based on Article 59 (4) of the Constitution. The legislature will be required to undertake a referendum in order to address the structure of KNCHR and NGEC because of the constitutional protection afforded by Article 59 (5)(c) unlike when dealing with NCIC. Merging the Constitutional Commissions with other agencies was a futile activity.

5.4 COMMITTEE RECOMMENDATIONS

65 Based on the Committee’s findings and general observations, the Committee makes the following recommendations;

- (i) The National Gender and Equality Commission to conduct an audit in Counties and Public bodies to asses which entities have met the two-third gender rule.
- (ii) The NGEC should not merged with other commissions within the recommended one year after the adoption of the NADCO report.

SIGNED.......... DATE.....

**HON. DR. WAMUCHOMBA GATHONI, HSC, MP
CHAIRPERSON, CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE**



6.0 ANNEXURES

- Annex 1 Minutes of the Committee
- Annex 2 Adoption List
- Annex 3 Submission by the Kenya National Commission on Human Rights on the Status of implementation of their mandate as per the Constitution and challenges faced
- Annex 4 Submission by the National Land Commission on the Status of implementation of their mandate as per the Constitution and any challenges faced
- Annex 5 Submission by the National Gender and Equality Commission on the Status of implementation of their mandate as per the Constitution and any challenges faced

**MINUTES OF THE 46TH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION
OVERSIGHT COMMITTEE HELD ON SATURDAY 12TH OCTOBER, 2024 AT 2:00PM
AT STONI ATHI RESORT-MACHAKOS COUNTY.**

PRESENT

1. Hon. Dr. Wamuchomba Gathoni, HSC, M.P –**Chairperson**
2. Hon. William Kamket, M.P- **Vice Chairperson**
3. Hon. Jessica Mbalu Nduku, CBS, M.P
4. Hon. Aramat Lemanken, M.P
5. Hon. Charles Ngusya Nguna, M.P
6. Hon. George Risa Sunkuyia, M.P
7. Hon. Peter Oscar Nabulindo, M.P
8. Hon. Jackson Lentoijoni Lekumontare, M.P
9. Hon. Patrick Osero Kibagendi, M.P
10. Hon. Augustine Mwafrika Kamande, M.P
11. Hon. Hamisi Kakuta Maimai, M.P

ABSENT

1. Hon. Silvanus Onyiego Osoro, CBS, M.P
2. Hon. Geoffrey Ekesa Mulanya, M.P
3. Hon. Benjamin Langat Kipkirui, M.P
4. Hon. Daniel Karitho Kiili, M.P
5. Hon. Patrick Ntwiga Munene, M.P
6. Hon. Lawrence Aburi Mpuru M.P
7. Hon. Ruth Odinga, M.P
8. Hon. John Gitonga Mukunji Mwaniki, M.P
9. Hon. John Murumba Chikati, M.P
10. Hon. Ali Abdisirat Khalif, M.P
11. Hon. Betty Njeri Maina, M.P
12. Hon. Harun Mohammed Umulkher, M.P

IN ATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Ms. Lucy Kimathi | - | Principal Clerk |
| 2. Ms. Hellen Kina | - | Clerk Assistant I |
| 3. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 4. Ms. Emma Essendi | - | Legal Counsel |
| 5. Mr. Alvin Ochieng | - | Research Officer |
| 6. Ms. Beatrice Auma | - | Executive Secretary |
| 7. Ms. Lilian Mburugu | - | Media Relations Officer |
| 8. Mr. Anthony Kariuki | - | Sergeant at Arms |

MIN NO. CIOC/199/2024: PRELIMINARIES

1. The Chairperson called the meeting to order at 2.00 PM followed by a word of prayer.

MIN NO. CIOC/200/2024: ADOPTION OF THE AGENDA

2. The agenda was adopted having been proposed by the Hon. George Risa Sunkuyia, M.P and seconded by the Charles Ngusya Nguna, M.P

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Consideration of the reports on participation in the parliamentary intelligence –security forum in Washington DC, United States of America and the report on participation in the collaboration and partnerships meetings in the United Kingdom
5. Any Other Business
6. Adjournment

MIN NO. CIOC/201/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON PARTICIPATION IN THE PARLIAMENTARY INTELLIGENCE SECURITY FORUM.

3. The Committee considered and adopted the report on Participation in the Parliamentary Intelligence Security Forum, having been proposed by the Hon. Jessica Mbalu, CBS, M.P and seconded by the Hon. Patrick Osero Kibagendi, M.P with the following Observations and Recommendations.

COMMITTEE'S OBSERVATIONS

4. The delegation made the following observations: -
 - i. Parliamentarians are instrumental in shaping legislation and allocating government funding, which positions them as vital actors in counter-terrorism financing, cybersecurity, intelligence sharing, managing predatory foreign investments, and exploring emerging technologies such as 5G and AI.
 - ii. The forum's discussions provided practical knowledge on legislative initiatives and technology solutions to enhance collaboration between the United States and its allies, creating a unified approach to neutralize terrorist capabilities effectively.
 - iii. The forum served as a strategic dialogue on pressing security, technological, and transnational crime issues, allowing participants to identify actionable solutions and share best practices.
 - iv. Through expert-led discussions, the forum increased understanding among U.S. allies about the current global security threats posed by hostile states and terrorist networks, enabling practical countermeasures.

- v. The forum was originally established in response to the limited involvement of parliamentarians in intelligence activities, addressing a gap in understanding between the legislative and executive branches regarding intelligence operations.
- vi. Participants shared critical insights and built networks for intelligence sharing among allied nations, creating a foundation for joint efforts to confront mutual security threats.
- vii. Effective responses to today's global threats require robust cooperation, clear analyses, and honest dialogue, making collaborative approaches essential for successful threat mitigation.

COMMITTEE'S RECOMMENDATIONS

5. The Committee recommended as follows: -

- i. The National Assembly should ensure active and ongoing involvement in future Parliamentary Intelligence-Security Forums. Given the critical role of Parliamentarians in shaping legislation and securing funding for government-led security initiatives, such participation will reinforce Kenya's commitment to addressing global security issues and contribute to robust policy development.
- ii. The Parliament of Kenya should take the initiative to host a regional Parliamentary Intelligence-Security Forum for African nations. Organizing this forum will position Kenya as a leader in promoting regional cooperation on security issues, facilitating discussions on shared challenges, and aligning African perspectives on counter-terrorism, cybersecurity, and other transnational threats.
- iii. The National Assembly should strengthen its collaboration with other national parliaments to address pressing concerns surrounding privacy, civil liberties, counter-terrorism financing, intelligence sharing, cybersecurity, and the regulation of foreign investments in sensitive technologies. This collaboration will support the creation of cohesive, international standards that respect civil liberties while enhancing security protocols.
- iv. The Ministry of Interior should initiate a comprehensive review of existing national security legislation. This review should prioritize enhanced parliamentary oversight and transparency, ensuring that Kenya's security framework is resilient, aligns with international best practices, and addresses emerging threats effectively.

MIN NO. CIOC/202/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON PARTICIPATION IN THE COLLABORATION AND PARTNERSHIPS MEETINGS

6. The Committee considered and adopted the report on Participation in the Collaboration and Partnerships Meetings, having been proposed by the Hon. Augustine Mwafrika Kamande, M.P and seconded by the Hon. Oscar Nabulindo M.P with the following observations and recommendations:

COMMITTEE'S OBSERVATIONS

7. The delegation made the following observation:

- i. The Commonwealth's membership spans approximately two billion people across Africa, Asia, the Americas, the Caribbean, Europe, and the South Pacific. This diverse community includes various cultures, languages, and racial backgrounds comprising a global network of cooperation and shared values.
- ii. Since joining the Commonwealth in 1963, Kenya has remained an active member, committed to values and objectives of the Commonwealth. Through the Commonwealth Fund for Technical Co-operation (CFTC) and the Commonwealth Secretariat's Regular Fund, Kenya has benefited from various forms of support. These include training courses, technical assistance, policy and advisory support, seminars, and consultancy services focused on enhancing good governance, democratic practices, trade and investment, economic and financial management, poverty reduction, and public sector reforms.
- iii. The CFTC and the Commonwealth Secretariat's Regular Fund have sponsored a range of initiatives that have directly benefited Kenya. These include capacity-building programs such as training courses, technical assistance, policy support, and consultancies. The support has particularly strengthened Kenya's governance, democracy, and public sector reform, as well as bolstered trade and investment initiatives, economic management, and poverty alleviation efforts.
- iv. **Riana Development Network (RDN)** was established by a group of Kenyans residing in the UK to address the unique challenges faced by Swahili-speaking communities, including poverty, homelessness, unemployment, substance abuse, health, and well-being. Over the past 15 years, RDN has focused on capacity-building and empowering vulnerable community members, with a strong emphasis on education, health and well-being, food security, livelihood development, and child protection. The organization's goal is to create pathways to self-reliance and sustainability for those it serves.
- v. **Riana Development Network** has actively worked to uplift disadvantaged individuals, equipping them with essential skills and confidence to enable their independence and positive contribution to society. Through its programs, RDN supports individuals to transition into self-sufficiency, fostering a sense of empowerment and community engagement among its beneficiaries.

COMMITTEE'S RECOMMENDATIONS

8. The Committee recommended as follows: -

- i. The Government of Kenya should actively pursue the implementation of recommendations from the 21st Conference of Commonwealth Education Ministers (CCEM), particularly those aligned with the UN's goals for the upcoming Summit of the Future. These recommendations emphasize the vital role of education in fostering innovation, sustainable growth, and resilience to global challenges, and are crucial for Kenya's continued advancement in these areas.
- ii. The Committee recommends that RDN expand its valuable programs to additional counties across Kenya to increase their reach and provide greater access to their services and support for individuals in need through initiatives in education, health and well-being, food security, livelihood, and child protection for socio-economic development.
- iii. The National Assembly should strengthen its partnership with the Commonwealth and the Commonwealth Secretariat to provide ongoing capacity-building opportunities for both Members and staff. These programs would cover critical areas such as good governance, legislative reforms, and public sector development, ensuring Kenya's continued alignment with best practices in governance and development within the Commonwealth.

MIN NO. CIOC/203/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON IMPLEMENTATION OF THE CONSTITUTION BY KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

9. The Committee considered and adopted the report on the status of implementation of the Constitution by The Kenya National Commission on Human Rights, having been proposed by Hon. Oscar Nabalindo, M.P and seconded by the Hon. Jessica Mbalu, M.P with the following observations and recommendations.

THAT-

- i. The timelines given in the Constitution on review of boundaries lapsed in March, 2024 and the Country is yet to have a fully constituted IEBC in place that is mandated to undertake the exercise which poses an impending Constitutional crisis.
- ii. The KNCHR has six (6) Regional offices out of forty-seven (47) Counties and a staff capacity of 30% which is below its optimum operational capacity.
- iii. Further to commutation of the death penalty, the KNCHR advice that Kenya **ratifies the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty and the Optional Protocol of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)**. The latter requires State Parties to establish independent National Preventive Mechanisms to conduct inspections of all places of detention and closed spaces.
- iv. The Commission continues to advocate for the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. This, notably, is aligned to the Kenya Kwanza Manifesto. It is also a recommendation made severally to Kenya by the treaty body mechanisms at both regional and international levels. The Commission has previously made submissions before the Public Petitions Committee of the National Assembly calling for speedy investigations of cases of enforced disappearances.

RECOMMENDATIONS OF THE COMMITTEE

10. Based on the Committee's findings and general observations, the Committee makes the following recommendations.
 - i. Increase budgetary allocation to the Kenya National Commission on Human Rights towards its regional and national offices to enable it carry out its mandates.
 - ii. On the Commutation of the death penalty. The State Parties to establish independent National Preventive Mechanisms to conduct inspections of all places of detention and closed spaces.

MIN NO. CIOC/204/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON IMPLEMENTATION OF THE CONSTITUTION BY THE NATIONAL LAND COMMISSION (NLC)

11. The Committee considered and adopted the report on the status of implementation of the Constitution by The National Land Commission, having been proposed by Hon. Charles Ngusya Nguna, M.P and seconded by the Hon. Patrick Osero Kibagendi , M.P with the following Observations and Recommendations.

Committee Observations

THAT-

- i. The National Land Policy, 2009, the Valuation for Rating Act, Cap. 266, the Rating Act, Cap. 267 and the Stamp Duty Act, Cap. 480 have not been reviewed and thus some of the provisions are not aligned with the Constitution.
- ii. The Commissions were unable to undertake their functions due to inadequate funding despite Article 249 (3) of the Constitution providing that Parliament shall allocate adequate funds to enable each Commission and independent office to perform its functions and the budget of each commission and independent office shall be a separate vote. The Commissions decried the fact that they were clustered together with the Executive in the Sectoral Working Groups and were thus competing with the Ministries for allocation of funds.

Committee Recommendations

- i. The Committee recommends that the National Land Commission reviews the National Land Policy, 2009, the Valuation for Rating Act, Cap. 266, the Rating Act, Cap. 267 and the Stamp Duty Act, Cap. 480 and presents proposals to the National Assembly for consideration within three months from the date of adoption of this report.
- ii. The Committee shall sponsor an amendment to Standing Order 235 to provide that Constitutional Commissions, and Independent Offices shall present their estimates to the Constitutional Implementation Oversight Committee for consideration and making of appropriate recommendations to the Budget and Appropriations Committee.
- iii. The Committee shall sponsor an amendment to Standing Order 216 to provide that at the beginning of every session of Parliament, the Speaker shall allocate time for the debate of the reports by Constitutional Commissions and Independent Offices.

MIN NO. CIOC/205/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON IMPLEMENTATION OF THE CONSTITUTION BY THE NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)

12. The Committee considered and adopted the report on The Status of the Implementation of the Constitution by the National Gender and Equality Commission, having been proposed by Hon. Augustine Mwafrika Kamande, M.P and seconded by the Hon. Jackson Lentoijoni Lekumontare, M.P with the following Observations and Recommendations.

Committee Observations

THAT-

- i. The NGEC has actively participated in strategic constitutional dialogues and decisions, including efforts towards realizing the not more than two-thirds gender principle in Parliament however, this two-thirds gender principle has not been implemented.
- ii. The NCIC is not a Chapter 15 Constitutional Commission, and its founding statute is not based on Article 59 (4) of the Constitution. The legislature will be required to undertake a referendum to address the structure of KNCHR and NGEC because of the constitutional protection afforded by Article 59 (5)(c) unlike when dealing with NCIC. Merging the Constitutional Commissions with other agencies is a futile activity.

Committee Recommendations


- i. The National Gender and Equality Commission to conduct an audit in Counties and Public bodies to assess which entities have met the two-third gender rule.
- ii. The NGEC not to be merged with other commissions within the recommended one year after the adoption of the NADCO report.

MIN NO. CIOC/206/2024: ADJOURNMENT

13. There being no other business to transact, the meeting was adjourned at 4:30 PM.

SIGNED..........DATE 17th Nov 2024.....

**HON. DR. WAMUCHOMBA GATHONI, HSC, M.P.
CHAIRPERSON**

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 12 NOV 2024	
DAY: TUESDAY	
TABLED BY:	HON. DR. WAMUCHOMBA GATHONI (CHAIRPERSON)
CLERK-AT THE-TABLE:	INZEVU MWALE

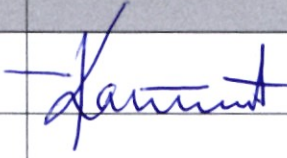





THE NATIONAL ASSEMBLY
13TH PARLIAMENT – 3RD SESSION (2024)

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE ADOPTION
LIST OF THE REPORTS ON:

1. THE STATUS OF THE IMPLEMENTATION OF THE CONSTITUTION BY THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS, THE NATIONAL LAND COMMISSION AND THE NATIONAL GENDER AND EQUALITY COMMISSION;
2. PARTICIPATION IN THE COLLABORATION AND PARTNERSHIPS MEETINGS IN THE UNITED KINGDOM; AND
3. PARTICIPATION IN THE PARLIAMENTARY INTELLIGENCE- SECURITY FORUM IN WASHINGTON DC, UNITED STATES.

	HON. MEMBER	SIGNATURE
1.	Hon. Wamuchomba Gathoni, HSC, M.P – Chairperson	
2.	Hon. William Kamket, M.P – Vice Chairperson	
3.	Hon. Jessica Mbalu Nduku, CBS, M.P	
4.	Hon. Silvanus Onyiego Osoro, CBS, M.P	
5.	The Hon. Aramat Lemanken, M.P.	
6.	Hon. Charles Nguna Ngusya, M.P.	
7.	Hon. George Risa Sunkuyia, M.P	
8.	Hon.Patrick Ntwiga Munene, M.P	
9.	Hon.Peter Oscar Nabulindo,M.P	
10.	Hon. Lawrence Aburi Mpuru,M.P	
11.	Hon.Ruth Odinga, M.P	

	HON. MEMBER	SIGNATURE
12.	Hon. Hamisi Kakuta Maimai, M.P	
13.	Hon. John Murumba Chikati, M.P	
14.	Hon. Geoffrey Ekesa Mulanya, M.P.	
15.	Hon. Patrick Osero Kibagendi, M.P.	
16.	Hon. Daniel Karitho Kiili, M.P.	
17.	Hon. Ali, Abdisirat Khalif, M.P.	
18.	Hon. Betty Njeri Maina, M.P	
19.	Hon. John Gitonga Mukunji Mwaniki, M.P.	
20.	Hon. Augustine Mwafrika Kamande, M.P.	
21.	Hon. Jackson Lentoijoni Lekumontare, M.P	
22.	Hon. Ali Abdisirat Khalif, M.P	
23.	Hon. Harun Mohamed Umulkher, M.P	



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

**BRIEF UPDATES ON THE HUMAN RIGHTS SITUATION IN THE COUNTRY
SUBMITTED TO THE**

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE (CIOC)

TUESDAY 12TH MARCH 2024

MINI CHAMBER, COUNTY HALL PARLIAMENT BUILDINGS

Table of Contents

1. ABOUT THE COMMISSION	3
2. UPDATES ON LIST OF ACTION POINTS RAISED	3
2.1 KNCHR Role in Advising Various Ministries on the status of Human Rights in the Country.....	4
2.2 Taking Lead on Matters Relating to LGBTQ and the Intersex.....	6
2.3 Taking Lead on Matters of the Death Penalty	9
2.4 The Embakasi Fire Tragedy.....	
2.5 Devolution, Health and Human Rights.....	13
3.0 STATUS OF HUMAN RIGHTS	17
3.1 Runaway Cost of Livelihood (Articles 28, 43).....	17
3.2 The Right to Education (Article 43 (1)(f)).....	18
3.3 Right to Accessible and Adequate Housing (Article 43(1)(b))	19
3.4 Right to Life (Article 26)	20
3.5 Freedom and the Security of the Person (Article 29).....	21
3.6 The freedom of conscience, religion, belief and opinion (Article 32)	24
3.7 Freedom of expression and the media (Articles 33, 34).....	25
3.8 Right to Assembly, demonstration, picketing and petition (Article 37).....	25
3.9 Consumer Rights (Article 46).....	26
3.10 Access to justice (Article 47).....	26
3.11 Rights of special interest and vulnerable groups.....	27
3.12 Climate Change & Forceful evictions of Indigenous Communities	27
3.13 Business and Human Rights	27
4.0 REVIEW OF BOUNDARIES AND CONSTITUTIONAL TIMELINES.....	28
5.0 KENYA'S GLOBAL COMMITMENTS ON HUMAN RIGHTS, 2023	30

1. ABOUT THE COMMISSION

The Kenya National Commission on Human Rights (the KNCHR/the Commission) was established under Article 59 of the Constitution of Kenya, 2010, and operationalized by the Kenya National Commission on Human Rights Act, 2011. The Commission is mandated to promote and protect human rights and develop a culture of human rights across public and private spheres in Kenya. The Commission is the designated state organ in ensuring compliance with obligations arising from human rights treaties that Kenya has ratified/acceded to. Additionally, the KNCHR is mandated to oversight the implementation of the Prevention of Torture Act, 2017 and is also the designated national monitoring agency under Article 33(2) of the Convention on the Rights of Persons with Disabilities.

The Commission enjoys affiliate status with the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child. In addition, the KNCHR is a member of the Network of African National Human Rights Institutions (NANHRI), the regional umbrella body that brings together National Human Rights Institutions in Africa. Since conferment of 'A' status in 2005 on its compliance with the Paris Principles, the Commission has been subsequently reaccredited with 'A' status by the Global Alliance of National Human Rights Institutions (GANHRI) in the succeeding three five-year cycles in 2008, 2014 and 2019.

2. UPDATES ON LIST OF ACTION POINTS RAISED

Honourable Chair, Members;

The Kenya National Commission on Human Rights is honoured to have this engagement with you, the Constitutional Implementation Oversight Committee (CIOC), a select committee of the National Assembly. We note that this is a follow up meeting to the engagement we held with the Committee last year on 23rd March 2023.

This brief first and foremost addresses the issues raised by the Honourable Members in their letter dated 29th February 2024 referenced NA/DAA & GPC/CIOC/2024/002; thereafter, the Commission provides a brief update on the status of human rights in the country on select themes.

2.1 KNCHR Role in Advising Various Ministries on the status of Human Rights in the Country

Honourable Members;

The Commission works closely with and continues to engage various actors at both national and county level regarding human rights situation in the country/specific regions. A number of success stories have also been witnessed. Notably, in some instances, disregard of the Commission's recommendations contained in reports and advisories remains a challenge; something the Honourable Members can support in exercise of their oversight and legislative mandates:

- The Commission continues to advise and engage various duty bearers on recommendations emanating from our research reports, review of bills and policies and from our investigations.
- The Commission has since delivered a state of human rights address covering the period (January 2022 to September 2023) on the status of human rights in the country and recommendations thereof. A copy of which is annexed for Honourable Members perusal. A soft copy is also available on the Commission website.¹
- The Commission engaged the Honourable Attorney General on 10th May 2023. The Commission presented a list of seventeen issues cutting across various human rights issues across the country with specific recommendations for consideration by the Office.
- The Commission continues to work closely with government ministries and departments as well as the OAG towards the realisation of human rights. For instance, the Kenya National Bureau of Statistics in terms of human rights-based approach to data collection, analysis and reporting; Ministry of Health on mental health matters and the Ministry of Labour and Social Protection on social assistance matters and disability rights; several MDAs on the UPR process; the Kenya School of Government and KICD on training of government officers; MOUS with Universities etc.
- Close collaboration with the National Council for Persons with Disabilities to develop draft National Action Plan on Albinism (2023-2028)
- Close partnership with the Office of the Attorney General to develop and launch the National Action Plan on Business and Human Rights.
- In its advisory role, the Commission has shared thirty (30) to various committees of Parliament on draft laws and public petitions in the period between January 2023 to date. Further, the Commission has held about **(10) engagements** with various parliamentary committees to advocate on key laws/issues affecting the country.

¹ KNCHR State of Human Rights and Fundamental Freedoms in Kenya (22nd November 2023)
<https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1177/STATE-OF-HUMAN-RIGHTS-AND-FUNDAMENTAL-FREEDOMS-IN-KENYA>

- In the half year alone (July-December 2023), the Commission processed 1568 complaints alleging human rights violations. From these, ECOSOC made up 41.6% and Civil Political comprised 47.8%. Most petitions are against Ministry of Interior.
- Over forty new investigations completed in the half year period (July- December 2023). An example of success stories amongst many- KNCHR investigated allegations of sexual abuse by a teacher against pupils in Teso North Sub County, Busia. The investigation led to the teacher's arrest and prosecution for indecent assault against minors
- Within the half-year, the Commission filed seven (7) Public Interest Litigation Cases. One of the cases (**Constitutional Petition No. 1 of 2023 KNCHR and Others V The Hon. AG and Others at ELC Nakuru Law Court**) was a Petition concerns the forced eviction of some members of the Ogiek community residing in the East Mau Complex area in the Sasimwani and Nkereta areas in the Maasai Mau Trust Land Forest. The Commission managed to secure interim orders suspending the illegal eviction of the Ogiek community. In one of the cases in **Busia Constitutional Petition**, J.O, a victim of assault during COVID-19 regulation enforcement, was awarded compensation after KNCHR's litigation proved rights violations. In **Kisumu CMCR E 194 of 2023: Charges against Burundian individuals, mistakenly treated as illegal immigrants, were dropped following KNCHR's intervention, recognizing them as refugees.**
- The Commission continues to leverage on alternative dispute resolution to address human rights issues ensuring effective and speedy access to justice. In the 2022/2023 year for instance, ten (10) human rights violations were successfully resolved through ADR as a redress mechanism. The Commission has also created a pool of advocates trained on access to justice through trainings on mediation.
- In the 2022/2023 FY engaged **8,000** community members in public awareness forums, reached approximately **5 million** individuals through targeted media campaigns and engaged **148 Trainers of Trainers.**
- KNCHR monitored human rights violations during nationwide protests over electoral reforms and living costs, particularly noting severe violations in Kisumu, Kisii, Siaya, and Migori Counties. With USAID support, KNCHR documented violations, and provided medical and psychosocial support to over 200 victims.
- The Commission last year (June 2023) launched three seminal research reports; That is; An Assessment of Selected Mental Health Facilities in Kenya; Mapping for Psychosocial and Intellectual Disabilities Organizations in Kenya and Mapping Laws, Policies and Programmes on Albinism and Existing Gaps.²
- In terms of the right to a clean and safe environment, the Commission has intervened in several instances. For instance, the Commission advocated for accountability and cooperation among local duty bearers, including NEMA and county government departments concerning pollution issues affecting the Nanyuki River. This led to

² The reports are available at the Commission website here <https://www.knchr.org/Publications/Thematic-Reports/Group-Rights/Rights-of-Persons-with-Disability-PWD>

warnings being issued to polluting businesses, stakeholder meetings, and the formation of a committee chaired by the county secretary to oversee river rehabilitation efforts.

2.2 Taking Lead on Matters Relating to LGBTQ and the Intersex

Honourable Chair and Members;

In 2014 the AU-African Commission on Human and Peoples' Rights (ACHPR) adopted ***Resolution 275 on the Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.***³ Kenya is a member of the AU and is obligated to implement the provisions of this resolution.

Following the Supreme Court decision rendered on 24th February 2023 relating to Petition No.16 of 2019 *NGOs Coordination Board vs Eric Gitari and Others* that affirmed the right of sexual minority groups/persons to register associations and organizations, there arose cases of threats and incitement to violence against the LGBTQ community including reported cases of loss of lives in 2023.

As the National Human Rights Institution and the designated state organ in ensuring state compliance, the Commission has been at the forefront of speaking against violence and harm directed to persons of diverse sexual orientation and gender identity. The Commission has done this through complaints processing and investigations, rapid response missions to the affected areas and engagements with state and non-state actors.

- The Commission received disturbing reports of members of the LGBTQ being trolled, profiled and harassed in various parts of the country. Numerous persons fled their homes while a number of LGBTQ organizations temporarily closed their offices for fear of being attacked.
- On 17/03/2023 anti-LGBTQ demonstrations held in Mombasa, Kwale, Kilifi and Lamu Counties resulted into violence and forced displacements of suspected LGBTQ persons. The rallies coordinated by a group known as the *anti-LGBTQ Movement* based in Mombasa called for the expulsion, beheading and stoning to death of LGBTQ persons in line with sharia law. Further demonstrations were planned and held in Mombasa and Kilifi on 15th September 2023. The commission monitored a total of eleven (11) anti-LGBTQ protests mostly held in the Coastal region.

³ Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity - ACHPR/Res.275(LV)2014 available at <https://achpr.au.int/en/adopted-resolutions/275-resolution-protection-against-violence-and-other-human-rights-violations>.

- As at the end of February 2024, the Commission had received and **documented 156 cases of violations** targeting LGBTQ communities across the country. The violations included death threats, physical violence, lack of access to essential drugs and services, evictions, cyberbullying, blackmail and extortion. The KNCHR has taken the following actions following processing of complaints and its investigations:
 - 14th & 22nd March 2023: Engaged County governments and the National Syndemic Diseases Control Council (NSDCC) to reopen the clinics. Almost all have resumed services to LGBTQ community and key populations
 - Engaged Police regarding the hate-speech and incitement to violence. As a result, the incitement declined significantly during the September 15th protests compared to the March 2023 demonstrators
 - Letters were sent out to the Mombasa Police and the Nairobi Police on 4th September and 4th October respectively.
 - 14th September: Held meetings with the Mombasa County Commander on the eve of the demos
 - March 18th and September 14th, 15th: KNCHR facilitated safe evacuation of LGBTQ members and human rights defenders at high risk in conjunction with CSOs- 65 evacuees
 - KNCHR secured release of 16 queer persons arrested by police in Rongai – 5th and 19th January 2024 and in Nakuru on 9th February 2024.
 - The KNCHR is creating awareness with local administration and host communities to build a conducive environment for LGBTG refugees- exercise began in January 2024 in Ongat Rongai and is ongoing.

Rights of Intersex Persons

The Commission has taken a proactive role in pushing for the promotion and protection of the rights of Intersex Persons. Several laws now including the children Act 2022 recognise intersex persons. Additionally, recognition of the rights of intersex persons more recently garnered traction at the regional level when the African Commission, through adoption of ***Resolution on the Promotion and Protection of the Rights of Intersex Persons in Africa - ACHPR/Res.552 (LXXIV) 2023***⁴ on 7th March 2023. The Resolution calls on State Parties to inter alia promote and protect the rights of intersex persons on the continent; stop non-consensual genital normalization practices on intersex persons, end human rights violations against intersex children such as infanticide and abandonment; avoid discrimination against intersex persons;

⁴ Resolution 552 on the Promotion and Protection of the Rights of Intersex Persons in Africa available at <https://achpr.au.int/en/adopted-resolutions/resolution-promotion-and-protection-rights-intersex-persons>.

enact enabling legislation and institutionalize administrative processes that allow intersex persons to change the gender designation on their birth certificates and other official documents and to conduct information and education/awareness for the intersex persons but all other stakeholders concerned.

Definition of intersex: “A child born with a biological sex characteristic that (are ambiguous) -cannot be exclusively categorised in the common binary as female or male due to their inherent and mixed anatomical (genitalia), hormonal (oestrogen and testosterone), gonadal (ovaries and testes) or chromosomal (X and Y) patterns which are apparent at birth, puberty or adulthood.”

The Commission hosts the Intersex Persons Implementation Coordination Committee (IPICC), a government multisectoral team gazetted by the Attorney General.⁵ The Commission Chairs this Committee and is also the Secretariat. The Commission has been at the forefront of conductive public sensitisation on the intersex throughout the country; it has generated various content and IEC materials on the matter.⁶ Some milestones in the intersex persons are as follows:

- Inclusion of the intersex sex marker 'I' in 2019 Kenya Population and Housing Census. The KNBS census result showed indicative figures of **1,524** intersex persons.
- Legislative advocacy efforts – amendment of the Children Act, 2022; Registration of Persons (Amendment) Bill; The Family Reproductive Healthcare Bill, 2022; The Assisted Reproductive Technology Bill, 2022; miscellaneous amendment proposals for IPs and Intersex Persons Bill, 2024.
- The draft Intersex Persons Bill presented to the Office of the Attorney General after undergoing public participation.
- Mainstreaming intersex in JSS curriculum
- Hiring of the first Intersex persons at IPICC-KNCHR, 20 Intersex Election observers, M-Chanjo app.
- Presidential Appointment of an Intersex Commissioner at KNCHR
- Children Act, 2022 inclusion of provision for intersex children and the proposed I.P bill, 2023
- Continued rigorous sensitisation/advocacy programmes
- The Commission continues to make several case-by-case interventions with regard to securing the right of intersex learners. For example, the Commission secured the re-admission of an intersex child to Mitua Girls Secondary School, ensuring her right to education and successful completion of her KCSE exams.
- Different MCDAs have mainstreamed intersex persons in their systems and structures by making provision for them in their documents/platforms, e.g.; KNCHR internal

⁵ Gazette notice No. 7264 of 2019 of 16th August, 2019 (extended)

⁶ See the several published resources on the intersex available here:

<https://www.knchr.org/Publications/Thematic-Reports/Group-Rights/Rights-of-Intersex-Persons>.

complaints management system, IPICC database and others, M-Chanjo by the MoH, The ODPP in the charge sheet, Ministry of Agriculture & Livestock.

- A Report on the Status of Intersex Persons in the Kenyan Criminal Justice System by the National Council on the Administration of Justice Committee on Criminal Justice Reforms jointly with IPICC proposes a review of laws in the criminal justice sector (including the Prisons Act, Persons Deprived of Liberty Act, Borstal Institutions, Sexual Offences among others).⁷

Recommendation: That the Honourable Committee supports the Intersex Persons Bill once presented before the House; participate in infusing the rights of intersex persons in all laws before the House and initiate amendments to the relevant laws to support the rights of the intersex in their interaction with the criminal justice system.

2.3 Taking Lead on Matters of the Death Penalty

Honourable Members;

There has been traction towards the abolition of the death penalty. In a 2022 study report by KNCHR and the Death Penalty Project, it emerged that out of the 51% respondents against abolition of death penalty, majority (59%) would accept it as government policy, making the case for retention increasingly hard to justify. The report further revealed that support for retention among participants was conditional, falling dramatically when presented with the possibility that innocent people could be executed – an inescapable possibility in all criminal justice systems where the death penalty is applied. Support for retention also fell when the public considered how its regional and international neighbors who have already abolished capital punishment could regard Kenya.⁸

Notably, the Penal Code (Amendment) Bill, 2023 was introduced at the National Assembly in September 2023. The objective of the Bill is to amend the Penal Code, Cap 63 in order to abolish the death penalty. The Bill was read the first time at the National Assembly on 3rd October 2023, and is currently awaiting second reading.⁹The Commission in the past year undertook various engagements on the abolition of the death penalty including with the Office of the Attorney General, Justice Legal Affairs Committee and Office of Leader of Minority in National Assembly- the mover of the Bill.

⁷ Report on the Status of Intersex Persons in the Kenyan Criminal Justice System available here

⁸ The Death Penalty in Kenya: A Punishment that has Died Out in Practice report available at <https://deathpenaltyproject.org/wp-content/uploads/2022/05/DPP-Kenya-Report-2022-Part-One-final-proof.pdf>

⁹ See <http://www.parliament.go.ke/sites/default/files/2023-11/BILLS%20TRACKER%20AS%20AT%20WEDNESDAY%2C%208TH%20NOVEMBER%202023.pdf> p.15

The Commission's position with regard to death penalty sentence has been consistent as follows:

- a. The KNCHR argument still remains that death penalty is not effective in fighting crime and thus its application does not make society any safer. Death Penalty is the ultimate violation of human rights, disproportionately affects the poor, and as such has no place in our society. Furthermore, revenge in the form of the death penalty only perpetuates violence and suffering and weakens the very concept of justice.
- b. Kenya is classified as an 'abolitionist de facto' state, where the death penalty is still present in the law, and people are sentenced to death, but they are not executed. Consequently, the Parliament of Kenya should take immediate and necessary steps to abolish the death penalty in Kenya through an amendment to Sections 204, 40(3), 296(2) and 297(2) of the Penal Code, CAP 63 Laws of Kenya; the Criminal Procedure Code, CAP 75 Laws of Kenya; other statutory provisions linked to the death penalty and the Bill of Rights, Chapter IV of the Constitution of Kenya to guarantee absolute enjoyment and guarantee of the right to life and accompanying rights and freedoms.
- c. Kenya made history on 27th July 2023 following the recent move on commutation of Death Sentences to Life Imprisonment by His Excellency, the President, Dr. William Ruto as recommended by the Power of Mercy Advisory Committee (POMAC). This means of all death sentences as of 21st November 2022 were commuted to life imprisonment. This progressive move aligned to provisions of various human rights instruments and the need to uphold the right to life.
- d. KNCHR supports abolition of death penalty and instead recommends life sentences to punish the offences that befitted the later sentences.
- e. KNCHR recommends that the Government should progress these discussions to prevention of crimes and strengthening of family units and social structures to curb criminal activities among the children and youth.
- f. Kenya must **continue to enforce the death sentences commutation** by ensuring that each case is reviewed individually, taking into consideration the length of sentence already served, the character of the prisoner, and the type of crime committed.
- g. Moreover, the Commission has recommended abolishing the use of life without the possibility of parole. All life sentenced prisoners in Kenya should have a realistic right of parole. Ensure that such release procedures are clearly defined in law, are accessible, meet due process safeguards, and are subject to appeal or review.
- h. Humanise the system of punishment by reducing the number of crimes (currently 26) for which life imprisonment may be prescribed, and limit these cases to only the "most serious crimes".

- i. The KNCHR continues to advocate for the **ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty and the Optional Protocol of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)**. The latter among other things require State Parties to establish independent National Preventive Mechanisms to conduct inspections of all places of detention and closed spaces.

2.4 The Embakasi Fire Tragedy

Honourable Members, in your letter you also sought to know more about the Commission's Interventions on the recent unfortunate incident concerning the Embakasi Fire that saw lives lost, bodies scarred and property destroyed. The Commission wishes to address you as follows:

The Commission first learnt from the media, reported loss of lives and serious injuries occasioned by a gas explosion at Mradi area in Embakasi, Nairobi on 1st February 2024. The explosion at the Liquefied Petroleum Gas (LPG) plant had negative impacts on livelihoods, loss of property and jeopardized the health of many. It was reported that a business enterprise was refilling gas cylinders when fire broke out and several people were injured and rushed to hospital, sadly – some have succumbed to the injuries. Prior to the incident, there were various other reported incidences of LPG cylinder explosions in the recent past with devastating consequences among them loss of lives and serious injuries. The Embakasi incident reportedly happened in a business premises that operated without license by the Energy and Petroleum Regulatory Authority (EPRA).

The Commission conducted a fact-finding mission from 5th February 2024. The Commission employed human rights investigations skills including; interviewing of victims' families and informants; Focus Group Discussions with key actors including the local government administrators; written inquiries with NEMA, administrative heads of various hospitals where the victims were being attended to, and other key duty bearers. The Commission is still pursuing information from the relevant hospitals.

The Commission has since established the following preliminary Findings:

- a. **The Incident:** The gas explosion incident that occurred on the night of 1st February 2024 was caused by ignition of gas leakage, in a site within Mradi area of Embakasi. The site was being illegally operated to fill gas cylinders by some known persons;
- b. **Duty of Care by Relevant State Agencies:** Eye witnesses reported that they had unsuccessfully attempted to take preventive measures by informing the Police and local authority when they sensed gas leakage but no effective action was taken.

c. Negative Impacts of the Explosion:

- a. The gas explosion incident resulted in death and injuries to persons who were being attended to at the various hospitals within and Nairobi Metropolitan area. According to the Nairobi County Lead Disaster officer, Farida K. Shaban, there were at least 11 reported cases that were pending tracing as at the time KNCHR was on the ground in February 2024. Further, 148 houses were fully burnt while 50 businesses were affected.
- b. Eleven (11) persons had succumbed to the fire injuries as at 20th February. (1 was from stampede as people ran away).

d. Effectiveness of Government Intervention:

- e. The agencies responsible for licensing, implementing controls such as NEMA, EPRA and disaster management seem to have been caught unawares. Report by NEMA and EPRA confirmed that the business premises was operating without requisite licenses.
- f. Upon the occurrence the incident, the national Government moved in to arrest suspects who included; the NEMA officers in charge of the area and the owner of the business premises.
- g. The international agencies like Red Cross, the County Government of Nairobi as well as the leaders and religious institutions also came in to provide some humanitarian support and psycho-social support services.

KNCHR Interventions/Key Recommendations:

- i. There is urgent need for Full Fledged Inquiry by Parliamentary Committee or a Multi-agency task committee on the cause of the explosion and broadly look at the regulations and handling of LPG gas and other highly inflammable products in Kenya;
- ii. There is need for development of protocols on the handling of PWDs in times of emergencies;
- iii. The Commission is working closely with the DCI and ODPP to fast-track investigations and prosecution of the persons responsible for the gas explosion incident in Mradi area;
- iv. The Commission has provided counselling and psycho-social support to victims
- v. The Commission has provided legal advice to the victims
- vi. The Government to coordinate the relevant agencies and come up with adequate and effective restorative mechanisms to support the victims of the tragedy-These may include, housing, medical care and supporting livelihoods
- vii. Worked with the Ministry of Interiors and Ministry of Education to ensure that children return to school.

2.5 Devolution, Health and Human Rights

The Commission continues to engage the County Governments with regard to the promotion and protection of human rights. The Commission has a Memorandum of Understanding (due for renewal) with County Governors that seeks to ensure human rights-based approach to policies and service delivery across the 47 county governments. The Commission had also entered into an MOU with the County Assemblies Forum (now restructured) that would ensure the infusion of human rights-based approach to county legislation.

Whereas the KNCHR has not been engaged in advocacy for devolution of healthcare, it has nevertheless engaged in the right to health as a thematic ECOSOC right under Article 43 of the constitution including mental healthcare. The Commission has undertaken various interventions and studies targeting counties including the following:¹⁰

- I. Direct engagements with county executives with regard to the work they are doing on ensuring universal health coverage and broadly the fulfilment of the economic social rights under Article 43 of the Constitution. More recently, in February 2024, the Commission engaged the county governments of Kwale and Kilifi.
- II. Development of County Action Plan and Indicators for the WASH sector- Garissa County (2022).
- III. Direct interventions in cases of detention of patients in public health facilities for inability to pay. The Commission has also engaged Kenya Law Reforms Commission and also submitted an advisory to Parliament concerning Health Amendment Laws to address the issue.
- IV. *The Fragility of Kenya's Public Health Care Systems An Assessment Report Of Selected County Public Health Facilities: A study on county public health facilities and their level of preparedness and of health care service delivery during the COVID- 19 pandemic.* The study focused on Makueni County Referral Hospital, Machakos County Referral Hospital, Nyeri County Referral Hospital, Embu County Referral Hospital, Kakamega County General Teaching and Referral Hospital, Jaramogi Oginga Odinga Teaching and Referral Hospital, Coast General Teaching and Referral Hospital and Lunga Lunga Sub-County Hospital.
- V. In pursuance of Universal Health Coverage (UHC) and in a bid to achieve equitable healthcare access for all persons in Kenya, the Kenya National Commission on Human Rights continues to evaluate the social healthcare protection systems in the country and make practical recommendations. For instance, in collaboration with key stakeholders, the Commission has facilitated the *development and deployment of*

¹⁰ For copies of these reports, please follow the link <https://www.knchr.org/Publications/Thematic-Reports/Ecosoc-Rights/Right-to-Health.>

facility improvement plans for four (4) County referral hospitals to enhance healthcare service delivery for vulnerable and marginalized groups in Kilifi, Nakuru, Machakos and Garissa Counties.

- VI. In 2017, the KNCHR conducted *an assessment of County Health Laws in 12 Counties* (Busia, Kiambu, Kisii, Kitui, Laikipia, Machakos, Makueni, Marsabit, Mombasa, Nyamira, Nyeri and Nakuru). The assessment established that as at 2017, only Marsabit County had comprehensive health services law that mainstreamed human rights principles and standards. The study further established that Busia, Kiambu, Laikipia and Nyeri Counties had enacted health services laws that to a varying extent mainstreamed human rights standards. The remaining seven counties did not have a comprehensive health services laws that meet human rights standards.¹¹
- VII. *The Right to Health: A Case Study of Kisumu County (2017)*- focused on the realisation of the right to health in Kisumu Central, Kisumu East and Seme sub-counties
- VIII. *Realising the Value of Health and the Right to Water: A Human Rights Assessment of County Health and Water Services Law*: This report is a result of a study of 12 counties that had enacted health related legislation or considered a proposed bill on the same and 8 counties that had enacted legislation governing access to clean and safe water, to assess compliance of county legislation and policies with the national and international human rights standards in order to promote and protect the right of every county resident to the right to the highest standard of health and to clean and safe water in adequate quantities.
- IX. In 2021, the KNCHR commissioned a ***Nationwide Survey on Human Rights for Vulnerable Groups during the COVID-19 Pandemic***. The survey confirmed that the vulnerable (among them children, women, youth, the elderly, Persons with Disabilities (PWDs), detainees, Orphans & Vulnerable Children (OVCs), the displaced, refugees, the urban and rural poor, intersex persons) were most adversely affected by the pandemic.¹²
- X. Review of county legislation on the rights of persons with disabilities To Determine Compliance with The UN Convention on The Rights Of Persons With Disabilities And The Constitution Of Kenya (2022)¹³
- XI. The KNCHR has in the past conducted assessment of the right to health care in Busia and Kisumu Counties and the right to emergency health care in Laikipia and Nyandarua Counties.¹⁴

The Commission has noted the following challenges across county health:

- accessibility, availability, acceptability and quality of health services wanting.

¹¹ See KNCHR Report “*Realizing the value of Health and the right to water A human rights assessment of county health and water services law*”

¹² Report available at: <https://www.knchr.org/Publications/Thematic-Reports/Ecosoc-Rights/Right-to-Health>

¹³ KNCHR Report on Review of county legislation on the rights of persons with disabilities [available here](#)

¹⁴ Reports available at: <https://www.knchr.org/Publications/Thematic-Reports/Ecosoc-Rights/Right-to-Health>

- unavailability of important medical equipment such as x-ray machines and kidney dialysis machines
- Prohibitive cost of health care thereby locking out the poor and most vulnerable
- Understaffing
- poor infrastructure for basic including wards, beds, theaters,
- Physical access a challenge to majority of residents
- Inadequately prepared to handle emergency health care
- Shortage of medical supplies including drugs
- Neglect of mental health component in the provision of healthcare
- A number of county laws on health fall short of international standards.

The Commission further takes notes of other developments and realities in the national arena that impact on the realisation of the right highest attainable standard of health care:

- In terms of access to health facilities to cover remote areas the Ministry of Health has put in place measures to ensure access to healthcare in remote areas. One of the ways it has done this is through the training of community health volunteers. Approximately 90,000 community health volunteers have been trained under the Universal Health Coverage program.
- On 26th June, 2023 the President unveiled the Kenya Health Human Resource Advisory Council established under Section 30 of the Health Act, 2017 whose operationalization was long overdue. The Council is expected to address inter-county transfer of health professionals, and transfers from one level of government to the other, standardize the welfare and schemes of service for health professionals among others.
- According to the Human Resources for Health Policy Brief of the Ministry of Health, Kenya has a shortage gap of 3,238 medical officers, with the required number being at least 5,317. There is also a deficit of 2,313 consultants, 1,070 dentists, 4,614 public health officers, 1,020 pharmacists, 4,167 pharm technologists, 3,970 specialist clinical officers and 9,301 general clinical officers.
- The country currently faces a threat on the right to health following the issuance of notices by the KMPDC and other professional bodies of health care providers to down their tools should their demands not be met. Some of the grievances include failure by the Ministry to post intern medics and failure to honour collective bargain agreements. As a Commission, we have offered to mediate the dispute with the two parties, as we have done previously in a bid to avert health crisis and threat to life.
- That during the 10th devolution conference in Eldoret held in August 2023, the President committed to transfer the remaining health functions to county governments. This is yet to be fully realised
- The Government has enacted the Primary Healthcare Act, 2023, the Social Health Insurance Act, 2023, the Digital Health Act, 2023 and the Facility Improvement Financing

Act, 2023. The new health laws have been heralded as a game-changer in the provision of comprehensive and quality healthcare under universal health coverage, especially through allocation of resources to cover emergency and chronic diseases treatment, which would bring much-needed relief to many. However, on the other hand, there have been questions surrounding the participatory nature in the enactment of the laws and contributions. The Commission has called for extensive public participation during development of regulations under the Act and for wider public awareness on the provisions and implications of the new health laws.

- That during the 2023/2024 financial year, the Government allocated 18.4 billion KES to Universal Health Care.¹⁵ This is a sharp decline compared to the 62.3 billion KES allocated to Universal Health Care during the 2022/2023 financial year.¹⁶ This falls short of the 15% threshold in line with the Abuja Declaration, 2001. The highest ever allocation to the healthcare sector was 11.1% in the 2020/2021 financial year.
- Of grave concern is the **endemic corruption** that has plagued the health sector. An investigation on corruption and unethical conduct in the Kenyan health sector conducted by the Ethics and Anti-Corruption Commission found that the Ministry of Health as the most corrupt-prone government Ministry.¹⁷ The EACC found that eight out of ten health projects in the country are always inflated. The investigation also revealed that 21 per cent of health projects were awarded due to favoritism, 20 per cent due to conflict of interest and 16 per cent due to bribery. It also established that 21 per cent of health projects are subject to cost manipulation at the design stage, while 15 per cent are subject to distorted procurement plans. Various projects that cost billions of tax payers' money had a number of irregularities, for example the construction of the Kakamega Teaching and Referral Hospital which was budgeted at 6 billion KES had stalled with no documents to show its status. The Commission has previously conducted various studies on corruption and its impact on Human Rights.¹⁸

The Commission makes the following broad **recommendations**:

- i. Fully implement the recommendations contained in the Commission's health reports aforementioned
- ii. Root out systematic corruption in the health sector and indeed all sectors of the Republic: Enhanced accountability and reforms
- iii. National Government to streamline the disbursement of equitable shares to county government to ensure prompt disbursements so as not to impact on service delivery

¹⁵ See <https://www.treasury.go.ke/wp-content/uploads/2023/06/Press-Release-Budget-Statement.pdf> P. 13

¹⁶ See <http://www.parliament.go.ke/sites/default/files/2022-04/The%20Budget%20Summary%20for%20the%20Fiscal%20Year%202022-2023.pdf> P.21

¹⁷ EACC, Corruption And Unethical Conduct In The Kenyan Health Care Projects: A Study of Procurement and Financial Management Practices, available at <https://eacc.go.ke/default/wp-content/uploads/2023/05/Final-Health-Sector-Study-of-Procurement-and-Financial-Practices.pdf>.

¹⁸ See <https://www.knchr.org/Publications/Corruption-and-Human-Rights>.

- iv. The Government to fully implement the Kenya Health Policy 2014-2030. In particular the institutional framework and Mechanisms for intergovernmental relations in health. The Policy proposes the Health Sector Intergovernmental Consultative Forum (HSICF) established in August 2013 to among others.¹⁹
- Identify issues for discussion during the intergovernmental consultative mechanisms and establish systems to address these issues;
 - Facilitate and coordinate the transfer of functions, power, or competencies from and to either level of government;
 - Coordinate and harmonise development of health policies and laws;
 - Evaluate the performance of the national or county governments in realising health goals and recommending appropriate action;
 - Monitor the implementation of national and counties' sectoral plans for health;

3.0 STATUS OF HUMAN RIGHTS

Honourable Chair, Members,

The Commission hereby turns to address you on developments to a few other human rights matters as follows:

3.1 Runaway Cost of Livelihood (Articles 28, 43)

The Country escalating high cost of living in the recent past coupled with the weakening Kenya shilling has had and is having a huge ramification on the enjoyment of economic & social rights secured under Article 43 of the Constitution. The spiraling cost of basic commodities including electricity, fuel, food, water amongst others has affected not only households at family level but also businesses. This has increased vulnerabilities across board and inequalities.

Recommendation: THAT Parliament reviews the policy/legislative measures affecting ECOSOC rights. THAT further Parliament considers introducing measures to cushion the most vulnerable.

¹⁹ Section 5.3 at pages 58-59

3.2 The Right to Education (Article 43 (1)(f))

The transition from 8-4-4 to the Competency Based Curriculum (CBC) continue to take shape although challenges continue to be experienced particularly on funding, infrastructural and human resource.

The promised 100% transition from primary to secondary school has not been realized. In the just recently released examinations results for the form four students, there have been reported cases of students who have failed to join form one due to lack of fees. Equally, the University funding has also experienced challenges that have not been adequately addressed. Moreover, there have been reported challenges in the University transition and the mean testing; private Universities failure to release degree certificates for government sponsored students because Government had failed to pay share, KNEC and the challenges witnessed with the release of examination results for candidates.

The Commission Plans to conduct a public inquiry on the education sector to unravel all the issues plaguing the education sector for a comprehensive response, tentatively in 2024/2025 FY.

The Kenya National Commission on Human Rights promotes the right to education as part of its mandate of promoting the right to access to quality education. The Commission made its presentations to the Presidential Working party on Education Reforms and we are proud to note that some of our recommendations made its way into the working Party's report entitled – Transforming Education, Training and Research for Sustainable Development in Kenya – which is premised on the effective implementation of Competency – Based Education that promotes an individual's wellbeing and acquisition of capabilities, skills and values in order to contribute meaningfully to the economy and society at large.

Some of the of the notable proposals presented by the Commission to the PWPER was on the question of the domiciling of Junior Secondary School where the commission's view was part of the overwhelming majority (93%) who proposed its hosting at the current Primary School. We further observed that teachers were inadequately trained on CBC; infrastructure and learning resources were inadequate; the inadequate sensitization of parents on their roles; teacher training for CBC implementation was inadequate, the Community Service Learning, though great in concept, its implementation remain costly and time consuming.

As a Commission we were delighted to note that some of the Commission's recommendations were adopted in the final report of the Taskforce: For instance, transitioning to grade 7/domiciling of the Junior Secondary, refresher training for teachers²⁰Recommendation on teaching/learning material that it should be stepped up. Learners with disabilities left behind.

²⁰ According to TSC about 50% are having a refresher courses. This however needs to be upscaled to 100%.

However, the commission notes with concern that access to quality education especially for learners from arid, semi-arid (ASAL) areas continue to face challenges such as high cost of accessing education, low proportion of teachers due to insecurity and low motivation of teachers in these regions. In this regard, the commission will undertake an inquiry into the right to access to quality education in the ASAL regions, with a view to share the findings of the inquiry with the relevant stakeholders and advocate for the implementation of the recommendations ensuing from the inquiry by the relevant stakeholders.

Notably, amongst others, the taskforce recommended review of the laws governing education in the country. The MoE has made recommendations towards drafting of the Bills- there is need for intense public participation from the word go. The challenge with the KNEC and examinations. Need to enhance credibility of exams as acritical cog in the education system.

The Commission recommends a need for a comprehensive sensitisation and robust public participation the ongoing proposed framework in the education including the proposed Sessional Paper on a Policy Framework for Education Reforms in Kenya, 2024 which will have huge implications in the sector.

3.3 Right to Accessible and Adequate Housing (Article 43(1)(b))

The Kenya Kwanza Government embarked on an affordable housing programme as part of fulfilling its election campaign manifesto. This ongoing programme is aimed at bridging the notable housing deficit. This scheme has been marred with legal challenges with the most recent being the court of appeal decision to momentarily stop the deductions. The Government on its part is currently developing the regulations to give effect to the scheme.

Since the government came up with affordable housing programme, there are questions around the framework for implementation of this. Particularly questions around: Who are the beneficiaries? The KNCHR has since submitted its advisory to the Senate and has also requested for an opportunity for oral presentation on the Housing Levy Fund Act.

There is need to:

- ✓ Carry out more sensitisation concerning the working of the intended fund
- ✓ Streamline the question of land set aside for the construction of the houses, noting that in some cases, it is on public institutions land.
- ✓ Resolve the question around beneficiaries to the scheme. People contributing through a level/tax how do you motivate them to want to pay?
- ✓ Consider other core viable alternatives to enhancing the right to access adequate housing for all Kenyans in both rural and urban areas. Enhancing the mortgage for civil servants and state officers- For instance, the Commission for the last four or so

years have never received funds to the same. The waiting list at KNCHR currently stands at Ksh 100M! The employees are seeking these are mostly our youths and middle-aged adults who are yet to have their first homes.

3.4 Right to Life (Article 26)

The Commission is concerned at the ongoing spate of femicide of young persons across various parts in the country, intensifying in the earlier part of this year. At least 10 women were reported to have been killed in the January 2024 alone; adding to over 500 cases the number of women killed between 2019 and 2024.²¹ On 27 January, thousands of women and men marched in Nairobi and other major cities in Kenya calling for an end to femicide and violence against women. The Commission has intervened in some of these cases:

The data by KNCHR and its partners reveals that extrajudicial killings, enforced disappearances and related violations are systemic, widespread and mostly well-coordinated. It is impossible to estimate reliably how many killings and disappearances occur, because the police do not keep a centralized database.

Below is a breakdown of the cases documented by the Commission in the past five (5) years.

Year	Extrajudicial Killings	Enforced Disappearances
2019	140	14
2020	158	10
2021	187	32
2022	107	10
2023	128	15
Total	592	82

The Commission has continuously advocated for amongst other things:

- Addressing the socio-economic marginalisation of communities involved
- Prompt, impartial and effective investigations by duty bearers into all allegations relating to killings and enforced disappearances
- Review of the legal framework to ensure that all forms of enforced disappearance are clearly defined in criminal law with associated penalties that are proportionate to the severity of the offence
- Full establishment and operationalisation of the National Coroners Service in order to ensure that any investigation into allegations of extrajudicial executions entails independent forensic examination
- Expedite the full operationalisation of the Prevention of Torture Act, 2017 including developing rules and regulations under the Act.

²¹ <https://www.unwomen.org/en/news-stories/feature-story/2024/02/femicide-cases-in-kenya-fuel-urgent-calls-for-action-to-end-violence-against-women>.

- Allocate increased adequate budgetary resources to the KNCHR to enhance its capacity to perform its work including investigations
- Strengthen investigative and prosecutorial capacities (ODPP, NPS) to ensure effective legal action against perpetrators of enforced disappearance and extrajudicial killings

3.5 Freedom and the Security of the Person (Article 29)

The insecurity across various counties in the recent past including banditry continues to threaten and violate human rights of the residents and gravely affect the communities and destabilize national security at large.

In the recent past (between 2021 and 2024), the Commission/KNCHR has documented human rights violations arising from insecurity in various parts of the Country, particularly; the North Rift region, Marsabit, Laikipia and Samburu Counties. The recurrent insecurity incidents in these areas have resulted in serious human rights violations, including; loss of lives, destruction of property forced movement/displacement from homes, sudden disruption of the right to access education, access to health and other services, as well as right to livelihood. The situation has especially taken toll on the vulnerable groups such as the PWDs, children, elderly persons who are forced to leave their homes to safer places. Although the National Government has repeatedly assured the affected citizens that it was in charge of their security, the situation has not improved in certain areas. The Commission's reports recommended various interventions by relevant Government Agencies/Ministries and has made efforts to engage the same with a view to addressing the underlying issues

Previously, the Commission has compiled various reports documenting violations and has made a raft of recommendations:

- a. KNCHR "Guarding the Coast: A Report of The Public Inquiry on Insecurity & Its Impact on The Enjoyment of Human Rights In The Coastal Region Of Kenya" (2019).
- b. KNCHR "Mending the Rift: Report of the Public Inquiry on Insecurity and its Impact on the enjoyment of fundamental human rights in the North Rift Region of Kenya" (May 2017)
- c. KNCHR "The Error of Fighting Terror with Terror: Report of KNCHR Investigations on Human Rights Abuses in the Ongoing Crackdown against Terrorism (September 2015)
- d. KNCHR, "The Cry of Blood: Report on Extra-Judicial Killings and Disappearances" (September 2008)
- e. KNCHR "The Mountain of Terror: A Report on the Investigations of Killings and Torture by the Military at Mt Elgon" (May 2008)

- f. KNCHR “On the Brink of the Precipice: A Human Rights Account of Kenya's Post-2007 Election Violence” (2008)

These reports are accessible on the Commission's website: <https://www.knchr.org/Publications/Thematic-Reports/Civil-and-Political-Rights/Security-Sector>

More recently, the KNCHR conducted a fact-finding mission by the KNCHR in Samburu Central and Samburu West Sub-Counties in February 2024. Some of the affected areas are; Porroh, Soit Pus, Moriyo, Angata Nanyekie, Lolmokok, and Longewan. The Commission's fact-finding mission revealed that recurrent banditry attacks have disrupted the normal life of the people in these areas, creating an environment that seriously undermines the enjoyment of fundamental human rights and freedoms of the local people. Preliminary Findings on the Causes and Impacts of Insecurity in Samburu Central & West Sub-Counties include **Armed**

- **Bandits and Cattle Rustling:** The bandits are reported to originate from the neighbouring Counties of Baringo and West-Pokot. There are also reported isolated incidents of cattle theft within Samburu County by armed bandits;
- **Land Ownership and Boundaries Conflict:** There are indications that the attackers are out to expand and take control of land territorial boundaries mainly for grazing. The areas considered as hotspots are those near the County boundaries such as Nasur in Amaiya Locations bordering Tiaty Constituency, Kur Kur and Ltungai, areas. There is a conflict over Ltungai Conservancy which was established around the year 2004 and with land acreage measuring about 22,257 hectares. The KNCHR team was informed that the conservancy has been a source of conflict between the Pokot and Samburu communities. That the Conflict over Ltungai Conservancy stemmed from issues around; resource allocation, access and distribution of resources between the Pokot and Samburu communities. It has also been reported that the Pokot community claims that the establishment of Ltungai Conservancy deprived them of their right to graze livestock in the inter-community reserve pasture during droughts.
- **Poor infrastructure and underdevelopment of the hotspot areas:** The most volatile areas are underdeveloped, not easily accessible and are not connected to good road network. On the other hand, the bandits thrive in these strongholds and are opposed to development projects that would expose them.
- **Deteriorating Security Situation:** The insecurity situation is worsening in some areas despite the Government's assurances that it has put measures in place to protect the people and their property. KNCHR established that 19 suspected criminals were arrested and 105 firearms recovered. The government has also deployed the National Police Reservists (NPRs) who are familiar with the local circumstances, to bolster the uniformed officers from different formations. Nevertheless, there are recurrent recorded incidents of banditry attacks, cattle theft and revenge attacks leading to

death and displacement of persons. The insecurity situation has further been worsened by the killing of Hon. Paul Leshimpiro, the Member of County Assembly (MCA) of Angata Nanyekie Ward on or about 26th February, 2024, reportedly by suspected bandits in the Soit Pus area.

The insecurity in Samburu County has occasioned the following repercussions: Loss of Lives and Property: KNCHR established that at least 36 Civilians and 4 Security Officers had been killed. Further, 9 other officers had been injured and 13 suspected bandits killed. A total number of recorded stolen livestock was 3,765. About 1,790 livestock had been recovered, while 1,975 remained unrecovered; **Closure of Schools and Disruption of Learning; Impeding Food Shortage on the County and breakdown of families and related social ties.**

KNCHR Recommendations: The Commission recommends the following urgent actions:

- a. *Deployment of Adequate Security Personnel:* The Government should deploy sufficient numbers of law enforcement personnel to the affected areas, equipped with the right equipment to ensure a visible and robust presence that deters potential security threats.
- b. *Heightened Intelligence and Surveillance:* Security agencies should intensify intelligence gathering and surveillance operations to identify, prevent and neutralize individuals or groups responsible for insecurity.
- c. *Expeditious Investigations and Prosecution of perpetrators including the master-minds:* The National Police Service (NPS) and the Office of the Director of Public Prosecutions (ODPP) should ensure that those responsible for acts of violence, robbery, cattle rustling, criminal threats, or intimidation are swiftly brought to justice, sending a clear message that impunity will not be tolerated.
- d. *Investigation of Land Ownership, Boundaries Disputes and Attacks:* The Directorate of Criminal Investigations, the National Land Commission, and other relevant agencies should investigate the connection between land ownership and the current spate of attacks, particularly along the boundaries between Samburu and neighboring Counties. This is in light of the worries expressed by Community leaders and the situation where some families have had to re-locate to safer places.
- e. In conclusion, the KNCHR calls on all duty bearers in Samburu and other affected Counties to prioritize the safety and security of the affected areas, enabling people to safely return home and resume their lives without fear. The Commission continues to monitor the human rights situation closely and urges the Government to protect the rights of all Kenyan citizens. Immediate action is crucial to prevent further loss of life and displacement of communities

3.6 The freedom of conscience, religion, belief and opinion (Article 32)

The Shakahola Horror

On 25th March 2023, the mainstream media carried a lead story²² on horrifying discoveries of scores of people buried in shallow graves in Shakahola forest, Malindi County. The authorities attributed the unfolding massacre to a doomsday cult linked to Pastor Paul Nthenge Mackenzie. This followed the gazettelement of the Shakahola/Chakama Ranch as a disturbed area vide Kenya Gazette Legal Notices Number 52 and 53 of 2023²³. Despite the resourcing constraints, the Commission has made the following interventions concerning the Shakahola issue:

- In its monitoring and investigative role, the Commission visited the mass graves in Shakahola, observed the exhumations, processing, management and preservation of the bodies in the mortuary. The Commission deployed officers to observe the documentation of missing persons, the DNA profiling of the deceased and their families and the conduct of postmortems to determine the cause of death.
- Submission of preliminary findings to the Senate Ad hoc Committee to Investigate the Proliferation of Religious Organisations and Circumstances leading to Deaths in Shakahola, Kilifi County (chaired by Hon Mungatana). Notably, the Commission's recommendations were adopted in the Committee's final report and a report tabled on 19th October 2023.
- The KNCHR has since been working with other government agencies and stakeholders in monitoring the operation aimed at bringing accountability and justice for the survivors and families of victims.
- The Commission has actively been engaged in providing psychosocial support to victims
- Ongoing engagements with the other duty bearers including the DPP, CID, Security agencies, local administrations and non-state actors.

As at the time of compiling KNCHR report on 10th October 2023 a total of 425 bodies had been exhumed, ninety-one (91) survivors were rescued who included twenty-five (25) children. Thirty (30) suspects including the leader of the cult (Pastor Mackenzie) had been arrested while six hundred and thirteen (613) were reported missing²⁴. The Commission interacted with ninety (90) survivors including twenty-five (25) children who were being held in a separate rescue center. The minors were aged from 1 year 4 months to 17 years, with majority of them being under ten (10) years of age.

²² <https://nation.africa/kenya/counties/kilifi/unmasking-paul-nthenge-the-preacher-linked-to-children-s-death-4171918>

²³ See Kenya Gazette Legal Notices 52 and 23 of 2023 and the Letter from the Cabinet Secretary: <https://twitter.com/KindikiKithure/status/1651214676833755136?t=FoDk8hnlzGMSSNhOHLJ35g&s=19>

²⁴ See Paragraph 8 of the Affidavit by Assistant Director of Public Prosecutions dated 9th October 2023

There is need to come up with a framework for protecting citizens from exploitation and radicalization.

NOTE: More recommendations to the various duty bearers are contained in the final report.

3.7 Freedom of expression and the media (Articles 33, 34)

This right came under attack during the mass demonstrations witnessed in Kenya for the better part of 2023. During that period, the KNCHR & the Media Council of Kenya recorded a total of 29 cases which included attacks on both local & foreign journalists with an accusing finger being pointed to both state and non – state actors. Despite these reported cases, there has been no accountability & redress on the matters.

3.8 Right to Assembly, demonstration, picketing and petition (Article 37)

Article 37 of the Kenyan Constitution guarantees every person the right to peacefully assemble, demonstrate, picket and present petitions to public authorities. Further, the Kenya National Police Service Standing Order on managing demonstrations and the Public Order Management Act provide clear guidelines on how to manage demonstrations without resorting to excessive force. The right to peaceful assembly serves as a fundamental pillar of democracy. It is a mechanism through which grievances are expressed and solutions sought in a civilized manner and that is exactly what the Doctors were doing yesterday.

The right has been under threat particularly during the better part of 2023 during the opposition called rallies popularly known as **“Mandamano”**. During this period, loss of lives, property and violence meted out to the assembly participants by both demonstrators and police officers were reported.

While the regulations on use of force and firearms and guidelines on public order management were developed through a consultative process including the participation of NPS, these guidelines are yet to see the light of day and thus violations related to public assembly continue to be witnessed. Further, lack of accountability for the cases of deaths & property destruction during these periods remain to be a matter of concern.

The more recent violence that met the demonstrations violence perpetrated against members of the *Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU)* during their peaceful demonstration yesterday in Nairobi. Reports from the media and other platforms have confirmed that the KMPDU Secretary General Dr. Davji Atallah, was gravely injured by a teargas canister fired by the police. In a statement of 1st

March 2024, the Commission strongly condemned the excessive use of force against peaceful KMPDU Members and demanded various actions.²⁵

3.9 Consumer Rights (Article 46)

The Constitution guarantees the rights to goods and services of reasonable quality; to the information necessary for consumers to gain full benefit from goods and services; to the protection of consumer health, safety, and economic interests and to compensation for loss or injury arising from defects in goods or services.

While acknowledging the recent intensified efforts by the Ministry of Interior and Office of the Deputy President to deal with the menace, the Commission remains disturbed at the recent wave of deaths arising from the sale and consumption of illicit, poisoned brew. The Commission is still pursuing investigations into the killer brew that claimed 13 lives in Kirinyaga.²⁶ The Commission continues its call for thorough investigations and prosecution of the culprits. The Commission further underscores the need for concerted efforts by the quality assurance and licensing authorities, NGAOs and county governments to step up efforts to fight poisonous liquor and indeed any products meant for human consumption. In the longer term, the demand side of the equation needs to be addressed- as to the push factors to alcoholism as it has become a social problem.

3.10 Access to justice (Article 47)

Access to justice has experienced both positive and negative developments in the Country. On the positive, coming into effect of the specialised sexual and gender-based violence, establishment of small claims courts, expansion of the Judiciary infrastructure, the adoption of alternative dispute resolution, the employment of more judicial officers and the operationalization of the Judiciary Fund have been great steps in the right direction.

However, several misses exist which include the slow pace of justice, disobedience of court orders and the current remarks and threats from both members of the legislature and executive directed towards the Judiciary impedes the functional independence of the courts and would likely impact service delivery of the judiciary.

²⁵ KNCHR Press Statement: "How Long Must Excessive Force Target Peaceful Protesters? Condemnation of Excessive Use of Force Against KMPDU Members"
[accessible here](#).

²⁶ See, KNCHR Seeks answers following death of 13 in Kirinyaga (8 February 2024)
<https://www.the-star.co.ke/news/realtime/2024-02-08-knchr-seeks-answers-following-death-of-13-in-kirinyaga/>.

3.11 Rights of special interest and vulnerable groups

The Country has put in place various steps to guarantee and protect the rights of this group. However, some misses exist which include the non - alignment of the Persons with Disabilities Act, 2003 with the Constitution and the CRPD, the inaccessibility of both information, infrastructure & implementation of 5% employment quota for PWDs among others. Further, the lack of PWDs in elective position remains a major issue of concern. For example, there are 20 county assemblies with no representation of persons with disabilities.

The Commission continues advocating for the **expediting of the enactment of a Persons with Disability law and adoption of a national policy on persons with disability in line with its national and international commitments**. These have been tossed over in both Houses over successive Parliaments.

Worth taking note is how far as a county we are towards inclusion of especially ethnic minorities in socio-economic development of our nation. According to the National Cohesion and Integration Commission (NCIC) report on Ethnic and Diversity Audit of the Public Service sector launched on 17th November, 2023, the minority are still far from achieving adequate representation in the county employment a decade after roll out of devolution. According to the NCIC report, only 13 out of the 47 counties are compliant with the law with regards to recruitment. Counties like Narok, Tharaka Nithi, Taita Taveta, Embu, Busia, Trans Nzoia, Nakuru, Isiolo, Mombasa, Tana River and Nairobi are compliant, while the rest 34 out of 47 counties have contravened with the legal requirement that no more than 30% of the vacancies at the entry level should go to ethnic groups that are from the dominant communities.

3.12 Climate Change & Forceful evictions of Indigenous Communities

Climate change has had devastating effects on the country broadly but more significantly on the rights of Indigenous People. In its efforts to mitigate against the adverse effects of climate change, the state has embarked on conservation efforts that are being pursued with indigenous people excluded. Such efforts have led to forceful evictions of indigenous people such as the Ogiek who despite having won against the Kenyan Government at the African Court on Human and People's rights have not enjoyed the fruits of their judgment. The KNCHR is currently supporting them by offering legal representation for a case filed at the High Court in Nakuru. The case was prompted by threatened evictions in November and December 2023.

3.13 Business and Human Rights

The KNCHR working with the office of the Attorney General finalized and launched the National Action Plan on Business and Human Rights in 2023 (**Sessional Paper No 3 of 2021**). The NAP provides guidelines for the Implementation of the United Nations Guiding Principles on

Business and Human Rights. However, human rights violations related to businesses continue to be reported to the KNCHR and thus a need for the implementation of the plan and the engagement by all the necessary actors.

The KNCHR is in engagements with the Office of the Attorney General and Department of Justice in the towards the development of the relevant monitoring tools including the Due Diligence framework towards the implementation of the NAP.

4.0 REVIEW OF BOUNDARIES AND CONSTITUTIONAL TIMELINES

The delimitation of electoral units in Kenya is guided by Article 89 of the Constitution which provides in part as follows:

***“89. (1) There shall be two hundred and ninety constituencies for the purposes of the election of the members of the National Assembly provided for in Article 97 (1) (a).
(2) The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years, but any review shall be completed at least twelve months before a general election of members of Parliament.***

The KNCHR notes that the issues of delimitation of boundaries were recently articulated and canvassed by the National Dialogue Committee as captured in its report dubbed “Report of the National Dialogue Committee”.²⁷ The Committee went on to make the following recommendations:

- a) “Article 89 of the Constitution be amended to provide that where for any reason the review of the names and boundaries of constituencies by the IEBC is not completed within the time stipulated under Article 89 (2), or where there justifiable reasons for the extension of the period for review then Parliament may extend the period provided under the Constitution by a resolution passed by the National Assembly, with the support of a majority of all the Members of the Assembly; and the Senate, with the support of a majority of all the County delegations;
- b) The procedure for delimitation of the boundaries be provided for in the IEBC Act 2011
- c) Parliament shall within six months of the adoption of the report enact the County Boundaries Bill 2023 to provide a legislative framework for the review of the County boundaries as provided for under Article 188 of the Constitution;
- d) The IEBC to undertake boundary delimitation of the constituencies and wards as provided for under Article 89 of the Constitution;

²⁷ <http://www.parliament.go.ke/sites/default/files/2023-12/Report%20of%20the%20National%20Dialogue%20Committee%2025%20November%202023.pdf>

- e) *The National Cohesion and Integration Commission investigates the claims of perceived marginalization and discrimination by Sabaot Community living in Bungoma and Trans Nzoia Counties; residents of Wajir South Constituency, Tiaty Constituency, and Teso, Kuria and Suba Communities, to ascertain the claims and extent of the marginalization and discrimination and make proposals for promoting inclusivity and peaceful coexistence amongst different communities”*

KNCHR observes that the timelines given in the Constitution for the review will lapse in March 2024 (today!), yet the country does not have a fully constituted IEBC that is mandated to undertake the exercise which then poses an impending Constitutional crisis. The delay in the appointment of Commissioners continues to stall the boundary review and delimitation process and will inevitably lead to a Constitutional crisis. The appointment of the IEBC Commissioners is required for the boundary review and delimitation of the process to be undertaken. It is notable that in a recent Judgment by the Courts, Thande J ruled that the recruitment of IEBC Commissioners should proceed forthwith. The learned judge directed that the current IEBC Selection Panel moves with speed and immediately recruits new Commissioners including the Chair.

As advised in its recent advisory²⁸, KNCHR recommends *inter alia* as follows:

- i. That as an immediate action to cure the Constitutional crisis due to the imminent threat and violation of Article 89(2) of the Constitutional timelines as well as the institutional challenges facing IEBC due to the lack of Commissioners, KNCHR recommends a Supreme Court interpretation of the issue noting that the delimitation exercise will not happen within the constitutional timelines.
- ii. That the process of the appointment of the Commissioners of the IEBC be undertaken as soon as possible as they are critical to guiding the boundary review and delimitation process in relation to policy, operations and strategic direction of the Commission. Based on the recommendations of the National Dialogue Committee deliberations, the recruitment process should yield an outcome of persons appointed who are non-partisan (non-political) public officials with the relevant qualifications and background experience in election administration, geography and statistics to spearhead this process.
- iii. Collaboration between the IEBC and the Kenya National Bureau of Statistics be enhanced and that the data collected is made public in relation to the number of

²⁸ Advisory on the Delimitation and Boundary Review Process in Kenya (February 2024) available at <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1183/Advisory-on-the-Delimitation-and-Boundary-Review-Process-in-Kenya>.

populations per constituency. This would enhance transparency and allow Kenyans to estimate for themselves the threshold for their constituencies and wards.

- iv. KNCHR recommends that civic education on delimitation of boundaries be carried out to sensitize, educate, equip and empower the general public and opinion leaders on the delimitation process and allow them to meaningfully participate in the delimitation process.
- v. That the need for adequate effective public participation in the ensuing boundary review process cannot be overemphasized.

5.0 KENYA'S GLOBAL COMMITMENTS ON HUMAN RIGHTS, 2023

The Republic of Kenya submitted to the Human Rights 75 Secretariat the following four human rights pledges²⁹ during the 2023 commemoration of International Human Rights Day on 10th December- which also marked the 75th Anniversary of the UDHR:

- **PLEDGE NUMBER 1: Human Rights Policy and Action Plan on Promotion, Protection, and Fulfilment of Human Rights:** The Government of Kenya pledges to strengthen commitment to human rights by developing a comprehensive National Human Rights Policy and Action Plan on the Promotion and Protection of Human Rights (NPAP) to guide Government and other stakeholders in implementing programs, strategies, and plans that will enhance the realization and enjoyment of rights and fundamental freedoms by all Kenyans.

Expected deadline within which pledges will be realised: Jan 1, 2025

NOTE: The Commission has held talks with the Department of Justice towards developing a roadmap and groundwork towards the review exercise including regional engagements in the process through public participation.

- **PLEDGE NUMBER 2: Legislative framework of the offence of Enforced Disappearance in domestic law:** The Government of Kenya pledges to enact comprehensive domestic legislation that criminalizes enforced disappearances and establishes robust mechanisms for prevention, investigation, prosecution, and victim support. This commitment marks a significant step towards ensuring accountability, reducing impunity among law enforcement agencies, and delivering justice to the families of victims who have endured pain and anguish.

Expected deadline within which pledges will be realised: Aug 2, 2027

NOTE: As KNCHR, we continue to advocate for the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. This, notably, is aligned to the Kenya

²⁹ Copy also available here

https://www.ohchr.org/sites/default/files/udhr/publishingimages/75udhr/kenya_en.pdf

Kwanza Manifesto. It is also a recommendation made severally to Kenya by the treaty body mechanisms at both regional and international levels. The Commission has previously made submissions before the Public Petitions Committee of the National Assembly and other fora.

- **PLEDGE NUMBER 3: Clean Energy Transition: The Government of Kenya pledges to achieve a complete transition to clean energy sources by 2020**, thereby contributing to global climate mitigation efforts and sustainable development by 2030. Kenya will reduce greenhouse emissions and improve air quality by increasing the share of clean energy sources in the national energy infrastructure from 92% to 100%.

Expected deadline within which pledges will be realised: Jan 1, 2030

- **PLEDGE NUMBER 4: Social protection: The Government of Kenya pledges to continue its unwavering commitment to human rights by fostering gender quality, safeguarding the rights of children, people with disabilities, elderly persons, and marginalized groups.**

Expected deadline within which pledges will be realised: Jan 1, 2030

Recommendation: We urge the Committee and indeed both Houses of Parliament to support the implementation of these commitments in their oversight, legislative and representation roles.

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ANNEXURE: PRESS STATEMENT: STATE OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN KENYA- READ BY THE CHAIRPERSON ON 22ND NOVEMBER 2023

The report is accessible on the Commission here:

<https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1177/STATE-OF-HUMAN-RIGHTS-AND-FUNDAMENTAL-FREEDOMS-IN-KENYA>



REPUBLIC OF KENYA

NATIONAL LAND COMMISSION

**NATIONAL LAND COMMISSION REPORT TO THE
COSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE**

BY

MR GERSHOM OTACHI

CHAIRMAN

14th MARCH 2024

Hon. Chairperson and Committee Members, I am honored to appear before the Constitutional Implementation Oversight Committee of the National Assembly. I wish to thank you and your members for inviting the National Land Commission (NLC) to respond to matters raised by the Committee.

Hon. Chairperson, vide a letter *Ref. NA/DAA&GPC/CIOC/2024/003* dated 29th February 2024 from the Clerk of the National Assembly, the NLC was invited to deliberate with the Committee on the issues listed below;

1) Status of Implementation of the Constitution as per the Commission's Mandate and Impediments to the process if any.

Response: Hon Chair and Committee members, the other important issue to be deliberated during this meeting is the report on status of implementation of the constitutional mandate of the National Land Commission and the impediments to implementation process.

Hon Chair and Committee members, following the highlights I have given on the broad mandate and functions of the Commission, I will now proceed to present to you the implementation status of each function.

i. Manage public land on behalf of the national and county governments;

a) *Decentralized Land Governance in the Counties*

The Commission has decentralized its services by establishing offices in the 47 counties.. These decentralized units provide services to members of the public within their counties by initiating various processes and submitting them for processing and finalization by the Commission. These include identifying public land and submitting applications for allocations of land applications for extension/renewal of leases for processing, inventorising public land parcels in community settlements, reporting on the Status of Land Use Planning within the counties, receiving, handling and forwarding land disputes for resolution where necessary among others.

b) Compulsory Acquisition of Land and Compensation of PAPs

The Commission has facilitated the acquisition of land for over 130 flagship public projects in various sectors like transport, water and sanitation, energy and security as spelt out in Vision 2030. The projects include: Special Economic Zone- Dongo Kundu Project, Nairobi Expressway Road Project, SGR Phase 1 and 2A, Lamu Port Southern Sudan Transport Corridor (Lapsset), Thwake Dam Multi-Purpose Project in Kitui and Makueni Counties, Karimenu Dam Project-Kiambu County and Magongo, Oil Refinery Roads-Mombasa County amongst others.

The Commission undertook final surveys for vesting of parcels of land compulsorily acquired for Upper Tana Bridge, Kimugu Water and a section of Standard Gauge Railway (SGR) Projects. The Commission has also prepared proposals for the vesting of land acquired for Thwake Dam, Mwache Dam, Lower Nzoia Irrigation Project and SGR Phase II.

c) Administration and Management of Public Land

The Commission continues to receive and process requests for allocation of public land recommended by various Counties. Some of the requests received and processed include: manufacturing sector-100 acres of land to the Export Processing Zone Authority; the energy sector-1,032 hectares allocated to Kenwind Limited for the generation of wind power in Lamu County and under the infrastructure sector - 28,000 hectares for LAPSSET Development Authority for Lamu Port development among others.

Further, the Commission has undertaken regularization of tenure in urban areas, and settlements such as Narok, Maralal, Isiolo, Makueni and Nyandarua resulting to over 20,000 letters of allotment.

In addition, the Commission has developed guidelines (Renewal of Leases, National Agricultural and Rural Inclusive Growth Project (NAGRIP), Management of Land held by Public Institutions) for administration and management of institutional public land; continued to reserve public land for the establishment of approved

settlement programmes where public land is available; recovered parcels of public land.

d) Land Development Control

The Commission approved and monitored the development of public land through extension /renewal of leases, change /extension of user, subdivisions and building plan approvals. It has continued to process and recommend for approval renewals/extensions of leases, subdivisions/amalgamations schemes, change/extensions of user and building plans.

e) Review of Grants and Dispositions of Public Land.

The Commission reviewed grants and dispositions to public land in various counties including Nairobi, Mombasa, Kisumu, Kiambu, Taita Taveta, Kakamega, Kilifi, Nakuru, Narok, Lamu, Kisii, Baringo, Makuèni, Nakuru, Lamu, Uasin Gishu, Machakos, Kwale, Embu, Kirinyaga, Laikipia, Mandera, Garissa, Marsabit, and Embu. The process of review of grants and dispositions of public land resulted in reclaiming public land.

f. Development of Kenya's Natural Resource Atlas and Inventory

The Commission has inventoried natural resources in Kenya by developing and launching the Kenya's Natural Atlas and Geoportal which serves as an information hub to integrate a multiplicity of actors/agencies' data on land-based resources. The atlas shows how the entire natural capital is distributed and interconnected as well as the changing patterns within the land/seascape towards enhancing and informing sustainable socio-economic development in the country.

It has also developed guidelines, regulations and frameworks for sustainable management of natural resources; inventoried natural resources by mapping ecologically-sensitive areas (ESAs); and continued to issue advisories to sustainably manage natural resources and to manage/resolve conflicts related to land and natural resources.

ii. Recommend a National Land Policy to the national government;

a) Implementation of the 2009 Land Policy

The Commission has implemented various recommendations regarding land management and administration under land policy principles.

These include: equitable access to land; security of land rights; sustainable and productive management of land resources; transparent and cost-effective administration of land; sound conservation and protection of ecologically sensitive areas; and elimination of gender discrimination in law, customs and practices related to land and property in land; among others.

The Commission further developed a framework for formulating a National Land Policy for Kenya, conducted research and consultations to generate land policy issues. The Commission has since finalized and handed over a recommendation on review of the National Land Policy in line with Article 67(2)(b) of the Constitution.

b) Advisories Issued by National Land Commission

The Commission issued several advisory opinions to MDAs, Parliament, County Governments, foreign governments and investors to ensure the enhancement of better land governance. Some of the advisories include:

- Advisories related to sustainable management of natural resources and Climate Change Mitigation issued to UNFCCC, Kenya Alliance of Resident Associations (KARA), Kenya Forest Service (KFS) among others
- Land use planning advisories issued to Konza Technopolis Buffer Zone Plan, Mombasa County Government PDPs (Nyali Fish Market, Mombasa City Bus Terminus, Liwatoni Fisheries and Mzima County Estate Redevelopment Plan), Plan for the Settlement of Squatters in Tinderet Sub-county, Nandi County.
- Advisories on valuation for properties issued to Export Processing Zones Authority (EPZA), Kenya Electricity Transmission Company (KETRACO), Kenya Electricity Generating Company (KenGen), Attorney General on 1,000 Ha Parcel of Land in Langas Estate, Eldoret, Uasin Gishu County.

iii. Advise the national government on a comprehensive program for the registration of title in land throughout Kenya;

a) School Titling Programme

To protect schools against illegal land grabs, the Commission in conjunction with the other agencies in the Shule Yangu Alliance Campaign prepared and dispatched 3,020 transfers of school land to relevant land registries for registration and issuance of titles.

- b) Developed two guidelines to monitor registration of land rights; (Guidelines on Large Scale Land Acquisition and Guide on Public Land Acquisition within Community Land)
- c) Developed an advisory on comprehensive programme for registration of titles in land; (2016) which stipulates processes and procedures involved in the registration process of titles in land.
- d) Developed a Land rights monitoring report for Kenya: and
- e) Monitoring the Transition of group ranches to Community Land in Kenya: A case study of Laikipia, Kajiado, West Pokot and Samburu Counties (2023)

iv. Conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;

a. Research on Land and use of Natural Resources

The Commission continues to guide the country on policy matters through research on land and the use of natural resources towards improving land administration and management in Kenya. Consequently, the Commission has conducted research and disseminated its findings in the following thematic areas: Land Governance and Land Management; Land use planning and land use conflict resolution; Land Rights and Security of Tenure; Emerging Global and Strategic Land Issues; Historical Land Injustices and Legal Research; Sustainable Conservation of Land-Based Natural Resources; and Valuation and Taxation.

v. Initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;

a) Historical Land Injustice (HLI)

HLI cases are the grievances that occurred between 15th June 1895 to 27th August 2010. HLI investigative hearings started in December, 2017 and by the set deadline of 22/09/2021 the Commission had received a total of **3,742** HLI claims.

The Commission has so far assessed all the 3,742 claims in which it admitted 1164 (31%) cases that met admissibility criteria and has so far resolved about 200 claims. It continues to deal with the pending claims.

b) Current/ Present Land Injustices

The Commission has developed an investigations and inquiry practitioners guide and continues to admit general complaints, conduct investigations and make appropriate recommendations.

vi. Encourage the application of traditional dispute resolution mechanisms in land conflicts;

a) Alternative Dispute Resolution (ADR) and Traditional Dispute Resolution (TDR)

The Commission has been able to handle land disputes through the ADR/TDR mechanism. The resolution of these land disputes has promoted national cohesion and peaceful coexistence between communities.

This has been done through: the development of guidelines and SoPs to guide dispute resolution mechanisms; attending investigative hearings; developing reports highlighting the cases heard and making appropriate recommendations/determinations.

b. Civil Litigations and Investigations

The Commission has participated in resolving numerous court cases touching on land at the Supreme Court, Court of Appeal, High Court (Environment and Land Court) and the Magistrates Court. It has also played an important role in carrying out investigations & forensic services in fraudulent public land transactions. It liaised closely with NEMA and NCA for the protection of riparian land where it served notices for the withdrawal of construction licenses to people putting up structures on riparian land.

The Commission currently has 3798 active cases.

vii. Assess tax on land and premiums on immovable property in any area designated by law;

a) Revenue generation from land and land-based resources

Through the assessment of tax on land and premium on immovable property in any area designated by law, the Commission has generated revenue from the land and land-based resources where it regularly reviews and prescribes rents, royalties, and other payments that should be paid by lessees and licensees of the public land.

viii. Monitor and have oversight responsibilities over land use planning throughout the country

a) Mainstreaming of Land Use Planning

The Commission has prepared monitoring and oversight frameworks (guidelines and procedures) for monitoring Land Use Planning in all the 47 counties and the implementation of the National Land Use Policy (NLUP) and the National Spatial Plan (NSP). In addition, the Commission prepared and issued county spatial plans monitoring and oversight advisories to planning authorities; sensitized all the 47 counties on preparation & implementation of County Spatial Plans; and sensitized all counties on implementation of NLUP and NSP.

It also reviewed and validated 15 county spatial plans for approval; the counties are Nakuru, Lamu, Kwale, Kilifi, Kajiado, Narok, Bomet, Siaya among others.

The Commission continues to prepare and issue of Local Physical & Land Use Plans/ Urban Plans/PDPs advisories to planning authorities on Urban Land Use Plans.

These are tools of engagement between the Commission as a monitoring and oversight agency and County governments as planning authorities.

1. IMPEDIMENTS / CHALLENGES

Hon Chair, despite the above achievements, the Commission experienced the following challenges:

i. Financial and Budgetary Constraints

The Commission continues to experience inadequate funding hence affecting its activities majorly on the delivery of its operational and administrative mandates. On average, the Commission has been allocated a mere 30 per cent of its annual budget requirement.

The table below illustrates the Commission's budgetary requirements vis a vis the allocation between FYs 2018/2019 to 2022/23.

	FINANCIAL YEAR	RESOURCE REQUIREMENT (Kshs Million)	ALLOCATED BUDGET (Kshs Million)	% OF FUNDING VS REQUIREMENT
1.	2018/19	5,287	1,260	24%
2.	2019/20	4,500	1,664	37%
3.	2020/21	4,599	1,138	25%
4.	2021/22	5,853	1,687	29%
5.	2022/23	5,468	1,558	28%
Average funding over the years vis a vis resource requirement is 30%				

ii. Policy/ Legislative Challenges

Review of the National Land Policy, 2009, the Rating Act CAP 267, Valuation for Rating Act CAP 266, Stamp Duty Act CAP 480, NLC Amendment Bills have taken too long to be reviewed and aligned with the Constitution of Kenya 2010. As such, these have impeded the execution of the Commission's service delivery to the citizens of Kenya. Further, there has been several uncoordinated land laws amendment that have served to cause more confusion and overlaps in the administration of land in Kenya. In addition, these rapid legislative changes cause

panic and uncertainties in land management and administration; which jeopardises public confidence and investment on land and land-based resources.

iii. Vesting land to the Government after Compulsory Acquisition

Land compulsorily acquired by the government has not been vested since independence. This has resulted in the illegal occupation and use of such land for private purposes, charges on public land, and the risk of double acquisition during project expansion. This challenge has been compounded by a lack of budgeting by the acquiring entities.

iv. Delayed Remittance of Compulsory Acquisition Compensation Funds

The Untimely remittance of funds by the acquiring bodies leads to delayed payment/compensation to project affected persons, which results in increased cost of land acquisition i.e., accrued interests, litigation costs and contractors' claims relating to idle time.

v. Litigation: Costly court cases and liabilities

There has been an increase in land conflict and a corresponding increase in the number of land cases in the Land and Environment Courts across the country. The high number of court cases implies that Commission incurs high costs in these cases.

Also Article 253 (b) states that each commission and each independent office is capable of suing and being sued in its corporate name. This has resulted in punitive directions from the courts including garnishee orders on Commission's accounts and warrant of arrests on key officers.

vi. Failure to comply to the HLI recommendations made by the Commission

The Commission is only mandated to make appropriate recommendations on HLI claims which can a times be ignored by the involved parties. This greatly interferes with the execution of this mandate.

vii. Lapse of Time Frame for Review of Grants and Dispositions

The Commission was to undertake a review of grants and dispositions within five years but the given timespan lapsed before the Commission could address all the claims received conclusively. The Commission continues to receive more

complaints relating to illegally and irregularly acquired land but due to a lack of legal framework, requests received cannot be addressed.

viii. Inadequate Technical Manpower

Understaffing has adversely affected the Commission's productivity, implementation of the planned activities and, eventually, the achievement of the set goals and objectives. Presently, the Commission has 549 staff members against an approved establishment of 1,216.

ix. Impediment in the Revenue Collection Role

Article 67(2)(a) mandates the Commission to manage and administer public land on behalf of the National and County governments. Section 28(1) of the Land Act 2012 mandates the Commission to collect revenue from rents, royalties and other payment under lease or licences. However, it has become difficult to fulfil the role due to the absence of a framework to collect revenue from land leases and allocations. Despite the centrality of the Commission in revenue generation from land and land-based resources, the Commission is manifestly overlooked in the processes involving the renewal/extension of leases.

2) The Broad Mandate and Functions of NLC

Response: Hon Chair and Committee members, as part of the land reforms and in recognition of the importance of public land management, the constitution of Kenya 2010 established the National Land Commission (NLC) under articles 67 and 248 of the Constitution of Kenya 2010. It was formed to spearhead the land reform agenda in Kenya as intended in the National Land Policy 2009. The Commission is operationalized through Acts of Parliament that give effect to these articles namely: National Land Commission Act, 2012; the Land Act, 2012, the Land Registration Act, 2012 and the Land (Amendment) Act of 2016. The role of the Commission is to facilitate sustainable land use in Kenya through a holistic land policy, efficient land management practices, equitable access to land, comprehensive land registration and applying appropriate land dispute handling mechanisms among others.

Article 67(2) of the Constitution and related statutes outline the mandate and functions of the Commission.

The Commission continues to play a strategic role in implementation of land reforms as provided for in the constitution, and specifically to carry out the following functions:

- i. Manage public land on behalf of the national and county governments;
- ii. Recommend a national land policy to the national government;
- iii. Advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
- iv. Conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- v. Initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- vi. Encourage the application of traditional dispute resolution mechanisms in land conflicts;
- vii. Assess tax on land and premiums on immovable property in any area designated by law; and
- viii. Monitor and have oversight responsibilities over land use planning throughout the country.

Annexure 1, outlines the details relating to implementation of each of the eight (8) functions as operationalized through the various legal statutes.

CONCLUSION AND WAY FORWARD

Hon Chair, I would like to emphasize that the Commission will continue to work with other actors in the land sector to effectively administer and manage public land on behalf of the two levels of Government. Among other things, the Commission seeks to:

- i. Continue strengthening the use of technology in accessing the information on public land. The Commission jointly with the Ministry of Lands will continue to promote the use of the Ardhisasa platform to allow the public access to land information, the use of the 'Haki kwa Ground' system for land conflict resolutions.

- ii. Address the issue of vesting. So far, the Commission continues to engage the acquiring entities with the view of budget provision for this purpose.
- iii. Promote revenue generation on land by reviewing existing property tax legislative framework to enable efficient revenue collection and implementation of policies and guidelines on valuation services for the assessment of property taxes.
- iv. Improving socio-economic development and peace through the provision of effective land dispute resolution and conflict management through the use of AJS, ADR and TDR mechanisms. The Commission will also continue to implement HLI legal framework to provide redress for Historical Land Injustices.
- v. Continue to sensitize the acquiring bodies on the need to remit funds promptly in compliance with Article 40(3)(b) of CoK and Section 5(1)(b) of the Land Value Amendment Act 2019.
- vi. Seek the support of the Committee on the ongoing Amendment of Section 14 on review of grants and dispositions – This will allow the Commission to continue with the review of grants or dispositions of public land in respect of complaints that were pending before the mandate under that section expired and receive new complaints continuously without limitation of time and providing redress.
- vii. Seek the support of the Committee on the ongoing Amendment of Section 15 on Historical land injustices – This will allow the Commission to continue to admit, register and process historical injustices claims continuously thereby allowing the Commission to handle disputes that were not brought within the limitation period and the mandate will continue to be exercised uninterrupted without time limitations

Honourable Chair, I submit.

GERSHOM OTACHI BW'OMANWA
CHAIRMAN.

Constitutional and Legal Mandates of the Commission

The Constitution gave the Commission eight broad and fundamental constitutional mandates outlined under Article 67 (2) (a - h) and at the same time specifically created a leeway under Article 67 (3), for parliament to bestow other functions through national legislation. This is re-emphasized under Article 252 (2) (d) that allow commissions and independent offices to perform any functions and exercise any powers prescribed by a legislation.

It is imperative to note that contrary to some misinterpretations, the eight constitutional mandates relate to matters on public land and also land in general. Land has been defined in the Constitution under Article 260 as:

- a) the surface of the earth and the subsurface rock;
- b) any body of water on or under the surface;
- c) marine waters in the territorial sea and exclusive economic zone;
- d) natural resources completely contained on or under the surface;
- and
- e) The air space above the surface.

The above underscores the broad mandate of the Commission. A Critical analysis reveals that the mandates and functions have not been adequate unbundled and therefore remain unexecuted for the benefit of land sector transformation.

Mandate 1: To manage public land on behalf of the National Government and County Governments

a) Legal Background

This mandate is provided for under Article 62(2) & 67(2) (a) of the Constitution of Kenya, 2010. Section 5(1) (a) of the NLC Act, 2012 and Section 8 of the Land Act, 2012, amplifies the mandate. The mandate involves both land administration and management

(i) Land Administration and Management –

This involves transactions on public land, which includes conversion (allocations, renewals/reallocations, acquisition, leasing and subleasing, transfers, valuation, reservations, final survey and vesting). The function also involves maintenance and updating of the register of all public land held by National and County governments. Further, it involves monitoring and compliance of terms and conditions use of land, development of management plans and monitoring implementation of management plans.

Specifically, implementation of this mandate include;

1. Management and administration of land with regard to the guiding values and principles (Section 4(1) and (2) of the Land Act 2012
2. Prescribing guidelines for the management of public land by all public agencies, statutory bodies and state corporations in actual occupation or use of public land (Section 10(1) of the Land Act 2012.

Land Allocation

3. Alienating public land on behalf of, and with the consent of the National and County Governments (Section 5(2) (a) of the NLC Act 2012 and section 12 of the Land Act 2012. This involves allocating public land as well as regularizing urban land allocations.
4. Conversion of Public land to community land by allocation in accordance with the Land Act, 2012 -Section (24(1) of the Community Land Act, 2016
5. Granting licenses for temporary use of unalienated public land for a period not exceeding five years subject to planning principles as the Commission may prescribe (Section 20(1) of Land Act 2012
6. Ensuring that any public land that has been identified for allocation does not fall within categories identified under Section 12(2) of the Land Act 2012.
7. Establishing and maintaining a register containing the particulars of all public land converted to private land by allocation. (Section 8(2)(a) Land Act 2012.

Compulsory Acquisition

8. Compulsory acquisition in accordance to Section 107(1) of the Land Act, 2012
9. Creating a right of way, known as public right of way (Section 146) of the Land Act 2012
10. Vesting the care, control and management of any reserved land with a statutory body, public corporation or a public agency (Section 16(1)(a) of the Land Act 2012
11. Reserving public land upon request by the national or county government (Section 15 of the Land Act 2012
12. Holding inquiries, awarding and promptly paying just compensation before taking possession of the compulsorily-acquired land Part VIII of the Land Act 2012
13. Ensuring that public land under the management of the designated state agencies is sustainably managed for the intended purposes (Section 5(2) (c) of the NLC Act 2012. The Commission has developed guidelines on management of land held by public agencies.
14. Prescribing a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land ((Section 12(11) of the land Act 2012.
15. Rejecting/accepting an acquisition request if the Commission determines that a request from an acquiring authority does or does not meet the legal requirements/criteria for an compulsory acquisition.
16. Making rules to regulate the assessment of just compensation in compulsory acquisition of land - Section 111(2) of the land Act 2012.

17. Where land is set aside for public purposes under subsection (1), the Commission shall gazette such parcel of land as public land. (Section 26(2) of the Community Land Act 2016.
18. Establishing and maintaining the names and addresses of all persons whose land has converted to public through compulsory acquisition or reversion of leasehold (Section 8(2)(b) Land Act 2012.

Natural Resource

19. Identifying ecologically sensitive areas that are within public lands and demarcate or take any other justified action on those areas and act to prevent environmental degradation and climate change (Section 11(2) of the Land Act 2012
20. Taking appropriate action to maintain public land that has endangered or endemic species of flora and fauna, critical habitats or protected areas (Section 11(1) of the Land Act 2012
21. Making rules and regulations for the sustainable conservation of land based natural resources (Section 19(1) of Land Act 2012.
22. Evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning (Section 8(1)(b) of the Land Act 2012);

Public Land Inventory

23. Identify, prepare and keep a database of public land throughout the country (Section 8(1)(a) of the Land Act 2012) ;/developing a comprehensive public land inventory and databases;
24. developing and maintaining an effective land information system for the management of public land (Section 5(2)(d) of the NLC Act 2012.
25. Identifying, preparing, and keeping a database of all public land, which shall be geo-referenced and authenticated by the statutory body responsible for survey. (Section 8(1)(a) of the Land Act 2012.
26. Establishing and maintaining the particulars of community land converted into public (Section 8(2)(c) of the Land Act 2012.
27. Create a depository of a copy of the cadastral maps relating to public land from the office or authority responsible for the survey of land. Section 17(3) of the Land Registration Act
28. Monitoring the registration of all rights and interests in land (Section 5(2)(b) of the NLC Act
29. Enhancing access to alienated and unalienated public land for development;

30. Reserving public land for the establishment of approved settlement programmes where public land is available (Section 134(5) of the Land Act 2012; Assisting the national and county governments in the administration of settlement schemes through the issuance of advisories on how the reserved settlement scheme land should be well planned and surveyed to provide adequate land for public utilities including schools, religious institutions, administrative offices and shopping centres among others (Section 134(3) of the Land Act 2012-
31. Causing unlawful occupiers of public land to vacate. Section 152 and 155(2) of the Land Act 2012, Securing public institutional land; this involves registration of rights, eviction of occupiers, regularization

Mandate 2: Recommend a National Land Policy to the National Government

a) Legal Background

This mandate is provided for under 67(2) (b) of the Constitution of Kenya, 2010. This entails reviewing, revising and updating Sessional Paper no. 3 of 2009 on National Land Policy. This is in line with Paragraph 1.5.4 of the inaugural National Land Policy that requires this living Policy Document be reviewed every 10 years to take into account current and future needs in view of social and economic dynamics in the land sector.

Achievement of this mandate involves:

1. Developing a Framework for Formulating a National Land Policy for Kenya;
2. Conducting research and consultations to generate land policy issues;
3. Developing land policy recommendations based on the generated issues;
4. Developing a draft Recommendation Policy;
5. Holding workshops to subject the recommended Policy to stakeholders' validation;
6. Integrating the stakeholders' feedback into the final recommended Policy.
7. Auditing the existing policy to identify gaps

Mandate 3: Advising the national government on a comprehensive programme for the registration of title in land throughout Kenya

a) Legal background

This mandate is provided for under Article 67(2) (c) of the Constitution of Kenya, 2010. Precisely, a comprehensive programme for registration of title in land is a systematically arranged land registration that offers information regarding the ownership of land and official recording of rights in the land by the State.

This programme covers the registration of title for the three categories of land- public, private and community. Registration of title in land is intended to help Kenyans address the pertinent issues of land tenure insecurity, reduce land disputes, stimulate land markets, and expedite land administration and transactions.

Implementation of this function involves:

1. Advising on the state of land registration Section 14(2)(d) of the Land Registration Act as per the annual report received from the Chief Registrar through the CS
2. Undertaking a baseline assessment of the status of land rights and interest as well as registration of title in land throughout the country;
3. Develop a land rights monitoring framework;
4. Monitor registration of rights to land; and
5. Develop an advisory on a comprehensive programme for registration of title in land throughout Kenya.

Mandate 4: Conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities

a) Legal background

The Constitutional mandate of National Land Commission in research is outlined by Article 67 (2) (d) which is to; conduct research related to land and the use of natural resources and make appropriate recommendations to appropriate authorities. The Commission therefore, has a significant role in spearheading the generation of scientific knowledge, through conducting themed-based research, and sharing it with relevant authorities/policymakers.

The key research areas cut across the entire land and natural resource as defined in Article 260 (a) to (e) of the Constitution of Kenya 2010.

The research also includes research on public, community and private land as stipulated in Article 61 (2) of the Constitution 2010; 'land as public, community or private'. Implementation of this function involves:

1. Promoting and facilitating research and knowledge production on land and use of natural resources using a holistic, multi-disciplinary approach;
2. Promoting dialogue on land and knowledge sharing among researchers, policymakers and other stakeholders.
3. Facilitating the publication and dissemination of the research findings.
4. Strengthening the institutional research capacity of the Commission through cooperation and collaboration.
5. Establishing and operationalize a knowledge resource center.

6. Sharing data with the public and relevant institutions in order to discharge their respective functions and powers under the Act (Section 8(1)(c) of the Land Act 2012
7. Monitoring and evaluating the effects of the research recommendations.

Mandate 5: Initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.

Legal background

Article 67(2)(e) of the Constitution, Section 5 (1) (e) of the NLC Act, 2012 and section 15 of the National Land Commission Act, 2012 requires the Commission to investigate current or historical land injustices on its own initiative or in response to a complaint, and to make recommendations for appropriate redress.

HLI cases are the grievances that occurred between 15th June 1895 to 27th August 2010. HLI investigative hearings started in December, 2017 and by the set deadline of 22/09/2021 the Commission had received a total of **3,742** HLI claims. Implementation of this function involves:

1. Development of guidelines for conducting HLI hearings
2. Developing a claims register by receiving and recording HLI claims, giving reference numbers and opening of file to the claims
3. Admitting HLI claims by analyzing them as per NLC Act 2012 Sec. 15 (3) & (4) and communicating the admissibility outcome to the claimants
4. Conducting investigations by conducting ground visits and seeking more information on the claims from relevant bodies and conducting hearings
5. Drafting determination and presenting it to the Plenary for adoption
6. Communication of the determination to the parties and implementing agencies

i. Current/ Present Land Injustices

In addition, the commission is expected to deal with current/Present land injustices. These are land right violations not debarred under Section 7 of the Limited of Action Act, (Cap 22) or any other law and does not contradict a law that was in force when the injustice began. Achievement of this function involves:

1. Development of NLC investigations and inquiry practitioners guide
2. Developing a claims register and registry
3. Admitting the general complains as per NLC Act 2012 and communicating the to the complainants
4. Conducting investigations by conducting ground visits and seeking more information on the claims from relevant bodies and conducting hearings
5. Developing investigation reports for Commission's recommendations and adoption

6. Communication of the determination to the parties and implementing agencies
7. Reviewing of Grants and Dispositions of public land to establish their propriety or legality as per Article 68 (c)(v) and Section 14 of NLC Act

Mandate 6: Encourage the application of Traditional Dispute Resolution mechanisms in land conflicts

a) Legal background

Article 252 (1) (b) enables each commission and each holder of an independent office to exercise powers necessary for conciliation, mediation and negotiation.

Article 67(2) (f) places the responsibility of encouraging the application of TDR mechanisms in land conflicts on the Commission.

Article 60 (1) (g) mandates the Commission to settle land related disputes, communities are encouraged to settle land disputes using recognized local community initiatives consistent with the Constitution.

The application of TDR mechanisms expedites the land dispute resolution process, reduces dispute resolution costs and also promotes peaceful coexistence among communities. This function involves:

1. Developing and implementing regulations, guidelines and SoPs to guide dispute resolution mechanisms for case management
2. Admitting land cases for resolution through ADR and TDR mechanisms.
3. Conducting TDR activities
4. Developing reports highlighting the cases heard and the determinations made
5. Presenting settlement agreements to the Plenary/ court for adoption.

Mandate 7: To assess tax on land and premiums on immovable property in any area designated by law

a) Legal background:

Article 67(2) (g) of the Constitution of Kenya as well as Section 5 (1) (g) of NLC Act 2012 mandates the Commission to assess tax on land and premiums on immovable property in designated areas.

This is aimed at ensuring fair and equitable taxation on land and property, contributing to revenue generation for government services and promoting efficient land use.

The mandate entails the assessment of land rent for government-leased lands, the assessment of Stamp Duty, and the assessment of land rates, including the creation and maintenance of a valuation roll. The function involves:

1. Receiving the records of the payments, relating to annual rent reserved under any lease or license, made from the respective government - Section 28 of the Land Act 2012
2. Review of land records
3. Review of previous land transactions & valuation reports
4. Creation of land records inventory
5. Enactment of laws: need for specific legislation that outlines the procedures and guidelines for the Commission to execute this function effectively.
6. Review of various Acts- Land Act, Rating Act, Valuation for Rating Act, Stamp Duty Act
7. Undertake baseline survey of properties within a county and prepare a valuation roll for each county
8. Carry out valuation of land to advise on amount of rents, stand premiums and royalties

Mandate 8: Monitor and have oversight responsibilities over land use planning throughout the country

Land use planning is defined as ‘the process of designating, regulating, evaluating, zoning and organizing the present and future use and development of land in all its geographical areas and its resources to secure the physical, economic and social efficiency, health and well-being of urban and rural communities’, (PLUPA, sec.2).

Article 66 gives power to the state to regulate use of any land in the interest of land use planning among other public interests. The powers are delegated to the planning authorities; that is the cabinet secretary in respect to national government planning functions and county government executive committee member in respect to county government planning functions.

The National Land Commission’s constitutional mandate as stipulated above is on monitoring and oversight function. Monitoring is tracking the land use planning activities to ensure that they are on course, compliant to the constitution, legal and policy frameworks and that they meet the set objectives.

Oversight on the other hand is to hold the planning authorities accountable and may include reporting to other relevant agencies for enforcement in case of non-compliance with recommendations issued during monitoring.

a) Legal background

Monitoring and oversight mandate is anchored in the Constitution of Kenya, Article 67(2) (h) and further expounded in the enabling statues namely the National Land Commission Act 2012, section 5 (1) (h), and Physical and Land Use Planning Act, 2019 section 9. This function involves:

1. Formulating monitoring framework and oversight parameters relating to physical, and land use planning.
2. Monitoring and overseeing land use planning throughout the country

3. Preparing reports on the status of land use planning and forward to the President and Parliament as per Article 254 of the Constitution of Kenya
4. Publishing and publicizing the national land use report according to Article 35 (3)
5. Developing tools to monitor and oversee the implementation of National Land Use Policy and National Spatial Plan
6. Monitor and oversee the implementation of National Land Use Policy and National Spatial Plan
7. Preparation of guidelines for land use management and development plans by public agencies holding public lands
8. Approve plans for the development, management and use of the reserved public land vested in the management body (section 17 of Land Act, 2012).
9. Requesting the county governments to submit to the Commission records of development plans lodged by registered community (Section 19 (5) of the Community Land Act 2016
10. Liaise with and oversee other specialized agencies responsible for development planning in transport infrastructure works, energy and oil, mining and other natural resources



REPUBLIC OF KENYA

NATIONAL LAND COMMISSION

**NATIONAL LAND COMMISSION REPORT TO THE
COSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE**

BY

MR GERSHOM OTACHI

CHAIRMAN

19TH – 21ST APRIL 2024

Hon. Chairperson and Committee Members, I am honored to appear before the Constitutional Implementation Oversight Committee of the National Assembly. I wish to thank you and your members for inviting the National Land Commission (NLC) to respond to matters raised by the Committee.

Hon. Chairperson, vide a letter *Ref. NA/DAA&GPC/CIOC/2024/003* dated 29th February 2024 from the Clerk of the National Assembly, the NLC was invited to deliberate with the Committee on the issues listed below;

1) The Broad Mandate and Functions of NLC

Response: Hon Chair and Committee members, as part of the land reforms and in recognition of the importance of public land management, the constitution of Kenya 2010 established the National Land Commission (NLC) under articles 67 and 248 of the Constitution of Kenya 2010. It was formed to spearhead the land reform agenda in Kenya as intended in the National Land Policy 2009. The Commission is operationalized through Acts of Parliament that give effect to these articles namely: National Land Commission Act, 2012; the Land Act, 2012, the Land Registration Act, 2012 and the Land (Amendment) Act of 2016. The role of the Commission is to facilitate sustainable land use in Kenya through a holistic land policy, efficient land management practices, equitable access to land, comprehensive land registration and applying appropriate land dispute handling mechanisms among others.

Article 67 (2) of the Constitution and related statutes outline the mandate and functions of the Commission. The Commission plays a strategic role in implementation of land reforms as provided for in the constitution, and specifically to carry out the following functions:

- i. Manage public land on behalf of the national and county governments;
- ii. Recommend a national land policy to the national government;
- iii. Advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
- iv. Conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- v. Initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- vi. Encourage the application of traditional dispute resolution mechanisms in land conflicts;
- vii. Assess tax on land and premiums on immovable property in any area designated by law; and
- viii. Monitor and have oversight responsibilities over land use planning throughout the country.

Annexure 1, outlines the details relating to implementation of each of the eight (8) functions as operationalized through the various legal statutes.

2) Status of Implementation of the Constitution as per the Commission's Mandate and Impediments to the process if any.

Response: Hon Chair and Committee members, the National Land Commission was established under Articles 67 and 248 of the Constitution of Kenya 2010 to spearhead land reform agenda as intended in the National Land Policy, 2009. Its mandate and functions are stipulated in the CoK, 2010 and the enabling statutes which I will elaborate later in my presentation. Allow me at this juncture, to give highlights on the status of implementation of the constitutional mandate of the National Land Commission and the impediments to implementation process.

i. Manage public land on behalf of the national and county governments;

a) Decentralized Land Governance in the Counties

The Commission has decentralized its services by establishing offices in the 47 counties. These decentralized units provide services to members of the public within their counties by initiating various processes and submitting them for processing and finalization by the Commission. These include identifying public land and submitting applications for allocations of land; applications for processing extension/renewal of leases; inventorising public land parcels in community settlements and private lands; reporting on the Status of Land Use Planning within the counties, receiving, handling and forwarding land disputes for resolution where necessary, among others.

b) Compulsory Acquisition of Land and Compensation of PAPs

Since its inception, the Commission has facilitated the compulsory acquisition of land for over 150 flagship public projects in various sectors like transport, water and sanitation, energy, education and security as spelt out in Vision 2030. The projects include: Kenol – Sagana – Marua Highway Improvement Project dualling Kenol-Sagana-Marua (A2) Road- Kirinyaga & Nyeri Counties, Special Economic Zone- Dongo Kundu Project, Nairobi Expressway Road Project, SGR Phase 1 and 2A, Lamu Port Southern Sudan Transport Corridor (Lapsset), Thwake Dam Multi-Purpose Project in Kitui and Makueni Counties, Karimenu Dam Project-Kiambu County and Magongo, Oil Refinery Roads-Mombasa County amongst others.

In addition, the Commission has acquired land for wayleaves and public right of way.

In regard to land compensation, the Commission has over time disbursed Ksh.90.8 Billion to PAPs whose land was compulsorily acquired for the projects.

The Commission also undertook final surveys for vesting of parcels of land compulsorily acquired for some projects including Upper Tana Bridge, Kimugu Water and a section of Standard Gauge Railway (SGR) Projects. Others include Thwake Dam, Mwache Dam, Lower Nzoia Irrigation Project, SGR Phase II, Kayafungu Group Ranch and Mumbaka Forest Boundary.

c) Enhancing Access to Alienated and Unalienated Public Land for development

The Commission continues to receive and process requests for allocation of public land recommended by various Counties. Some of the requests received and processed include: manufacturing sector-100 acres of land to the Export Processing Zone Authority; the energy sector-1,032 hectares allocated to Kenwind Limited for the generation of wind power in Lamu County and under the infrastructure sector -28,000 hectares for LAPSET Development Authority for Lamu Port development among others. In addition, the commission has facilitated allocation of 21 plots to investors in Machakos County, 100 acres allocation to KEMRI.

d) Formalization and Regularization of Land Allocations

Further, the Commission has undertaken formalization of urban land allocation, and settlements such as Narok township, Samburu (Maralal township) Isiolo (Bulapesa), Nyandarua (Collonial Villages), Kilifi (Mwatundo & Ukombozi informal settlement schemes) Laikipia (Rumuruti), Marsabit, Nyeri, Meru (under NHC) which were previously done by the defunct Local Authorities resulting to over 30,000 letters of allotment. We also have other Regularization requests from the Counties of Makueni (Nunguni & Kikima township), Isiolo Township (Kulamawe, Kambi Gabra, Kiwanjani, Tuluroba and Kambi Bule), Laikipia which are ongoing.

Regularization was done in cases where urban land was developed without planning, survey or ownership documents. This is aimed at securing tenure in various urban areas.

e) Verification of letters of Allotment and Titles Emanating from Public Land.

The Commission has continued with verification exercise to confirm whether due process was followed, authenticity of the signatures as well as ground status verification among other requirements.

In addition, the Commission has developed guidelines for administration and management of institutional public land which include: Guidelines on Renewal of Leases, Guidelines on Acquisition of land by National Agricultural and Rural Inclusive Growth Project (NARIGP), Guidelines on Management of Land held by Public Institutions. Further, the Commission has continued to reserve public land for the establishment of approved settlement programmes where public land is available; and recovered parcels of public land.

f) Land Development Control

Land development control ensures that development complies with approved spatial development plans, policy guidelines, regulations and development conditions stipulated in land ownership documents. In this regard, the Commission approved and monitored the development of public land through extension /renewal of leases, change /extension of user, subdivisions and development plan approvals. It has continued to process and recommend for approval renewals/extensions of leases, subdivisions/amalgamations schemes, change/extensions of user and building plans.

g) *Review of Grants and Dispositions of Public Land.*

This is aimed at establishing the legality or propriety of such grants and dispositions. The Commission carried out review of grants and dispositions of public land in various counties including Nairobi, Mombasa, Kisumu, Kiambu, Taita Taveta, Kakamega, Kilifi, Nakuru, Narok, Lamu, Kisii, Baringo, Makueni, Nakuru, Lamu, Uasin Gishu, Machakos, Kwale, Embu, Kirinyaga, Laikipia, Mandera, Garissa, Marsabit, and Embu. The process of review of grants and dispositions of public land resulted in successful recovery of illegally and irregularly allocated public land. This had a timeline of five (5) years which have lapsed pending extension.

h) *School Titling Programme*

To protect schools against illegal land grabs, the Commission in conjunction with the other agencies in the Shule Yangu Alliance Campaign prepared and dispatched 3,020 transfers of school land to relevant land registries for registration and issuance of titles. The Commission continues to document schools and other public institutions by preparing requisite documents.

i) *Development of Kenya's Natural Resource Atlas and Inventory*

The Commission has inventoried natural resources in Kenya by developing and launching the Kenya's Natural Atlas and Geoportal which serves as an information hub to integrate a multiplicity of actors/agencies' data on land-based resources. The atlas shows how the entire natural capital is distributed and interconnected as well as the changing patterns within the land/seascape towards enhancing and informing sustainable socio-economic development in the country.

In addition, the Commission has developed guidelines, regulations and frameworks for sustainable management of natural resources; inventoried natural resources by mapping ecologically-sensitive areas (ESAs); and continued to issue advisories to sustainably manage natural resources and to manage and resolve conflicts related to land and natural resources.

j) *Public Land Information Management System*

The Commission is expected to develop an efficient public land information system (PLIS) and in this regard, it developed the NLIMS standards and guidelines and also established a geographical information systems (GIS) laboratory. After the Land Law amendments, the role of development of NLIMS was given to the Cabinet Secretary in-charge of Lands. This has been ongoing under the Ardhi Sasa System.

However, the Commission has a significant role towards creation of a comprehensive digital repository of all public land in Kenya by identifying, preparing and keeping a database of all public land; as per the Land Act, Section 8.

In February 2018, the CEO, NLC, wrote to the Head of the Public Service requesting for information on public land held by Ministries, Department and Agencies. The Head of the Public Service then, Dr. Kinyua, subsequently wrote to all Ministries passing on the request. The Commission has been receiving responses and datasets from various institutions. So far, the received responses are from the following institutions:

Table 1: Public land data from Ministries, Departments and Agencies

	Ministry/Department/Agency	Data Description
1	Kenya Wildlife Service	Parks boundary data and details for the whole country
2	Kenya Forest Service	Forest boundary data and details for the whole country
3	Kenya Railways Corporation	Old railway line and stations Phase 1 (Mombasa-Nairobi) SGR line and stations
4	Kenya Roads Board	Major roads and classes
5	Lake Basin Development Authority	26 parcels
6	Teachers Service Commission	5 parcels
7	Public Service Commission	1 parcel
8	Communications Authority of Kenya	6 parcels
9	Kaimosi Friends University College	2 parcels
10	Kenya Broadcasting Corporation	36 parcels
11	Kenya Institute of Curriculum Development	1 parcel
12	Kenya National Trading Corporation	12 parcels
13	National Council for Persons with Disabilities	1 parcel
14	Numerical Machining Complex Limited	3 parcels
15	State Department of Immigration, Border Control and Registration of Persons	5 parcels
16	State Department for Labour	17 parcels
17	Kenya National Assurance Company Limited	1 parcel
18	KenGen	61 parcel

	Ministry/Department/Agency	Data Description
19	Moi Teaching and Referral Hospital	4 parcels
20	National Hospital Insurance Fund	4 parcels
21	Kerio Valley Development Authority	35 parcels
22	Nyayo Tea Zones Development Corporation	9 parcels
23	University of Eldoret	3 parcels
24	KenGen	61 parcels
25	National Social Security Fund	20 parcels
26	East African Portland Cement	26 parcels
27	Agricultural Finance Corporation	54 parcels
28	Kenya Utalii College	5 parcels
29	Kenya Literature Bureau	2 parcels
30	Machakos University	2 parcels
31	Kenya Institute of Mass Communication	4 parcels
32	Postal Corporation of Kenya	150 parcels
33	Kenya Reinsurance Corporation Ltd	10 parcels
34	Ethics and Anti-Corruption Commission	1 parcel
35	Agriculture And Food Authority	25 parcels
36	National Oil Corporation	67 parcels
37	Capital Markets Authority	0 parcels
38	Witness Protection Agency	0 parcels
39	Policyholders Compensation Fund	0 parcels
40	Kenya Trade Network Agency	0 parcels
41	Competition Authority of Kenya	0 parcels
42	Kenya Medical Laboratory Technicians and Technologists Board	0 parcels

Most ministries, departments and agencies are yet to furnish the Commission with information on public land in their possession.

The Commission is focusing on revamping the development of the Public Land Inventory. The project is expected to yield significant outcomes, including: a comprehensive digital repository of all public land in Kenya, enhancing transparency and accessibility.

This will employ a multi-faceted approach involving:

- Data collection from public institutions and field surveys to identify, prepare and keep a database of all public land; as per the Land Act Section 8.
- Development of a dynamic public land portal for data access and continuous update with varying access levels for government institutions and the general public.

ii. Recommend a National Land Policy to the national government;

The Commission developed a framework for review and formulating a National Land Policy for Kenya, and conducted research and consultations to generate land policy issues and recommendations. The Commission has since finalized and handed over a Recommended National Land Policy in line with Article 67 (2) (b) of the Constitution.

a) Implementation of the 2009 Land Policy

The Commission has implemented various recommendations regarding land management and administration under land policy principles.

These include: equitable access to land; security of land rights; sustainable and productive management of land resources; transparent and cost-effective administration of land; sound conservation and protection of ecologically sensitive areas; and elimination of gender discrimination in law, customs and practices related to land and property in land; among others.

The Commission further developed a framework for formulating a National Land Policy for Kenya, conducted research and consultations to generate land policy issues. The Commission has since finalized and handed over a recommendation on review of the National Land Policy in line with Article 67(2)(b) of the Constitution.

b) Advisories Issued by National Land Commission

The Commission issued several advisory opinions to MDAs, Parliament, County Governments, foreign governments and investors to ensure the enhancement of better land governance in line with the principles of national land policy. Some of the advisories include:

- Advisories related to sustainable management of natural resources and Climate Change Mitigation issued to UNFCCC, Kenya Alliance of Resident Associations (KARA), Kenya Forest Service (KFS) among others.
- Land use planning advisories issued to Konza Technopolis Development Authority (KOTDA), Mombasa County Government PDPs (Nyali Fish Market, Mombasa City Bus Terminus, Liwatoni Fisheries and Mzima County Estate Redevelopment Plan), Plan for the Settlement of Squatters in Tinderet Sub-county, Nandi County, among others.
- Advisories on valuation for properties issued to Export Processing Zones Authority (EPZA), Kenya Electricity Transmission Company (KETRACO), Kenya Electricity Generating Company (KenGen), Attorney General on 1,000 Ha Parcel of Land in Langas Estate, Eldoret, Uasin Gishu County and others

iii. Advise the national government on a comprehensive program for the registration of title in land throughout Kenya;

a) Guidelines to monitor registration of land rights

The Commission has developed two guidelines: (i) Guidelines on Large Scale Land Acquisition and (ii) Guide on Public Land Acquisition within Community Land both meant to monitor registration of land rights.

b) Advisory on comprehensive programme for registration of titles in land (2016)

The Commission developed the above advisory which stipulates processes and procedures involved in the registration process of titles in land.

c) Land rights monitoring tool for Kenya

The Commission has developed a monitoring tool to be used to indicate the status of land rights in Kenya.

d) Monitoring the Transition of group ranches to Community Land in Kenya

Pursuant to Article 63 and Community Land Act 2015, the Commission in collaboration with NAMATI undertook a case study of Laikipia, Kajiado, West Pokot and Samburu Counties (2023). The purpose of this study was to monitor the transitioning of group ranches to community land in Kenya.

iv. Conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;

a. Research on Land and use of Natural Resources

The Commission continues to guide the country on policy matters through research on land and the use of natural resources towards improving land administration and management in Kenya. Consequently, the Commission has conducted research and disseminated its findings in the following thematic areas: Land Governance and Land Management; Land use planning and land use conflict resolution; Land Rights and Security of Tenure; Emerging Global and Strategic Land Issues; Historical Land Injustices and Legal Research; Sustainable Conservation of Land-Based Natural Resources; and Valuation and Taxation.

These researches include: Land Monitoring for Kenya, Tenancy-at-will Land Tenure System: Its Sustainability and Place in Kenya's Legal Framework (Case study of Mombasa and Lamu Counties), Monitoring the transition of Group Ranches to Community Land in Kenya, Rural Women, Indigenous and Contemporary Knowledge Response to Climate Change & Food Security, effects of Land fragmentation in Land use and Food security in 13 counties: Case study of Nyamira ,Laikipia ,Nandi ,Trans Nzoia ,Taita Taveta ,Kiambu ,Nakuru ,Tana River ,Makueni ,Isiolo ,Kisumu ,Vihiga and Kajiado among others.

b. Land Conferences, workshops and seminars

The Commission has conducted Research Seminars, workshops and conferences as platforms to disseminate research findings and discussing topical issues in the land sector.

v. Initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;

a) Historical Land Injustice (HLI)

HLI cases are the grievances that occurred between 15th June 1895 to 27th August 2010. HLI investigative hearings started in December, 2017 and by the set deadline of 22/09/2021 the Commission had received a total of **3,742** HLI claims.

Overall, the Commission's performance in relation to redressing HLI is summarized by below;

S/No.	HLI Particulars	Total During FY2022/2023	Cumulative Total
1.	No. of HLI Claims received as at the Claims receiving Deadline of 21 st Sept 2021 after Data Cleaning	-	3742
2.	No. of HLI Claims Assessed for Admissibility	3614	3742
3.	No. of claims Admitted	1038	1164
4.	No. of Status Conferences/Meetings	139	265
5.	No. of Investigative Hearings	116	242
6.	No. of HLI Determinations	5	130

The Commission has so far assessed all the 3,742 claims in which it admitted 1164 (31%) cases that met admissibility criteria and has so far resolved about 200 claims. It continues to deal with the pending claims.

b) Current/ Present Land Injustices

The Commission has developed an investigations and inquiry practitioners guide and continues to admit general complaints, conduct investigations and make appropriate recommendations.

vi. Encourage the Application of Traditional Dispute Resolution Mechanisms in Land Conflicts;

a) Alternative Dispute Resolution (ADR) and Traditional Dispute Resolution (TDR)

The Commission has been able to handle land disputes through the ADR/TDR mechanism. The resolution of these land disputes has promoted national cohesion and peaceful coexistence between communities.

This has been done through: the development of guidelines and SoPs to guide dispute resolution mechanisms; attending investigative hearings; developing reports highlighting the cases heard and making appropriate recommendations/determinations. Examples of disputes handled include; Kwa-Mbuzi between local communities and Kenya Defense Forces (KDF), KenGen and Kivaa community in Machakos among others. So far the Commission has handled over 6,000 land disputes using ADR and TDR

Civil Litigations and Investigations

The Commission has participated in resolving numerous court cases touching on land at the Supreme Court, Court of Appeal, High Court (Environment and Land Court) and the Magistrates Court. It has also played an important role in carrying out investigations & forensic services in fraudulent public land transactions. It liaised closely with NEMA and NCA for the protection of riparian land where it served notices for the withdrawal of construction licenses to people putting up structures on riparian land.

The Commission currently has 3,798 active cases.

vii. Assess tax on land and premiums on immovable property in any area designated by law;

a) Revenue generation from land and land-based resources

Through the assessment of tax on land and premium on immovable property in any area designated by law, the Commission has generated revenue from the land and land-based resources where it regularly reviews and prescribes rents, royalties, and other payments that should be paid by lessees and licensees of the public land.

The Directorate of Valuation & Taxation undertakes valuation for determination of stand premium and annual rents payable for public properties in regard to lease renewals, lease extensions, regularization, alienation and subdivision

b) Review of existing legislative frameworks on assessment of tax

Commission has been involved in the ongoing processes of review of existing legal frameworks and regulations governing assessment of tax. These includes the Rating Act CAP 267, Valuation for Rating Act CAP 266, Stamp Duty Act CAP 480.

viii. Monitor and have oversight responsibilities over land use planning throughout the country

a) Mainstreaming of Land Use Planning through Monitoring and Oversight

The Commission has developed monitoring and oversight frameworks (Guidelines and Procedures Tools) for monitoring and overseeing preparation, approval and implementation of County Spatial Plans (CSPs) and Urban Land Use Plans in all the 47 counties. These are tools of engagement between the Commission as a monitoring and oversight agency and County governments as planning authorities. The monitoring involved tracking planning progress, reviewing and commenting on draft land use development plans, preparing monitoring reports and issuing advisories to the county government for improvement.

Commission reviewed and validated 15 county spatial plans for approval namely; Lamu, Makueni, Baringo, Kericho, Bomet, Kilifi, Kwale, Narok, Nakuru, Kajiado, Siaya, Trans Nzoia, Nairobi, Mombasa and Bungoma County Spatial Plans. The Commission is in the process of reviewing and making recommendations on the other CSPs that are at various levels of preparation.

In addition, the Commission sensitized all the 47 counties on preparation and implementation of County Spatial Plans through organized trainings and workshops that brought on board members of County Assembly (MCAs), County Executive Committee Members (CECMs) and County technical staff charged with the responsibilities of land use planning. This has resulted in significant increase in mainstreaming and uptake of land use planning functions by the county governments since year 2020.

b) Promotion of Good Land Governance through Implementation of Policies & Plans

The Commission also developed two (2) frameworks or toolkits for monitoring implementation of National Land Use Policy (2017) and the National Spatial Plan (2015-2045). Through monitoring and overseeing land use planning throughout the country the planning authorities (county and national governments) are sensitized to entrench provisions of the policy and the plan in the national, county and local levels land use planning. All Ministries, Departments and State Agencies including the 47 County Governments have been sensitized on this matter and follow up is ongoing.

c) Reporting Progress and Status of National Land Use Planning

The Commission is charged with the responsibility of reporting on status of National Land Use Planning. Towards this a Concept Paper and Budget was developed to facilitate undertaking a Baseline Surveys at the national, inter-county, county and urban levels and produce a Baseline Report on Status of Land Use Planning in the country. Implementation is still pending awaiting funding from the Treasury.

The Commission, however has continuously and on annual basis gathered and collated land use planning progress reports from all the 47 county governments and prepared a Status Report in spite of the limitation of lack of baseline information and verifications.

d) Guidelines for Preparing Land Use & Management Plans for Land Held by Public Agencies

Public agencies holding land are expected to use, manage and develop their land pursuant to an approved plan and development guidelines. To actualize this, the Commission is developing guidelines (currently at draft stage) for preparing the requisite plans. Upon completion and approval, the guidelines will be used by the various public agencies to prepare the management plans and will be the basis of monitoring use of such public lands.

1. IMPEDIMENTS / CHALLENGES

Hon Chair, despite the above achievements, the Commission experienced the following impediments:

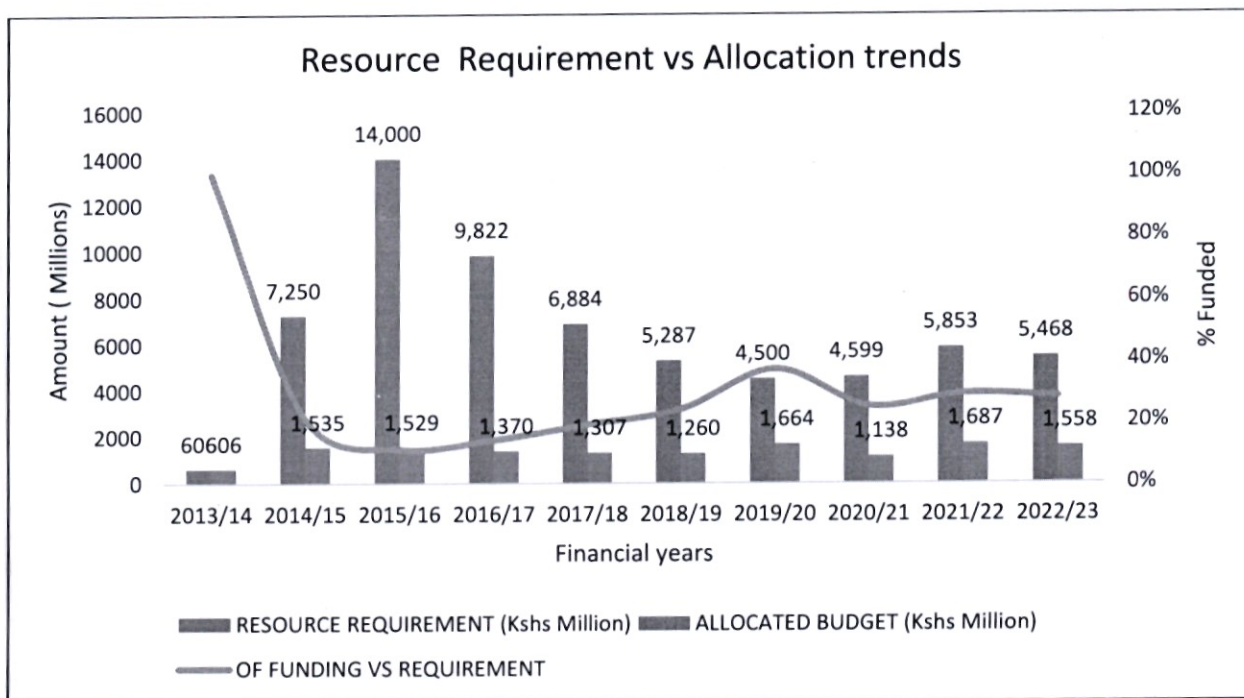
i. Financial and Budgetary Constraints

The Commission continues to experience inadequate funding hence affecting its activities majorly on the delivery of its operational and administrative mandates. On average, the Commission has been allocated a mere 30 per cent of its annual budget requirement.

The table below illustrates the Commission's budgetary requirements vis a vis the allocation between FYs 2013/2014 to 2022/23.

	FINANCIAL YEAR	RESOURCE REQUIREMENT (Kshs Million)	ALLOCATED BUDGET (Kshs Million)	% OF FUNDING VS REQUIREMENT
1	2013/14	606	606	100%
2	2014/15	7,250	1,535	21%
3	2015/16	14,000	1,529	11%
4	2016/17	9,822	1,370	14%
5	2017/18	6,884	1,307	19%
6	2018/19	5,287	1,260	24%
7	2019/20	4,500	1,664	37%
8	2020/21	4,599	1,138	25%
9	2021/22	5,853	1,687	29%
10	2022/23	5,468	1,558	28%
<i>Average funding over the years vis a vis resource requirement is 31%</i>				

A descriptive representation of the above table is as follows:



ii. Policy/ Legislative Challenges

Review of the National Land Policy, 2009, the Rating Act CAP 267, Valuation for Rating Act CAP 266, Stamp Duty Act CAP 480, NLC Amendment Bills have taken too long to be reviewed and aligned with the Constitution of Kenya 2010. As such, these have impeded the execution of the Commission’s service delivery to the citizens of Kenya. Further, there has been several uncoordinated land laws amendment that have served to cause more confusion and overlaps in the administration of land in Kenya. In addition, these rapid legislative changes cause panic and uncertainties in land management and administration; which jeopardises public confidence and investment on land and land-based resources.

iii. Vesting land to the Government after Compulsory Acquisition

Land compulsorily acquired by the government has not been vested since independence. This has resulted in the illegal occupation and use of such land for private purposes, charges on public land, and the risk of double acquisition during project expansion. This challenge has been compounded by a lack of budgeting for vesting by the acquiring entities.

iv. Delayed Remittance of Compulsory Acquisition Compensation Funds

The delayed remittance of funds by the acquiring bodies leads to delayed payment/compensation to project affected persons, which results in increased cost of land acquisition i.e. accrued interests, litigation costs and contractors’ claims relating to idle time.

For example, the acquiring agencies have not remitted compensation funds to the Commission as below:

	Acquiring entity	Amount not forwarded to NLC (Ksh) by the acquiring agencies
1	KENHA	37 Billion
2	Kenya Railways	9 Billion

v. Litigation: Costly court cases and liabilities

There has been an increase in land conflict and a corresponding increase in the number of land cases in the Land and Environment Courts across the country. The high number of court cases implies that Commission incurs high costs in these cases.

In addition, there have been punitive directions from the courts including garnishee orders on Commission's accounts and warrant of arrests on key officers which greatly affects the performance of the Commission.

vi. Failure to comply to the HLI recommendations made by the Commission

The Commission is only mandated to make appropriate recommendations on HLI claims which can a times be ignored by the involved parties. This greatly interferes with the execution of this mandate.

vii. Lapse of Time Frame for Review of Grants and Dispositions

The Commission was to undertake a review of grants and dispositions within five years but the given timespan lapsed before the Commission could address all the claims received conclusively. The Commission continues to receive more complaints relating to illegally and irregularly acquired land but due to a lack of legal framework, requests received cannot be addressed.

viii. Inadequate Technical Manpower

Understaffing has adversely affected the Commission's productivity, implementation of the planned activities and, eventually, the achievement of the set goals and objectives. Presently, the Commission has 606 staff members against an approved establishment of 1,236.

ix. Impediment in the Revenue Collection Role

Section 28(1) of the Land Act 2012 mandates the Commission to collect revenue from rents, royalties and other payment under lease or licences payable to respective governments agencies and the records of payments made to be submitted to the Commission by these agencies.

However, it has become difficult to fulfil this role due to the absence of frameworks to implement assessment of tax on land and premiums on immovable property and to collect revenue from land leases and allocations.

CONCLUSION AND WAY FORWARD

Hon Chair, I would like to emphasize that the Commission will continue to work with other actors in the land sector to effectively administer and manage public land on behalf of the two levels of Government and also execute other stipulated mandates and functions on land. Among other things, the Commission seeks to:

- i. Strengthen the use of technology in accessing the information on public land. The Commission jointly with the Ministry of Lands will continue to promote the use of the Ardhisasa platform to allow the public access to land information and the use of the 'Haki kwa Ground' system for land conflict resolutions.
- ii. Address the issue of vesting. So far, the Commission is engaging the acquiring entities with a view to achieve budget provision for this purpose.
- iii. Promote revenue generation on land by reviewing existing property tax legislative framework to enable efficient revenue collection and implementation of policies and guidelines on valuation services for the assessment of property taxes.
- iv. Improving socio-economic development and peace through the provision of effective land dispute resolution and conflict management through the use of AJS, ADR and TDR mechanisms. The Commission will also implement HLI legal framework to provide redress for Historical Land Injustices.
- v. Continue to sensitize the acquiring bodies on the need to remit funds promptly in compliance with Article 40 (3) (b) of CoK and Section 5 (1) (b) of the Land Value Amendment Act, 2019.
- vi. Seek the support of the Committee on the ongoing Amendment of Section 14 of the NLC Act 2012 on review of grants and dispositions. This will allow the Commission to continue with the review of grants and dispositions of public land in respect to complaints that were pending before the mandate under that section expired and receive new complaints without limitation of time and provide redress.
- vii. Seek the support of the Committee on the ongoing Amendment of Section 15 of the NLC Act 2012 on Historical land injustices. This will allow the Commission to admit, register and process historical land injustices claims continuously to enable handling disputes that were time-barred and execution of the mandate without time limitations

Honourable Chair, I submit.

GERSHOM OTACHI BW'OMANWA
CHAIRMAN.

Annexure 1:

Constitutional and Legal Mandates of the Commission

Hon. Chair and Committee members, the Constitution gave the Commission eight broad and fundamental constitutional mandates outlined under Article 67 (2) (a - h) and at the same time specifically created a leeway under Article 67 (3), for parliament to bestow other functions through national legislation. This is re-emphasized under Article 252 (2) (d) that allow commissions and independent offices to perform any functions and exercise any powers prescribed by a legislation.

It is imperative to note that contrary to some misinterpretations, the eight constitutional mandates relate to not only matters on public land but also land in general. Land has been defined in the Constitution under Article 260 as:

- a) the surface of the earth and the subsurface rock;
- b) any body of water on or under the surface;
- c) marine waters in the territorial sea and exclusive economic zone;
- d) natural resources completely contained on or under the surface; and
- e) The air space above the surface.

The above underscores the broad mandate of the Commission. Hon. Chair, allow me to now discuss each of the mandates and what the implementation entails.

Mandate 1: To manage public land on behalf of the National and County Governments

a) Legal Background

This mandate is provided for under Article 62(2) & 67(2) (a) of the Constitution of Kenya, 2010. Section 5(1) (a) of the NLC Act, 2012 and Section 8 of the Land Act, 2012, amplifies the mandate. The mandate involves both land administration and management

Land Administration and Management Land Administration involves transactions on public land, which includes conversion (allocations, renewals/reallocations, acquisition, leasing and subleasing, transfers, valuation, reservations, final survey and vesting). The function also involves maintenance and updating of the register of all public land held by National and County governments. Land management on the other hand involves monitoring and compliance of terms and conditions on use of land, development of management plans and monitoring implementation of management plans.

Specifically, implementation of this mandate includes;

Land Allocation

1. Prescribing guidelines for the management of public land by all public agencies, statutory bodies and state corporations in actual occupation or use of public land (Section 10(1) of the Land Act 2012).

2. Alienating public land on behalf of, and with the consent of the National and County Governments (Section 5(2) (a) of the NLC Act 2012 and section 12 of the Land Act 2012). This involves allocating public land as well as regularizing urban land allocations.
3. Conversion of Public land to community land by allocation in accordance with the Land Act, 2012 -Section (24(1) of the Community Land Act, 2016).
4. Granting licenses for temporary use of unalienated public land for a period not exceeding five years' subject to planning principles as the Commission may prescribe (Section 20(1) of Land Act 2012).
5. Ensuring that any public land that has been identified for allocation does not fall within categories identified under Section 12(2) of the Land Act 2012.
6. Establishing and maintaining a register containing the particulars of all public land converted to private land by allocation. (Section 8(2)(a) Land Act 2012).
7. Vesting the care, control and management of any reserved land with a statutory body, public corporation or a public agency (Section 16(1)(a) of the Land Act 2012)
8. Reserving public land upon request by the national or county government (Section 15 of the Land Act 2012).
9. Ensuring that public land under the management of the designated state agencies is sustainably managed for the intended purposes (Section 5(2) (c) of the NLC Act 2012). The Commission has developed guidelines on management of land held by public agencies.
10. Enhancing access to alienated and unalienated public land for development.

Compulsory Acquisition

11. Compulsory acquisition in accordance to Section 107(1) of the Land Act, 2012
12. Creating a right of way, known as public right of way (Section 146) of the Land Act 201).
13. Holding inquiries, awarding and promptly paying just compensation before taking possession of the compulsorily-acquired land Part VIII of the Land Act 2012
14. Prescribing a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land ((Section 12(11) of the land Act 2012).
15. Rejecting/accepting an acquisition request if the Commission determines that a request from an acquiring authority does or does not meet the legal requirements/criteria for an compulsory acquisition.
16. Making rules to regulate the assessment of just compensation in compulsory acquisition of land - Section 111(2) of the Land Act 2012.
17. Where land is set aside for public purposes under subsection (1), the Commission shall gazette such parcel of land as public land. (Section 26(2) of the Community Land Act 2016).
18. Establishing and maintaining the names and addresses of all persons whose land has converted to public through compulsory acquisition or reversion of leasehold (Section 8(2)(b) Land Act 2012).

Natural Resource Management

19. Identifying ecologically sensitive areas that are within public lands and demarcate or take any other justified action on those areas and act to prevent environmental degradation and climate change (Section 11(2) of the Land Act 2012).
20. Taking appropriate action to maintain public land that has endangered or endemic species of flora and fauna, critical habitats or protected areas (Section 11(1) of the Land Act 2012).
21. Making rules and regulations for the sustainable conservation of land based natural resources (Section 19(1) of Land Act 2012).
22. Evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning (Section 8(1)(b) of the Land Act 2012).

Public Land Inventory

23. Identify, prepare and keep a database of public land throughout the country (Section 8(1)(a) of the Land Act 2012) ;/developing a comprehensive public land inventory and databases;
24. developing and maintaining an effective land information system for the management of public land (Section 5(2)(d) of the NLC Act 2012.
25. Identifying, preparing, and keeping a database of all public land, which shall be geo-referenced and authenticated by the statutory body responsible for survey. (Section 8(1)(a) of the Land Act 2012.
26. Establishing and maintaining the particulars of community land converted into public (Section 8(2)(c) of the Land Act 2012.
27. Create a depository of a copy of the cadastral maps relating to public land from the office or authority responsible for the survey of land. Section 17(3) of the Land Registration Act
28. Monitoring the registration of all rights and interests in land (Section 5(2)(b) of the NLC Act
29. Reserving public land for the establishment of approved settlement programmes where public land is available (Section 134(5) of the Land Act 2012; Assisting the national and county governments in the administration of settlement schemes through the issuance of advisories on how the reserved settlement scheme land should be well planned and surveyed to provide adequate land for public utilities including schools, religious institutions, administrative offices and shopping centres among others (Section 134(3) of the Land Act 2012-
30. Causing unlawful occupiers of public land to vacate. Section 152 and 155(2) of the Land Act 2012, Securing public institutional land; this involves registration of rights, eviction of occupiers, regularization

Mandate 2: Recommend a National Land Policy to the National Government

a) Legal Background

This mandate is provided for under 67(2) (b) of the Constitution of Kenya, 2010. This entails reviewing, revising and updating Sessional Paper no. 3 of 2009 on National Land Policy. This is in line with Paragraph 1.5.4 of the inaugural National Land Policy that requires this living Policy Document be reviewed every 10 years to take into account current and future needs in view of social and economic dynamics in the land sector.

Achievement of this mandate involves:

1. Developing a Framework for Formulating a National Land Policy for Kenya;
2. Conducting research and consultations to generate land policy issues;
3. Developing land policy recommendations based on the generated issues;
4. Developing a draft Recommendation Policy;
5. Holding workshops to subject the recommended Policy to stakeholders' validation;
6. Integrating the stakeholders' feedback into the final recommended Policy; and
7. Auditing the existing policy to identify gaps

Mandate 3: Advising the national government on a comprehensive programme for the registration of title in land throughout Kenya

a) Legal background

This mandate is provided for under Article 67(2) (c) of the Constitution of Kenya, 2010. Precisely, a comprehensive programme for registration of title in land is a systematically arranged land registration that offers information regarding the ownership of land and official recording of rights in the land by the State.

This programme covers the registration of title for the three categories of land- public, private and community. Registration of title in land is intended to help Kenyans address the pertinent issues of land tenure insecurity, reduce land disputes, stimulate land markets, and expedite land administration and transactions.

Implementation of this function involves:

1. Advising on the state of land registration Section 14(2)(d) of the Land Registration Act as per the annual report received from the Chief Registrar through the CS
2. Undertaking a baseline assessment of the status of land rights and interest as well as registration of title in land throughout the country;
3. Develop a land rights monitoring framework;
4. Monitor registration of rights to land; and
5. Develop an advisory on a comprehensive programme for registration of title in land throughout Kenya.

Mandate 4: Conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities

a) Legal background

The Constitutional mandate of National Land Commission in research is outlined by Article 67 (2) (d) which is to; conduct research related to land and the use of natural resources and make appropriate recommendations to appropriate authorities. The Commission therefore, has a significant role in spearheading the generation of scientific knowledge, through conducting themed-based research, and sharing it with relevant authorities/policymakers.

The key research areas cut across the entire land and natural resource as defined in Article 260 (a) to (e) of the Constitution of Kenya 2010.

The research also includes research on public, community and private land as stipulated in Article 61 (2) of the Constitution 2010; 'land as public, community or private'. Implementation of this function involves:

1. Promoting and facilitating research and knowledge production on land and use of natural resources using a holistic, multi-disciplinary approach;
2. Promoting dialogue on land and knowledge sharing among researchers, policymakers and other stakeholders.
3. Facilitating the publication and dissemination of the research findings.
4. Strengthening the institutional research capacity of the Commission through cooperation and collaboration.
5. Establishing and operationalize a knowledge resource center.
6. Sharing data with the public and relevant institutions in order to discharge their respective functions and powers under the Act (Section 8(1)(c) of the Land Act 2012
7. Monitoring and evaluating the effects of the research recommendations.

Mandate 5: Initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.

Legal background

Article 67(2)(e) of the Constitution, Section 5 (1) (e) of the NLC Act, 2012 and section 15 of the National Land Commission Act, 2012 requires the Commission to investigate current or historical land injustices on its own initiative or in response to a complaint, and to make recommendations for appropriate redress.

HLI cases are the grievances that occurred between 15th June 1895 to 27th August 2010. HLI investigative hearings started in December, 2017 and by the set deadline of 22/09/2021 the Commission had received a total of **3,742** HLI claims. Implementation of this function involves:

1. Development of guidelines for conducting HLI hearings
2. Developing a claims register by receiving and recording HLI claims, giving reference numbers and opening of file to the claims
3. Admitting HLI claims by analyzing them as per NLC Act 2012 Sec. 15 (3) & (4) and communicating the admissibility outcome to the claimants
4. Conducting investigations by conducting ground visits and seeking more information on the claims from relevant bodies and conducting hearings
5. Drafting determination and presenting it to the Plenary for adoption
6. Communication of the determination to the parties and implementing agencies

i. Current/ Present Land Injustices

In addition, the commission is expected to deal with current/Present land injustices. These are land right violations not debarred under Section 7 of the Limited of Action Act, (Cap 22) or any other law and does not contradict a law that was in force when the injustice began. Achievement of this function involves:

1. Development of NLC investigations and inquiry practitioners guide
2. Developing a claims register and registry
3. Admitting the general complains as per NLC Act 2012 and communicating the to the complainants
4. Conducting investigations by conducting ground visits and seeking more information on the claims from relevant bodies and conducting hearings
5. Developing investigation reports for Commission's recommendations and adoption
6. Communication of the determination to the parties and implementing agencies
7. Reviewing of Grants and Dispositions of public land to establish their propriety or legality as per Article 68 (c)(v) and Section 14 of NLC Act

Mandate 6: Encourage the application of Traditional Dispute Resolution mechanisms in land conflicts

a) Legal background

Article 252 (1) (b) enables each commission and each holder of an independent office to exercise powers necessary for conciliation, mediation and negotiation.

Article 67(2) (f) places the responsibility of encouraging the application of TDR mechanisms in land conflicts on the Commission.

Article 60 (1) (g) mandates the Commission to settle land related disputes, communities are encouraged to settle land disputes using recognized local community initiatives consistent with the Constitution.

The application of TDR mechanisms expedites the land dispute resolution process, reduces dispute resolution costs and also promotes peaceful coexistence among communities. This function involves:

1. Developing and implementing regulations, guidelines and SoPs to guide dispute resolution mechanisms for case management
2. Admitting land cases for resolution through ADR and TDR mechanisms.
3. Conducting TDR activities
4. Developing reports highlighting the cases heard and the determinations made
5. Presenting settlement agreements to the Plenary/ court for adoption.

Mandate 7: To assess tax on land and premiums on immovable property in any area designated by law

a) Legal background:

Article 67(2) (g) of the Constitution of Kenya as well as Section 5 (1) (g) of NLC Act 2012 mandates the Commission to assess tax on land and premiums on immovable property in designated areas.

This is aimed at ensuring fair and equitable taxation on land and property, contributing to revenue generation for government services and promoting efficient land use.

The mandate entails the assessment of land rent for government-leased lands, the assessment of Stamp Duty, and the assessment of land rates, including the creation and maintenance of a valuation roll. The function involves:

1. Receiving the records of the payments, relating to annual rent reserved under any lease or license, made from the respective government - Section 28 of the Land Act 2012
2. Review of land records
3. Review of previous land transactions & valuation reports
4. Creation of land records inventory
5. Enactment of laws: need for specific legislation that outlines the procedures and guidelines for the Commission to execute this function effectively.
6. Review of various Acts- Land Act, Rating Act, Valuation for Rating Act, Stamp Duty Act
7. Undertake baseline survey of properties within a county and prepare a valuation roll for each county
8. Carry out valuation of land to advise on amount of rents, stand premiums and royalties

Mandate 8: Monitor and have oversight responsibilities over land use planning throughout the country

Land use planning is defined as ‘the process of designating, regulating, evaluating, zoning and organizing the present and future use and development of land in all its geographical areas and its resources to secure the physical, economic and social efficiency, health and well-being of urban and rural communities’, (PLUPA, sec.2). Article 66 gives power to the state to regulate use of any land in the interest of land use planning among other public interests. The powers are delegated to the planning authorities; that is the cabinet secretary in respect to national government planning functions and county government executive committee member in respect to county government planning functions.

NLC’s constitutional mandate as stipulated above is on monitoring and oversight function. Monitoring is tracking the land use planning activities to ensure that they are on course, compliant to the constitution, legal and policy frameworks and that they meet the set objectives.

Oversight on the other hand is to hold the planning authorities accountable and may include reporting to other relevant agencies for enforcement in case of non-compliance with recommendations issued during monitoring.

a) Legal background

Monitoring and oversight mandate is anchored in the Constitution of Kenya, Article 67(2) (h) and further expounded in the enabling statutes namely the National Land Commission Act 2012, section 5 (1) (h), and Physical and Land Use Planning Act, 2019 section 9. This function involves:

1. Formulating monitoring framework and oversight parameters relating to physical, and land use planning.
2. Monitoring and overseeing land use planning throughout the country
3. Preparing reports on the status of land use planning and forward to the President and Parliament as per Article 254 of the Constitution of Kenya
4. Publishing and publicizing the national land use report according to Article 35 (3)
5. Developing tools to monitor and oversee the implementation of National Land Use Policy and National Spatial Plan
6. Monitor and oversee the implementation of National Land Use Policy and National Spatial Plan
7. Preparation of guidelines for land use management and development plans by public agencies holding public lands
8. Approve plans for the development, management and use of the reserved public land vested in the management body (section 17 of Land Act, 2012).
9. Requesting the county governments to submit to the Commission records of development plans lodged by registered community (Section 19 (5) of the Community Land Act 2016
10. Liaise with and oversee other specialized agencies responsible for development planning in transport infrastructure works, energy and oil, mining and other natural resources



THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE: A PRESENTATION BY THE CHAIRPERSON OF THE NATIONAL GENDER AND EQUALITY COMMISSION DR. JOYCE M. MUTINDA, PHD, EBS. 9TH APRIL, 2024, 12. 01P.M-1.30P.M

Committee Room, 2nd Floor, Continental House, Parliament Buildings

Introduction

The National Gender and Equality Commission (NGEC) is a Constitutional Commission established by the National Gender and Equality Commission Act. No. 15 of 2011 pursuant to Article 59 (4) & (5) of the Constitution of Kenya. The Commission's mandate is to promote gender equality and freedom from discrimination for all people in Kenya with focus on Special Interest Groups, which include: women, children, youth, Persons with Disabilities (PWDs), older members of society, minorities and marginalized groups.

Hon. Chairperson and Members, in line with our mandate, your committee requested us to present with a detailed response to:

- A. The status of the implementation of the Constitution and impediments to the process, and
- B. The two thirds gender rule and why it was not addressed in the National Dialogue Committee (NADCO) report. I wish to share a highlight of response to the two issues. More details are available in our written submissions.

A. Status of Implementation of the Constitution and Impediments to the Process

1. Review of Laws

Hon. Chairperson and Members, since 2018, the Commission has supported the Parliament prepare not less than 140 pieces of legislation. We have submitted in excess of 229 memoranda on various bills. Some of the most recent bills we have made interventions on include; *Gold Processing Bill (National Assembly Bill No 46 Of 2023)*, *The Mining (Amendment) Bill (National Assembly Bills No 51 Of 2023)*, *The Gambling Control Bill (National Assembly Bill No 70 Of 2023)*, *The National Lottery Bill (National Assembly Bill No 69 Of 2023)*, *The National Transport And Safety Authority (Amendment) Bill (National Assembly Bills No 36 Of 2023)*, *The Primary Health Care Bill, 2023 (Senate Bills No 44 Of 2023)*, *The Memoranda On The Facilities Improvement Financing Bill, 2023 (Senate Bills No 43 Of 2023)*, *The Social Health Insurance Bill 2023*, *The Higher Education Loans Board (Amendment) Bill (National Assembly Bills No 58 Of 2022)*, *The National Government Co-Ordination (Amendment) Bill, (National Assembly Bills No 25 Of 2023)*, *The Vocational Training Bill, Senate Bill No 3 Of 2022*, and *the Public Service Commission (Amendment) Bill, (National Assembly Bill No. 6 Of 2023)*. In the last one week we submitted three memoranda on i) Care and Protection of Child Parents Bill (Senate Bill No 29 of 2023), and ii) Kenya Sign Language Bill, (National Assembly Bills No.1 Of 2024), and justification and limitations for Kenya in consideration of the ratification of the International Labor Organization Convention, Violence and Harassment 2019 (No. 190); and Domestic Workers Convention, 2011 (No. 189).

Of our total contribution in this space (legal and policy review), only 20% of our efforts is directed to the County Assemblies. This is mainly due to resource constraints. Nevertheless, today we have seen great improvement in the quality of legislative instruments coming from Parliament, and the County Assemblies of Kenya, and policy proposals from the executive arms of our national and county government.

2. Contributions to National Strategic and Constitutional Decisions.

Hon. Chairperson and Members. The Commission has over years contributed to matters of national interest, and strategic constitutional dialogues, discourse and decisions. For example, the sustained momentum on the realization of the not more than two-thirds gender principle in Parliament; the formulation of a bill towards the realization of Article 100, the national dialogue on the age of consent for sex in Kenya, constitutional moments and consequential report under the 2019 Building Bridges Initiative, and more recently the 2023 National Dialogue Committee, social and economic consequences of COVID19 drought, flooding and other disaster, huge cases of femicide in Kenya, the 2016 Socio-economic audit of the Constitution of Kenya, just to mention a few.

The Commission also contributes and intervenes on topical issues that directly affects special interest groups. For example;

- i. We issue statements and direct appeals to the National Police Service to expeditiously conduct investigations, then follow-up and watch brief on matters that proceed to court. An ongoing case for example is in Nyeri Magistrate Court where a 73 old man is alleged to have defiled a 7-year minor. Another case is in Homabay Magistrate Court where a teacher employed by the board of management raped a student.
- ii. The indecent act by pupils of Itumbe Primary School in Nyamache sub-county, Kisii County. We asked the Police and Teachers Service Commission to investigate the matter and deliver justice to the children and to the perpetrators. The commission is closely following up with relevant authorities.
<https://twitter.com/NGECKenya/status/1621159870815965185?s=20>. Feb 2023
- iii. We responded to the widespread sexual abuse on tea farms based on a documentary dubbed , *'Sex for Work: The True Cost of Our Tea'*: Here we employed the approach of public shaming of perpetrators of GBV to act as a deterrent measure. The Commission also conducts public education and awareness on GBV targeting the private and public sectors as a complementary approach.
<https://twitter.com/NGECKenya/status/1628391221147181056?s=20>, in Feb 2023.
- iv. Called out the promotion of rape culture at the Osim County Lodge by Hon David Ole Sankok, a member of the Eastern Africa Legislative Assembly. Again this is geared towards creating a culture of frowning upon GBV.
<https://x.com/NGECKenya/status/1668641376332836864?s=20>; June 2023
- v. Responded to *'Period shaming and sexual harassment at work places*, on (10th July 2023), by offering Brown Cheese Food Company an opportunity to implement firm administrative and policy measures that will prevent such occurrences in the future
<https://x.com/NGECKenya/status/1678313889560133632?s=20>
- vi. Offered broad-based solutions to ending femicide in Kenya after noting a surge of such violence. These measures include the enhancement of proactive measures for personal safety, ensuring acts of violence are not only met with legal consequences but are declared socially unacceptable, and swift delivery of justice to families of the victims of such heinous acts.
<https://twitter.com/NGECKenya/status/1748375418296582380?s=20>
- vii. Made presentations before various Parliamentary committees on various subject matter. For example, on 29th February 2024, 9a.m we made presentation to the Senate Standing Committee on Justice, Legal Affairs, and Human Rights (JLAHR), on Gender-Based Violence In Kenya's Political Space With Reference To Statement Sought By Hon Senator Hamida Ali Kibwana, Mp (Nominated).

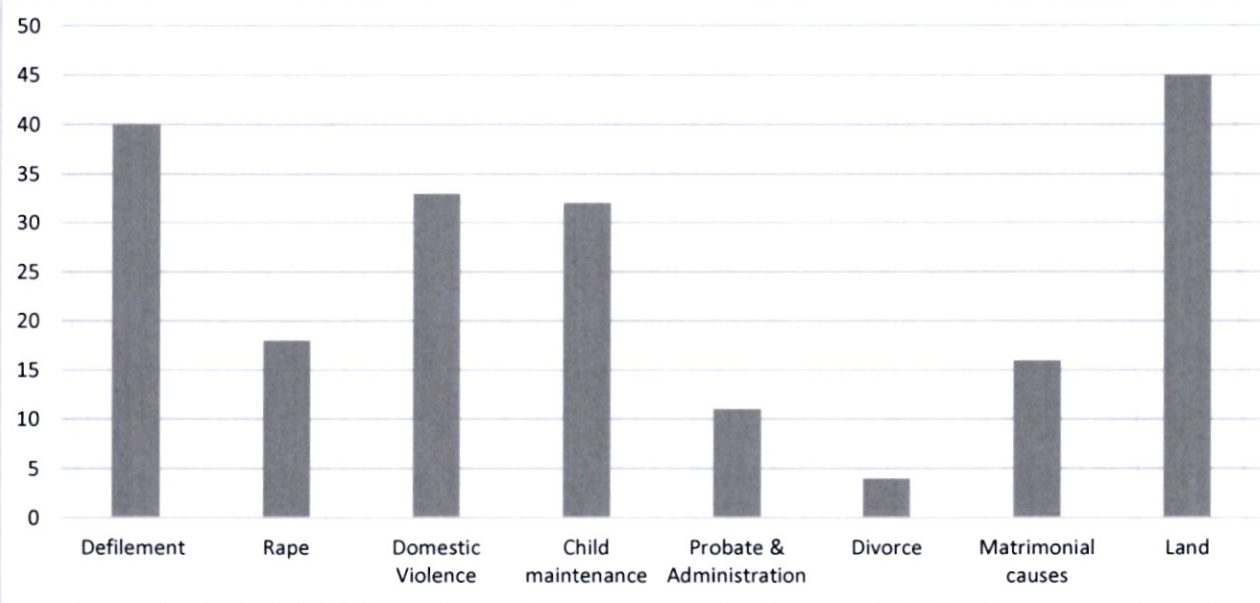
3. International and Regional Reporting: Treaties and Conventions Ratified By Kenya Relating To Issues Of Equality And Freedom From Discrimination. **Hon. Chairperson and Members,** The Commission acts as the principal organ of the State in ensuring compliance

with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalized persons, women, persons with disabilities, and children. Every financial year, the Commission participates in at least 7 international reporting sessions mainly virtually or through contributions to the country position papers/reports, and planning of side events. The annual reporting cycles we are involved include: United Nations Session of the Open-Ended Working Group on Ageing; Conference of States Parties to the UN Convention on the Rights of Persons with Disabilities (COSP) in New York; The United Nations Permanent Forum on Indigenous Issues (UNPFII); UN Framework Convention on Climate Change (UNFCCC); Sessions of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the United Nations Framework Convention on Climate Change (UNFCCC); Commission on the Status of Women; African Commission on Human and Peoples' Rights; Ordinary Sessions of the African Commission on Human & Peoples' Rights (ACHPR). Period regional and international reporting we are involved include; reporting cycles for Convention on the Rights of the Child (CRC), African Charter on Rights and Welfare of Children; The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (Maputo Protocol), Summits to the International Conference on Population and Development (ICPD).

Our participation to these obligatory reporting contributes to the fulfillment of the Article 2(6) of the Constitution. We also ensure that the state implement the concluding observations and recommendations from treaty committees.

4. Complaints Management

Hon. Chairperson and Members, The Commission has a broad mandate of investigating on its own initiative or on receipt of complaints on violation of the principles of equality and freedom from discrimination. Between 2019 and today, the Commission has processed 473 complaints on gross violations of rights of special interest groups, GBV and conflict on land are most common. The Commission has had a direct impact on accelerating access to justice.



With the support of the National Assembly, the Commission published the National Gender and Equality Commission Complaints Handling and Procedure Regulation 2022. These regulations are meant to operationalize part III of the National Gender and Equality Commission Act of 2011 on investigations. The regulations has been put to test in processing two active complaints: Non-Compliance With The Not More Than Two Thirds Gender Principle By The Kenya Union Of Savings And Credit Cooperatives Limited Board Of Directors (KUSSCO); and alleged violation of

the right to equal benefit and protection emerging from complaints in ownership and management of a land buying company.

5. Public Interest Litigation (PIL)

Hon. Chairperson and Members, The Commission has undertaken several public interest litigations aimed at promoting and defending the right to equality and freedom from discrimination. Notable ones include Petition 1 of 2019 National Gender & Equality Commission -v- Nakuru County Assembly, Speaker of Nakuru County Assembly & others that affirmed the right of nominated members of county assemblies to be appointed into chairs and vice chairpersons of various committees of County Assemblies, and clarified that the constituency of nominated members of county assemblies representing youth, minorities, Persons with Disabilities is the entire of the county which should be factored during allocation of mileage allowances for such members. In the past three years, the Commission has invested more on alternative dispute resolution mechanisms and watching brief on court matters. Budget limitations has impeded our participation in PIL.

6. Issue of Advisories

Hon. Chairperson and Members, The Commission has issued over 300 advisories on strategies for compliance with principles of equality and inclusion to both private and public institutions. Some of the advisories we have issued include:

Date	Issue	To whom
2023/2024	Advisory on implementation of Article 56 on minority and marginalised groups by establishing a state department for minority and marginalised groups	The Office of the President
2021/2022	President to reject reject the list of nominees to be appointed as Commissioners of IEBC presented to him since it did not comply to the two thirds gender principle	The Office of the President
	To the Senate and National Assembly to consider the not more than two thirds gender principle in consideration of the names of the candidates proposed to hold the office of Commissioners for IEBC	Speaker of the National Assembly
	In respect to complaints received by the Commission from older persons or their care givers on the discontinued access to the <i>Inua Jamii</i> cash transfer funds and the need to consider expanding the eligibility criteria of the <i>Inua Jamii</i> program to all persons aged 70 and above within Kenya	Cabinet Secretary, Ministry of Public Service, Gender, senior citizens affairs and special programs
2020/2021	Following an advertisement in the Daily Newspapers seeking to recruit persons for training and specifically on the eligibility of the applicants. The advertisement was discriminatory to women.	The State Department for Fisheries, Aquaculture and the Blue Economy, Ministry of Agriculture, Livestock, Fisheries and Cooperatives
	On the proposed engagement of street children in the Nairobi Metropolitan Services (NMS) Power plan. The proposal violated the right of the child	Cabinet Secretary, Ministry of Labour and Social Protection
	The appointment of Chief Justice and a judge of Supreme Court to ensure the recruitment processes support the Apex Court in its entirety to comply with the not more than two-thirds gender principle,	Judicial Service Commission

	and promote the participation of the SIGs as eligible applicants in the recruitment processes	
	On a framework for monitoring the implementation of voluntary 50 hours of Pro Bono legal services to victims of Gender-Based Violence (GBV) offered by Mr. Edwin Sifuna, (the Secretary-General, Orange Democratic Party (ODM) to the National Cohesion and Integration Commission (NCIC)	National Cohesion and Integration Commission
	Based on a request by the Communications Authority of Kenya and major outcry by Kenyans about the use of derogatory and discriminatory language against women and girls during a morning show carried on air on 25th March 2021 by one of the local radio stations.	Homeboyz radio of the Radio Africa Group
	On promotion, protection and fulfilment on the affirmative action and inclusion of SIGs in the recruitment process including adherence to the not more than two-thirds gender principle in the entire composition of the policy arm of the Commission.	The Selection Panel for the IEBC Commissioners
2019/2022	Compliance advisories with the Health Act, No. 21 of 2017, which requires all employers to support workers who breastfeed at work by establishing lactation stations	44 Principal Secretaries, Kenya Private Sector Alliance and 14 hospitals (including national, county and private sector hospitals)
	Key issues affecting the welfare of people in vulnerable situations during COVID-19	Ministry of Health and the Ministry of Interior and Coordination of National Government

7. Service to Taskforces and Committees

Hon. Chairperson and Members, The Commission is a member of the National Council on Administration of Justice Committee on review of Sexual Offences Laws and Policy. Here we champion review of the 2006 Sexual Offences Act, enactment of the National Policy against Sexual Offences and review of the whole gamut of laws touching on gender-based violence.

The Commission is a member of the Victims Protection Board where it champions the rights of vulnerable victims of offences including gender-based violence, abuse of police power among others. The Commission is a member of the national implementation committee on Business and Human Rights established by the Attorney General. The committee comprises of both State and Non-State actors to ensure the country respects human rights. The committee spearheaded development of a national action plan on Business and Human Rights to ensure compliance with international standards to respect human rights in business process.

The Commission is a member of the National Committee on International and National Human Rights Obligations. Through this committee, the Commission has participated in drafting the third national status report on Universal Periodic Review of the UN Human Rights treaties. The Universal Periodic Review (UPR) is a process that assesses all human rights in all the 193 UN Member States.

The Commission is a member of the Technical Working Group of the ICPD-25. From 2021, the Commission has participated in development of annual reports on implementation of the International Conference on Population and Development (ICPD), specifically on ICDP+25

commitment 5, dubbed, *End gender and other forms of discrimination by 2030 through enforcing the anti-discrimination laws and providing adequate budgetary allocations to institutions mandated to promote gender equality, equity and empowerment of women and girls.*

8. Transfer of Functions to County Government

Hon. Chairperson and Members, As guided by sections 8(b) and (g) of the NGEC Act, 2011, NGEC is a member of the Gender task team that is established by the Intergovernmental Relations Technical Committee to facilitate the completion of transfer of Constitutionally assigned functions to county governments. Specifically NGEC was tasked to work with representatives from targeted national government state departments, corresponding county government representatives and targeted sectoral technical directors to ; identify pending constitutionally assigned functions for transfer; provide clarity on the identified functions pending transfer; identify and review existing legislation to strengthen the already transferred functions; identify attendant resources due for transfer; and develop implementation plans for the transfer of functions. NGEC gave its submissions to its sector task team and a report was developed that was dubbed '*Report on the functional analysis on tourism, heritage, wildlife, culture & cross cutting themes (Gender, youth, children, older members of society, Persons with Disabilities, minorities and marginalized groups and social services*'.

9. Supporting County Governments Plan and Budget for SIGs:

Hon. Chairperson and Members; The Commission has so far established Equality and Inclusion Technical Working Groups (EITWGs) in thirty-four counties (Trans-nzoia, Samburu, West Pokot, Turkana, Muranga, Nyeri, Nyandarua, Makueni, Machakos, Kitui, Nairobi, Nyamira, Kisumu, Busia, Bungoma, Vihiga, Kericho, Kajiado, Narok, Nakuru, Laikipia, Baringo, Nandi, Embu, Tharaka-Nithi, Isiolo, Mandera, Wajir, Garissa, Taita-Taveta, Tana River, Kilifi, Kwale and Mombasa). The EITWG is designed to serve as a facilitator in monitoring the progress that the National and County governments are making in addressing equality and inclusion matters for Special Interest Groups (SIGs); plan for, and budget for priority interventions for the special interest groups. Through the EITWG, a number of policies, documents, plans, and programs have been reviewed, several public education and awareness fora held and ensuring that SIGs are included in the development agenda. The EITWG have greatly improved the Commission's coordination function at county level especially in the counties where the Commission has physical presence. Kitui , Kilifi and Isiolo counties for example shall be holding EITWG meeting 11th April 2024, Garissa county held their own on 2nd April 2024, and Nakuru and Kisumu counties shall hold on 1th April 2024..

In respect to our direct support to the County Governments, NGEC has received certificates of recognition from Garissa County in 2024, Nakuru in 2023, Isiolo 2023, and Kisumu in 2020 and again in 2023, in addition to several national awards.

10. Special Audits

Hon. Chairperson and Members, Function 8 (m) as provided in section 8 of the NGEC Act No 15 of 2011, mandates the Commission to conduct audits on the status of special interest groups. Since our establishment, the Commission has completed in excess of 56 audits on various issues (11 special structured audits and 45 rapid audits). We have also audited various agencies (private and public), and on the two arms of government (Judiciary through a dedicated audit and the Executive through public performance contracting), on compliance of gender equality, freedom from discrimination and inclusion. We have also audited the county governments albeit minimally due to financial constraints. On 21st March 2024, we discussed with the Speaker of the National Assembly Rt.Hon. (Dr.) Moses M. Wetang'ula EGH. MP, and immediate need to conduct gender audit the 13th Parliament.

In respect to the audit of Government Ministries, Departments and Agencies (MDAs) on their compliance with the principles of gender equality, inclusion and nondiscrimination, the Commission has since 2020 implemented a successful reward and sanction scheme. In 2024, the Commission awarded Ministries, Departments and Agencies that performed well on gender mainstreaming, an activity we hope to replicate in the private sector and scale up in near future.

In 2022, the Commission completed an assessment of level of gender diversity of companies listed in the Nairobi Securities Exchange (NSE). The assessment covered 62 companies and 540 board members. The results indicate that women constitute only 25% of the board members; nine companies (15.5%) did not have any woman serving in the board while three companies namely: Standard Chartered Bank of Kenya, Kenya Commercial Bank and Home Africa had the highest proportion (50%) of women serving in their board. Eight companies had female Chief Executive Officer.

The Commission has monitored the last three general elections from 2013, 2017 and 2022. Monitoring mainly focuses on the participation and involvement of Special Interest Groups (SIGs) in the general elections processes including; political campaigns, political party nomination processes, administration and logistics related to the polling, tallying announcement of the results, and post-polling activities. The objective of the monitoring exercise is to assess the participation, involvement, and contributions of SIGs in the electoral process. Some of the aspects covered by the monitoring exercises included: Campaign financing of SIGs candidates; Access to information about elections; Accessibility of campaign and polling venues; Incidences of Gender Based Violence particularly those directed to SIGs; Electoral malpractices and how they affected SIGs involvement in elections; and Media coverage of SIGs during the campaigns period. On preparedness (administration and logistics), the NGEK monitors the extent to which agencies with the greatest responsibility of managing and implementing elections were prepared to deliver the general elections. Reports of the monitoring of elections exercises are prepared and they contain recommendations directed to agencies responsible for electoral governance and management in Kenya. a key recommendation is the need to review and implement the campaign financing Act among other laws.

Given that the SIGs are most marginalized in the energy sector and use expensive and dirty hazardous energy, the Commission has conducted an assessment on the uptake of selected forms of green energy by SIGs in Kenya. The project was premised on the fact that Kenya has invested heavily in green energy production and distribution and has made major policy, regulatory and institutional reforms to enhance access to clean energy and to promote investments in renewable energy. The study was conducted in 8 counties namely: Kiambu, Murang'a, Kajiado, Machakos, Uasin Gishu, Kakamega, Garissa, and Nyamira Counties. The report contains far reaching recommendations on the disproportional access of SIGs to clean energy.

The Commission is a member of the gender sector statistic committee with responsibility of supporting data producers prepare well disaggregated data based on the minimum demographic and location variables. The Commission therefore contributes in the identification of the most left out populations in various spheres of development, and helps define intersectionality over time and within different spheres of life. Our major contributions on this task is mainly in 2023 health and demographic data, the 2019 national population and housing census, and elections data.

The Commission, in partnership with GIZ, developed and launched a report on the 2023 Inequality Diagnostic Study in Kenya. This study is grounded on a macroeconomic analysis of significant developments in Kenya's economic growth, poverty, and inequality over the past decades. It investigated the root causes and catalysts of inequality, emphasizing labor market dynamics, taxation policies, social transfers, and gender disparities. The examination extended to evaluating the efficacy of national policies and strategies in addressing inequality, considering the approaches of international donors.

11. Institutional Strengthening

Hon. Chairperson and Members, the Commission being a responsible constitutional outfit strives to demonstrate to other agencies on practical applications of affirmative actions, value for diversity, equity, inclusion, and nondiscrimination. We are not perfect but we are proud of the following:

- a) The Commission policy arm has 4 commissioners (two men and two women), and a female chairperson, thus a total of 5 members (an odd number). The chair and vice chairperson are of opposite gender. One member is a PWD and all members are drawn from different counties.
- b) The secretariat has 108 staff, females constitute 54%, PWDs 5%, youth 19% and represents 20 ethnic groups of Kenya.
- c) Our senior management team is well balanced with two directors from opposite gender and diverse ethnicity.
- d) We have six regional offices (Nakuru, Kisumu, and through affirmative action to marginalized zones, established offices in Kitui, Isiolo, Garissa, and Malindi)

A. Challenges

1. Budgetary constraints that has prevented the Commission from significantly discharge its mandate. For instance:
 - a) Unable to undertake inquiries on notorious violations of principles of equality and freedom from discrimination. For instance, the Commission has received petitions so far on inaccessibility of built environment in both private and public spaces by persons with disabilities but we are unable to conduct the large-scale inquiries due to lack of funds.
 - b) Physical presence in counties is limited to 6 counties. This, coupled with limited number of technical (42 out of 108) staff make it difficult for the Commission presence to be felt across all regions.
 - c) Limited funding of the gender agenda and inclusion issues in all spheres of life. Gender equality and freedom from discrimination though considered critical in the realization of the 2030 Kenya development agenda, it is yet to receive the necessary political good will and critical financial muscle.
2. Extremely low levels of adherence to legal and policy framework on gender equality and inclusion
3. Gender and SIG related laws are less prioritized at National Parliament and in County Assemblies. For example, a quick analysis of schedule five of the COK shows that since the promulgation of the 2010 Constitution, the law on representation of marginalized groups (Art 100) has not been enacted.
4. Gender equality and inclusion issues are perceived as expensive, invites additional costs, and a driver of ballooning of wage bill. Personal aides to PWD, brailing of materials, and reasonable accommodations for PWDs is often construed as unnecessarily expensive. Bodies and agencies that work for the SIGs are therefore choked from receiving necessary financial allocations to promote and implement inclusion and equity. Gender equality and inclusion must be redefined in Kenya as a factor of development and not a matter of women, or marginalized groups.

B. The Two Thirds Gender Rule And Why It Was Not Addressed In The National Dialogue Committee (NADCO) Report.

Hon. Chairperson and Members, On Friday 22nd September 2023, the Commission made its presentations before the National Dialogue Committee (NADCO) at the Bomas of Kenya at 11:00am as captured in paragraph 467 of the report. Further, based on the report, the

Commission is aware that other players such as the Political Parties, the Council of Governors, the Federation of Kenya Employers, The Kenya Women Parliamentary Association (KEWOPA), a Multi-Sectoral Working Group (MSWG) on the realisation of the not more than two-thirds gender principle, *Azimio la Umoja* One Kenya Coalition (Women Leaders), among others presented their views on the issue of two thirds as captured in the NADCO report for example under paragraphs, 469, 494, 499, 500 and 505.

Hon. Members, the Commission takes notes of the recommendations by NADCO in page 167 of the report. The Committee, while noting the establishment of Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle, recommended the taskforce to finalize its work and submit its report for consideration by Parliament. Further, the Commission notes that the NADCO, through its recommendation in paragraph 518 (b) gave proposals for consideration by the Multi-Sectoral Group on the realization of the Two-Thirds Gender Principle. It is important to note that in August 2023, the Cabinet Secretary for Gender, Culture, the Arts and Heritage, Hon Aisha Jumwa established through Gazette Notices No. 10848 and No. 1109, a Multi-Sectoral Working Group (MSWG) on the realization of the not more than two-thirds gender principle. The MSWG was mandated to develop a framework to implement the outstanding constitutional requirements on the not more than two-thirds gender principle in elective and appointive public institutions. The Working Group comprised of 25 members from State and non-State agencies representing diverse sectors. NGEK served in the 6-member joint secretariat to the working group.

Hon. Chairperson and members, it is our view that the NADCO, in its wisdom found it best to have this issue addressed through the already established working group. By the time NGEK made its presentation to the NADCO, the Multi-Sectoral Working Group (MSWG), had not finalized its work and report. The Commission therefore support the decision by NADCO in obligating the MSWG to complete its report and give guidance to the nation as far as the realization of the two thirds gender rule in Parliament is concerned.

Hon. Chairperson and Members, the NADCO report also made a recommendation that the Commission is strongly convinced will negatively impact on the implementation of the Constitution and in particular Articles 27, 52, 53, 54 and 57 on respectively. Parliament has already adopted the National Dialogue Committee (NADCO) Report and shall proceed to debate it. One of the far-reaching recommendations in this report is that within one year of its adoption, the National Cohesion and Integration Commission (NCIC), National Gender and Equality Commission (NGEK) and Kenya National Commission on Human Rights (KNCHR) be merged, and their mandates be undertaken by the Kenya National Human Rights and Equality Commission as established under Article 59 of the Constitution. This shall result in the claw back of the gains made thus far in the gender agenda.

Hon. Members, the National Cohesion and Integration Commission is not a Chapter 15 Constitutional Commission for the reason that its founding statute is not based on Article 59 (4) of the Constitution. The legislature will be required to undertake a referendum in order to address the structure of KNCHR and NGEK because of the constitutional protection afforded by Article 59 (5)(c) unlike when dealing with NCIC.

Hon. Members, Indeed, of all the Chapter 15 Commissions, NGEK has a higher number of functions compared to the others (16 functions). It is only NGEK that has powers over private sector in terms of compliance with the principle of gender equality and non-discrimination. Furthermore, of the Chapter 15 Constitutional Commissions, NGEK receives the lowest annual budget of less than 500 Million Kenya Shillings (for the last 12 years consistently). The Commission has just started implementing its complaints mechanism albeit with zero budget. These among other functions will be lost and subsumed in the event of a merger.

This evidence is enough to inform you about the architecture that informed the establishment of the three constitutional commissions (CAJ, NGEC and KNCHR). The object was to ensure among others, a holistic implementation of the constitution with delicate balance on principles of separation of powers, independence, accountability, checks and balances within government. The Kenya National Human Rights and Equality Commission (KNHREC) as designed in article 59 (1) would have such a huge mandate that is almost impossible to adequately fund, implement, and be accountable. It is for those reasons that the provisions of article 59 (4) allowed at that time, Parliament to restructure the KNHREC in order to give full effect to article 59 (2) within the governance principles of separation of powers, checks and balances, independence and accountability. If these provisions are reversed, there will be a serious challenge in the implementation of the Constitution.

Hon. Chairperson and Members, with merger, the Country will send a negative signal that matters of equality, non-discrimination, and social cohesion are not of priority in the scheme of governance and administration. I also bring to your attention that NCIC is not a Constitutional Commission but a statutory one. To wind up NCIC, we do not require a constitutional referendum. However, NGEC is a Constitutional Commission protected under Chapter 16(1e) of the Constitution and to actualize the recommendation on merger, it would require a constitutional referendum. Given the unrealized mandate, it is extremely untimely to imagine or consider merging NGEC with other agencies.

Hon. Chairperson and Members, The Commission seeks your leadership, commitment to the rule of law, and support in keeping the promise of promoting gender equality and protecting fundamental rights by championing the agenda of not merging NGEC with any other Commission. This is a prayer we humbly present to you

Thank you.